Practical Law

GLOBAL GUIDE 2021
INTERNATIONAL TRADE AND COMMERCIAL TRANSACTIONS

International Trade in Goods and Services in Pakistan: Overview

Saifullah Khan and Saeed Hasan Khan, S.U.Khan Associates, Corporate & Legal Consultants

global.practicallaw.com/w-019-0685

RECENT TRENDS

1. What are the recent trends affecting the regulation of international trade in your jurisdiction?

Economic Situation

Pakistan's economy showed some signs of recovery in the second half of 2019 before the outbreak of the 2019 novel coronavirus disease (COVID-19) pandemic. The current government has made efforts to provide an enabling environment for trade and businesses, reduce current account deficits, and achieve a positive balance of payment. As a result:

- Pakistan rose 28 places on the World Bank's Ease of Doing Business index compared with 2018.
- Pakistan is now among the world's top ten countries with the most improved business climate.
- Volatility in exchange rate has decreased, as overvaluation of the rupee was reduced.
- The China-Pakistan Free Trade Agreement (FTA) entered into force on 1 December 2019. This grants Pakistan similar access to the Chinese market as that granted to the Association of Southeast Asian Nations (ASEAN) member states.
- There was evidence of increased foreign direct investment, particularly from Chinese textiles companies.

However, the COVID-19 outbreak has resulted in widespread lockdowns, transport restrictions, and social distancing, which have halted supply chains and had devastating consequences on business activities.

The economic growth of Pakistan is highly dependent on its exports. This is because access to foreign exchange enables Pakistan to finance its imports, stabilise its currency devaluation, service its debts, and resolve the issue of balance of payment deficit. However, the trade imbalance that has been continuing for decades cannot be reduced without an effective import substitution strategy. To encourage import substitution, the government is pursuing its "Make in Pakistan" policy. The objectives of this policy are to create jobs, generate value-added exports, and encourage import substitution.

Over the last two years, imports have decreased due to regulatory measures, currency devaluation, and higher interest rates to suppress domestic demand. The COVID-19 pandemic also reduced domestic demand, resulting in fewer imports in the second half of 2020.

With the relaxing of lockdown measures, economic indicators are showing positive results bringing Pakistan's economy on the path of recovery. The earlier trend of falling imports has been reversed. This is because the government reduced import tariffs on industrial raw materials in line with the National Tariff Policy (2019-2024) to enhance competitiveness of the local industry. The overall recovery is attributed to two main factors:

- The national strategy that contained the pandemic.
- The timely and well-calibrated support measures adopted by the government and the State Bank of Pakistan (SBP).

The government had initially projected that GDP growth would remain at around 2.1% in 2021. However, strong recovery from the manufacturing sector has revised upward the central bank's projection to 3% for 2021. The economy recovered more rapidly than projected by international institutions. The International Monetary Fund (IMF) had projected a growth of 1% in its "World Economic Outlook Database, October 2020", but revised it to 1.5 in January 2021.

Pakistan's exports have increased by 4.4% to USD16.3 billion during the first eight months of financial year (FY) 2021, compared to USD15.6 billion for the same period in the previous year. Textile exports increased by 6.7% in the first eight months of FY2021. Private consumption is estimated to have picked up between July and December 2020, in part due to:

- A record increase in remittances inflows.
- Social assistance support from the Ehsaas programme.
- The government's construction package.
- A return to pre-COVID-19 mobility levels from September 2020.

Investment is also estimated to be recovering, as machinery imports and cement sales both recorded double-digit growth rates during this period.

Pakistan has finalised its five-year Strategic Trade Policy Framework (STPF 2020-25) draft with measures to diversify exports from traditional sectors to high-quality and globally competitive engineering products. The ministry envisages annual exports of USD37 billion by 2025.

Negotiations of Trade Agreements

Many preferential trade agreements (PTAs) and FTAs are currently under discussion. For example:

- FTA negotiations with Thailand are at an advance stage.
- An FTA with Iran is under discussion.
- Pakistan and Uzbekistan have agreed to enhance trade relations through a bilateral transit trade agreement, a PTA, as well as co-operation on banking and visa issues, aviation, and customs.
- Pakistan and South Korea have agreed to hold further negotiations on a proposed FTA to increase bilateral trade and promote free trade between the two countries.
- Pakistan and Afghanistan have agreed to discuss a PTA as part of their talks on a new Transit Trade Agreement.

- Turkey and Pakistan are aiming to raise annual bilateral trade to USD5 billion through a proposed FTA.

Trade Disputes

Pakistan is currently party to four WTO disputes:

- ***DS500: South Africa - Provisional Anti-Dumping Duties on Portland Cement from Pakistan.*** This case relates to the imposition of provisional anti-dumping measures by South Africa on the import of Portland cement products from Pakistan. On 10 November 2015, Pakistan requested consultations with South Africa, but the dispute did not settle or move forward. South Africa imposed anti-dumping duties and an expiry review was initiated in December 2020, which will be concluded within 18 months.
- ***DS470: Pakistan - Anti-Dumping and Countervailing Duty Investigations on Certain Paper Products from Indonesia.*** On 27 November 2013, Indonesia requested consultations with Pakistan relating to the continuation of, and failure to terminate in a timely manner, certain anti-dumping and countervailing duty investigations on certain paper products from Indonesia. In 2014, Indonesia requested the creation of a panel, but this has been deferred. The National Tariff Commission subsequently terminated the investigations.
- ***DS538: Pakistan - Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates.*** On 24 January 2018, the UAE requested consultations with Pakistan concerning Pakistan's anti-dumping measures on imports of biaxially oriented polypropylene film from the UAE. A panel has been established and was composed on 7 May 2019. On 18 January 2021, the panel report was circulated to members. On 22 February 2021, Pakistan notified the Dispute Settlement Body (DSB) of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report.
- ***DS107: Pakistan - Export Measures Affecting Hides and Skins.*** On 7 November 1997, the EC requested consultations with Pakistan in respect of a Notification enacted by the Ministry of Commerce of Pakistan prohibiting the export of, among other things, hides and skins, and wet blue leather made from cow hides and cow calf hides. The EC contended that this measure limited the access of EC industries to competitive sourcing of raw and semi-finished materials. The matter was resolved through a mutually agreed settlement between the EU and Pakistan.

TRADE AGREEMENTS

2. Is your jurisdiction a member of the World Trade Organization (WTO)? What are the main international, regional or bilateral trade agreements to which your country is a party?

Pakistan is one of the founding members of the WTO, and had been a member of the General Agreements on Tariffs and Trade (GATT) since 30 July 1948.

Pakistan is party to the following trade agreements:

- Agreement on South Asian Free Trade Area (SAFTA).
- Pakistan-Malaysia Trade Agreements.
- Pakistan-China FTA on Goods and Investment.
- Pakistan-China FTA on Trade in Services.
- Pakistan-Sri Lanka FTA.
- Pakistan-Iran PTA.
- Pakistan-Mauritius PTA.
- Pakistan-Indonesia PTA.

For more information, see *www.commerce.gov.pk/about-us/trade-agreements*.

Negotiations are under way for bilateral FTAs with Iran, South Korea, Thailand, Turkey, and Uzbekistan, and with Afghanistan for a PTA (*see Question 1, Negotiations of Trade Agreements*).

EU has granted Pakistan generous tariff preferences since 1 January 2014. Under GSP+ status, Pakistan benefits from preferential tariffs (mostly zero duties on two thirds of all product categories). To maintain GSP+ status, Pakistan must ratify and effectively implement 27 core international conventions on:

- Human and labour rights.
- Environmental protection.
- Good governance.

See: *http://ec.europa.eu/trade/policy/countries-and-regions/countries/pakistan*.

In February 2020, the EU conducted its third biennial review on Pakistan's implementation of the core conventions, and renewed its GSP+ status until 2022.

TRADE NEGOTIATIONS

3. What are the authorities responsible for negotiating trade agreements? How long does it usually take to conclude a trade deal with your country?

The main federal government authority responsible for negotiating trade deals is the Ministry of Commerce (MOC). The Foreign Trade Wings of the MOC are responsible for trade promotion/diplomacy and taking market access initiatives related to their respective regions. There are three Foreign Trade Wings in the Ministry:

- Foreign Trade-I (East, South and Southeast Asia, Oceania).
- Foreign Trade-II (Caribbean, Middle East, and Africa).
- Foreign Trade-III (Europe and America).

There are no strict timelines for the negotiation of trade agreements. These vary depending on the negotiating parties, the sectors involved, ongoing market and economic conditions, existing trade and diplomatic relationships, and so on. For example, negotiations of a Pakistan-Thailand FTA were launched formally on 13 August 2015. Nine rounds of negotiations have been held. The 10th, to be hosted by Pakistan, is pending due to COVID-19 lockdowns. By contrast, FTA negotiations with Malaysia started in early 2005 and a Comprehensive FTA for Closer Economic Partnership was signed in 2007.

SUPPLY OF SERVICES

4. Is your jurisdiction a party to international agreements on cross-border trade in services? Is your jurisdiction taking part in the negotiations of the Trade in Services Agreement (TiSA)?

Pakistan's only complete and distinct agreement on trade in services is the Pakistan-China FTA on Trade in Services. This was concluded on 21 February 2009 with the following objectives:

- Integrate the economies of Pakistan and China for mutual benefits.
- Provide a predictable investment regime in the services sector, especially in infrastructure, computer and related services, educational services, research and development, tourism,

sporting services, and environmental services such as sewage and cleaning services.

- Promote joint ventures to build the capacity of domestic service suppliers, increase transfers of technology, and create new jobs in Pakistan.

Additionally, the Pakistan-Malaysia FTA includes provisions on preferential market access for cross-border trade in services in:

- Computer and IT related services.
- Islamic banking.
- Islamic insurance (*takaful*).

The Pakistan-Malaysia FTA also includes provisions on the accreditation of educational institutions and academic programmes through mutual recognition arrangements.

The government intends to include trade in services in the negotiations of new FTAs.

Pakistan is one of the 23 TiSA negotiating parties.

5. What domestic legislation and international rules apply to the supply of financial services and legal services in your jurisdiction? What are the main requirements that service providers must comply with?

Financial Services

The financial services sector of Pakistan includes banking, non-banking finance, and insurance services.

Banking Services. The SBP is responsible for the supervision and regulation of banks in Pakistan. It has authority to issue commercial banking licences (*section 27, Banking Companies Ordinance 1962*).

The main requirements to open a commercial bank in Pakistan are as follows:

- The proposed bank must be a public limited company and listed on the stock exchange(s) in Pakistan. If it is not listed at the time of commencing business, the listing must be completed within two years from the date of commencing business.
- At least 50% shares must be offered to the general public.
- To commence business, locally incorporated banks and subsidiaries of foreign banks must have a minimum paid-up capital (free of losses) of PKR10 billion, or any other amount as prescribed by the SBP from time to time. However, foreign banks wishing to conduct banking business through branches must have a minimum paid-up capital (free of losses) of PKR3 billion or any other amount as prescribed by SBP from time to time, subject to the following conditions:
  - the foreign bank has a paid-up capital (free of losses) at least equivalent to USD300 million and has a capital adequacy ratio of at least 8% or the minimum prescribed by their home regulator, whichever is higher; and
  - the foreign bank will operate at least five branches in Pakistan.
- The bank must maintain a minimum capital adequacy ratio of 10% or any other percentage as specified by the SBP from time to time.
- At least 20% of the total paid-up capital must be subscribed personally by the sponsor directors.
- The bank must have at least seven sponsor directors.
- Sponsor directors must not dispose of their shares in any manner for a minimum period of three years, and thereafter only with specific written approval of the SBP.
- The board of directors and chief executive must comply with fit and proper requirements.
- The bank must not provide any accommodation, fund-based or otherwise, to its directors, chief executives and major shareholders, including their spouses, parents and children, or to the firms and companies in which they are interested as partners, directors, or major shareholders. Major shareholding in this context means any person holding 5% or more of the paid-up share capital.

The following can conduct banking business through branches or wholly owned locally incorporated subsidiaries:

- Banks from countries belonging to regional groups and associations of which Pakistan is a member.
- Foreign banks having a global tier-1 paid up capital of USD5 billion or more.

Otherwise, a foreign corporate entity wishing to conduct banking business in Pakistan must incorporate a local company with a maximum 49% foreign shareholding.

Non-Banking Financial Services. Non-bank finance companies (NBFCs) are governed by the:

- Companies Act 2017 and Part VIII A of the Companies Ordinance 1984.
- Non-bank Finance Companies (Establishment and Regulation) Rules 2003.
- Non-bank Finance Companies and Notified Entities Regulations 2008.

The Securities and Exchange Commission of Pakistan (SECP) regulates NBFCs and issues relevant licences.

Non-banking financial services include:

- Asset management services for collective investment schemes (including both open and closed-end public funds).
- Private equity and venture capital fund management services for private funds.
- Investment finance services.
- Investment advisory services.
- Leasing services.
- Housing finance services.
- Discounting services.
- Pension fund schemes.
- Management services for real estate investment trusts.
- Venture capital investment.

The requirements to establish NBFCs are as follows:

- The promoters, proposed directors, chief executive and chairman must comply with the fit and proper criteria set out by the SEC.
- Incorporation under the Companies Act 2017.
- A foreign company must incorporate a local subsidiary (there is no prescribed limit on shares held by non-residents or foreign companies).

Insurance Services. The insurance sector is governed by the:

- Insurance Ordinance 2000.

- Insurance Rules 2017.

The SECP is responsible for regulating and supervising the insurance sector.

To offer insurance services in Pakistan, a service provider must be either:

- A company incorporated under the Companies Act.
- Any other body corporate incorporated under the laws of Pakistan.

Before the enactment of the Insurance Ordinance 2000, foreign insurers were permitted to provide insurance services in Pakistan subject to compliance with all regulatory requirements. The Insurance Ordinance 2000 changed this by requiring all existing insurers incorporated outside Pakistan to transfer their insurance business to a locally incorporated public limited company through a scheme of amalgamation no later than six months after the Insurance Ordinance 2000 came into force.

There are no nationality or residency requirements. However, if a foreign entity intends to provide services through a locally incorporated company, all foreign shareholders and foreign directors must apply for a No Objection Certificate (NOC) or security clearance from the SECP at the time of:

- Incorporation.
- Appointment as a director.
- Equity investment.

If the SECP rejects the application, the foreign director or investor must immediately resign as director or disinvest from the local company.

Legal Services

Regulatory Framework. The legal profession in Pakistan is governed by the:

- Legal Practitioners and Bar Councils Act 1973.
- Pakistan Legal Practitioners and Bar Councils Rules 1976.
- Pakistan Bar Council Legal Education Rules 1978.
- Pakistan Bar Council (Recognition of Universities) Rules 2005.

Main Requirements. Only advocates can practise law in Pakistan. To be an advocate, a person must:

- Be a citizen of Pakistan.
- Be above 21 years of age.
- Have a law degree from a university in Pakistan or abroad that is recognised by the Pakistan Bar Council (PBC).
- Have undergone such course of training and passed such examination after training as prescribed by the PBC.
- Have paid the prescribed enrolment and other fees to the PBC.

The requirement for citizenship can only be waived if both:

- The foreign national is admitted in a country in which citizens of Pakistan are also permitted to practise law.
- The foreign national has resided in Pakistan for at least one year immediately before the day they file an application for admission as an advocate.

The training requirements prescribed by the PBC are waived if an applicant, whether local or eligible foreign citizen:

- Has obtained an LLM from any university in Pakistan or a university recognised under section 26(1)(c)(iii) of the Legal Practitioners and Bar Councils Act 1973, or a degree or diploma that is declared by the PBC to be equivalent to that degree.
- Has for at least five years held a judicial office in Pakistan, or has for the same period held a post involving the interpretation or drafting of Pakistan laws.
- Has been called to the Bar in England and Wales and has completed one-year training with a senior counsel in England and Wales that entitled them to appear independently before the courts of England and Wales.
- Has been enrolled as a practising lawyer abroad and has practised law for at least one year in Pakistan to the satisfaction of the Enrolment Committee of the relevant Bar Council.

6. Are there restrictions on market access for specific services sectors?

Pakistan has a relatively liberal investment regime, which applies equally to both domestic and foreign investors. According to the Board of Investment's Investment Policy 2013, there is no minimum foreign equity investment in any sector.

100% foreign ownership is generally allowed except in the following sectors:

- Aviation.
- Banking.
- Agriculture.
- Media.

Foreign investment is prohibited in some sectors, including:

- Arms and ammunitions.
- High explosives.
- Radioactive substances.
- Securities.
- Currency and mint.
- Consumable alcohol.

All foreign investment in Pakistan must be cleared by the Ministry of Interior. Certain general market access and national treatment limitations relate to commercial presence or the presence of natural persons (for example, presence of foreign executives or specialists, expenses of representative office, authorisation for the acquisition of real estate by foreign firms).

There are no quotas, monopolies, or exclusivity granted to public or private local operators, except for distribution and transmission services in the electricity sector.

IMPORTS

Customs Authority

7. What is the authority responsible for enforcing customs laws and regulations?

The Federal Board of Revenue (FBR) is responsible for levying, collecting and enforcing the payment of customs duties under the Customs Act 1962 (Customs Act). Its powers under the Customs Act are exercised through its Customs Wing.

The FBR and its officers have various powers under the Customs Act, including powers to:

- Impose penalties.
- Confiscate goods.
- Carry out searches on reasonable grounds.

- Arrest and examine persons.
- Summon persons to give evidence and produce documents or items.

8. How can customs decisions be challenged?

Customs decisions can be challenged by appealing to the:

- Collector (Appeals), within 30 days of communication of the decision.
- Customs Appellate Tribunal, if the original decision was made by a customs officer of the rank of Additional Collector or higher, within 60 days of the decision.

(*Section 194A, Customs Act.*)

An appeal from the decision of the Customs Appellate Tribunal can be filed with the High Court on questions of law. This appeal must be filed within 90 days of service of the order of the Appellate Tribunal (*section 196, Customs Act*).

A recent amendment to the Customs Act allows any person aggrieved by a decision of customs authorities pertaining to, among others, liability to customs duty, fixation of penalty, or confiscation of goods, to apply for the dispute to be resolved by a three-panel committee through an alternative dispute resolution mechanism (*section 195C, Customs Act*). The committee must be appointed by the FBR Board, and include one member who is a customs officer, and two independent members selected from a panel of retired judges, chartered accountants, advocates, tax consultants or reputable taxpayers.

There is no statutory right of appeal against import restrictions notified by the federal government under the Customs Act or the Import Policy Order. However, it is possible to petition the High Court in its writ jurisdiction for judicial review of a decision to impose import restrictions (*Article 199, Constitution of Pakistan*).

Import Duties, Tariffs and Rates

9. Where can information be found about import tariffs and other customs charges?

General Tariffs and Rates

The Schedules to the Customs Act 1969 is the main legislation relating to import tariffs and customs charges. Statutory regulatory orders (SROs) passed from time to time also contain information about import tariffs. Customs legislation is amended annually and is released as part of the budget (Finance Act), which must be passed by Parliament before coming into force. Import tariffs/duties in Pakistan are classified into the following categories:

- Customs duty.
- Additional customs duty.
- Regulatory duty.

Customs Duty. Information on statutory rates of customs duty can be found in the First Schedule to the Customs Act. Concessionary rates are set out in the Fifth Schedule to Customs Act.

Tariffs are amended annually at the end of the financial year, when the annual budget is announced and approved through an Act of Parliament. The Budget Bill is generally presented to Parliament around May/June, as the Pakistani financial year runs from 1 July to 30 June. The federal government can apply tariff exemptions and concessions either through the law implementing the budget or through SROs. SROs can further specify whether certain products are exempted from sales tax or other domestic taxes.

Additional Customs Duty on Imports. This duty is imposed on imported goods specified in the First Schedule at a rate not exceeding 35% of the customs value of the goods, through SROs issued by the federal government (*section 18(5), Customs Act*). SROs are issued to reflect changes in duty structure. The current additional customs duty rates are 2%, 4% and 7%. Most items listed in the Fifth Schedule are exempt from additional customs duty.

Regulatory Duty on Imports or Exports. This duty can be levied on the import or export of any of the goods listed in the First Schedule at a rate not exceeding 100% of the customs value of these goods, by SRO issued by the FBR with approval of the supervising Ministry. This duty applies in addition to any customs duty (*section 18(3), Customs Act*).

Preferential Tariffs

Preferential tariffs apply to countries who have concluded PTAs or FTAs with Pakistan (*see Question 2*), including:

- China.
- Malaysia.
- Mauritius.
- Sri Lanka.
- Indonesia.
- Iran.
- SAFTA members (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka).

The federal government, through SROs issued under the Customs Act, can apply tariff exemptions or concessions by:

- Amending the MFN rates in the First Schedule (*section 19, Customs Act*).
- Modifying customs rules and procedures to allow imports from countries party to preferential agreements to claim preferential rates of duty (*section 18C, Customs Act*).

Non-Tariff Barriers to Imports

10. Are there non-tariff barriers to imports into your jurisdiction?

Import Bans and Restrictions

The Import Policy Order 2020 allows the import of all goods from worldwide sources unless included in a:

- Banned items list (*Appendix A, Import Policy Order*).
- Restricted items list (imports are permitted subject to certain conditions) (*Appendix B, Import Policy Order*).
- List of items that cannot be imported in used or second-hand condition (*Appendix C, Import Policy Order*).

For example, the Order prohibits the import of counterfeit goods.

For information on the latest Import Policy Order with amendments, see *www.commerce.gov.pk/sros*.

Further, the federal government can prohibit or restrict imports from all or any source if deemed to be in the public interest (*Imports and Exports (Control) Act 1950*).

Licensing Requirements

There is no general licensing requirement for importers.

The import of specific goods can require licensing under domestic law. For example:

- Imports of wildlife species, including those mentioned in Appendix II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, require a no objection certificate (NOC) from the National Council for Conservation of Wildlife (NCCW).
- Certain chemicals, such as acetic anhydride, can only be imported by industrial consumers after obtaining a NOC from the Ministry of Narcotics Control.
- The imports of explosives require a NOC from the Department of Explosives of the Ministry of Industries.

The Import Policy Order 2020 provides details of the licensing requirements and procedures.

Country of Origin Marking

Rules of origin marking requirements apply to imports from countries that have free or preferential trade arrangements with Pakistan.

The MOC can adopt specific SROs, which are notified in the *Official Gazette*, to enable customs authorities to determine whether imports are subject to preferential rules of origin (*section 18C, Customs Act*).

Quotas

Imports of certain ozone depleting substances are subject to policy/quota allocations set by the Ministry of Climate Change from time to time (*Import Policy Order 2020*). Commercial importers can only import certain substances subject to a NOC and quota determination by the Ministry of Narcotic Control (such as acetone, anthranilic acid, ethyl ether, hydrochloric acid, acetic anhydride, and sulphuric acid).

Localisation Requirements

Pakistan does not impose any localisation barrier to trade.

Pakistan Standards

The Pakistan Standards and Quality Control Authority (PSQCA) was established under the Pakistan Standards and Quality Control Authority Act 1996 and operates under the Ministry of Science and Technology. It is responsible for the formulation of Pakistan standards for specific goods and harmonises these with international requirements such as ISO, IEC, and OIML. Goods that are subject to Pakistan standard specifications include:

- Foodstuffs.
- Chemicals.
- Agricultural goods.
- Civil and mechanical engineering.
- Textiles.

Imports are subject to the same national quality standards and regulations as domestic products.

The Import Policy Order 2020 contains a list of products that must meet Pakistan standards on human safety and public health at the import stage, and bear the appropriate certification mark.

Quarantine Requirements

The Animal Quarantine (Import and Export of Animal and Animal Products) Act 1979 allows the federal government to prohibit, restrict or otherwise regulate the import and export of any animal, class of animals, or animal products likely to introduce disease to other animals, animal products, or man.

The Plant Quarantine Act instructs the federal government to set quality controls on imports of goods that can potentially infect plants and plant products. The federal government can also restrict or otherwise regulate the import of any article/class of articles likely to cause infection to any crop/plant, or of any pest/class of pests (*section 3(1), Plant Quarantine Act*). The Plant Protection Rules 1967 set out the applicable restrictions.

TRADE REMEDIES

Regulatory Framework

11. What is the main legislation relating to trade remedies? What are the authorities responsible for investigating and deciding on trade remedies?

Regulatory Framework

The main domestic laws relating to trade remedies are the:

- Anti-Dumping Duties Act 2015.
- Countervailing Duties Act 2015.
- Safeguard Measures (amendment) Ordinance 2015.

In addition, the following rules regulate the trade remedy investigation process:

- Anti-Dumping Duties Rules 2001.
- Countervailing Duties Rules 2001.
- Safeguard Measures Rules 2001.

The domestic regulatory framework implements the relevant WTO rules on trade remedies.

Regulatory Authority

The National Tariff Commission (NTC) is the independent authority responsible for investigating and deciding on trade remedies and tariff matters. The NTC enforces trade remedy laws against dumped and subsidised imports causing injuring to Pakistan's domestic industry. The NTC also conducts safeguard investigations relating to surge in imports. All these proceedings comply with WTO rules.

The NTC has the following powers:

- **Anti-dumping actions.** The NTC can investigate and adopt measures to combat dumping under the Anti-Dumping Duties Act 2015.
- **Countervailing measures.** The NTC can investigate and impose countervailing measures under the Countervailing Duties Act 2015.
- **Safeguard measures.** The NTC can investigate and recommend safeguard measures on imports under the Safeguard Measures (amendment) Ordinance 2015. The MOC then decides whether safeguard measures should be imposed.

Investigations and Enforcement

12. Does your jurisdiction apply a lesser duty rule and/or a public interest test in trade remedy investigations? Are there any other notable features of your jurisdiction's trade remedy regime?

Pakistan's domestic legislation on trade remedies (*see Question 11, Regulatory Framework*) includes the lesser duty rule. The NTC has discretion to apply the lesser duty rule in its investigations.

The authorities do not apply any public interest test for trade remedies.

Appeals

13. Is there a domestic right of appeal against the authority's decision? What is the applicable procedure?

Under section 70 of the Anti-Dumping Duties Act 2015, any interested party can bring an appeal to the Anti-Dumping Appellate Tribunal against the following NTC's decisions:

- Initiation of an investigation.
- Preliminary determination.
- Final determination.
- Final determination following a review.
- Order for the termination of an investigation.
- Determination concerning the refund of anti-dumping duties paid in excess of the dumping margin.

The time limit to bring an appeal varies depending on the type of decision (30 days for initiation decisions and preliminary determinations, and 45 days in all other cases).

After making further inquiries (if required), the Anti-Dumping Appellate Tribunal can make an order to confirm, alter, or annul the determination of the NTC. If the decision of the Tribunal requires any action by the NTC, the case will be remanded to the NTC.

The Tribunal's decision is final on points of fact, but can be appealed to the High Court on points of law.

A similar appeal procedure applies for decisions of the NTC in countervailing investigations. Any interested party can refer an appeal to the Anti-Dumping Appellate Tribunal.

There is no statutory right of appeal against decisions of the MOC relating to safeguard measures. However, any aggrieved person can file a writ petition in the High Court seeking judicial review of an MOC decision (*Article 199, Constitution*).

SANCTIONS AND EXPORT CONTROLS

Regulatory Framework

14. What is the main legislation governing sanctions and export controls? What are the authorities responsible for enforcing sanctions and export controls?

The main legislation governing sanctions and export controls is the:

- Imports and Exports (Control) Act 1950.
- United Nations (Security Council) Act 1948 (UNSC Act).
- Import Policy Order 2020.
- Export Policy Order 2020.

The federal government can prohibit, restrict, and control exports (*section 3, Imports and Exports (Control) Act 1950*). The MOC announces export policies and measures as part of its Trade Policy. Export controls and sanctions are implemented through notifications and SROs of the MOC, SBP and FBR. The Customs Wing of the FBR is responsible for enforcing sanctions and export controls.

15. Are certain categories of goods subject to non country-specific export controls?

Exports are allowed unless otherwise indicated in Schedules I and II to the Export Policy Order 2020.

Exports of items specified in Schedule I to the Export Policy Order are prohibited, subject to exceptions. Export prohibitions are generally based on health, social, moral, and environmental grounds. Additionally, export of the following goods is prohibited:

- Livestock, wild mammals, and reptiles.
- Shuttering material of poplar wood.
- Certain chemicals.
- Counterfeit products.
- Pulses.
- Gram and gram flour.
- Wheat and wheat flour.
- Maida and suji.
- Sugar.
- Fissionable material.
- Wood and timber.
- Liquor.
- Urea.
- Various fertilisers.
- Charcoal and firewood.
- Sann hemp.
- Anti-personnel landmines.
- Antiquities.

Exports of imported goods in their original and unprocessed form are generally prohibited, subject to exceptions listed in the Export Policy Order 2020.

Exports of the items specified in Schedules II to the Export Policy Order 2020 are restricted and subject to specific conditions, procedure, and formalities.

In addition, export controls and sanctions are managed through notifications and SROs of the MOC, and sometimes the State Bank and the FBR.

16. Are there specific restrictions on trade with certain jurisdictions, entities or persons?

Trade with Israel is prohibited, and goods of Israel origin are banned (*Import Policy Order 2020 and Export Policy Order 2020*).

Goods of Indian origin or imported from India are prohibited, except for therapeutic products regulated by the Drug Regulatory Authority of Pakistan. The export of goods to India is also prohibited, except for the same therapeutic products.

The UNSC Act implements Chapter VII resolutions of the UN Security Council. The UNSC Act allows the federal government to give effect to decisions of the UN Security Council. The Ministry of Foreign Affairs (MOFA) issues SROs to implement UN sanctions. These SROs generally impose assets freezes, travel bans, arms embargos, and any other measures required by UN resolutions. For further information, see *http://mofa.gov.pk/unsc-sanctions* and *www.secdiv.gov.pk/page/sro-unscr-sanctions*.

The mechanism for implementing asset freezes under SROs is set out in the UNSC Act 1948 (Assets Freezing and Seizure) Order 2019. The authorities can also rely on relevant domestic laws and regulations to implement sanctions. For further information, see *www.fbr.gov.pk/Targeted-financial-sanctions-regulations/152366/152886* and the Guidelines on Implementation of the UN Security Council resolutions concerning Targeted Financial Sanctions, Travel Ban, and Arms Embargo (*https://nacta.gov.pk/wp-content/uploads/2019/04/Pakistan-1267-guidelines.pdf*).

Penalties

17. What are the consequences of non-compliance with sanctions and export controls?

Non-compliance with the Imports and Exports (Control) Act 1950 is punishable with imprisonment of up to one year or a fine of up to PKR1 million, or both. Penalties are set out in section 5 of the Import and Export Control Act 1950.

Non-compliance with export controls may also be punishable under sections 156, 156A and 157 of the Customs Act 1969.

Non-compliance with the sanctions regime under the UNSC Act and the Anti-Terrorism Act 1997 is punishable with a fine of up to PKR10 million.

COMPLIANCE

18. Are businesses subject to specific compliance requirements? What practical steps should a business take to ensure compliance with trade sanctions and import/export requirements?

All businesses must generally:

- Register their business.
- Obtain a national tax number from the FBR.
- Obtain a sales tax registration number (STRN) from the FBR.
- Have a bank account in Pakistan.

Specific compliance requirements vary depending on the type of business and entity. Any company, partnership, or individual can import and export goods into and from Pakistan if they fulfill the above requirements and are a member of any chamber of commerce and industry, or any relevant trade association of Pakistan.

Exporters must comply with foreign exchange rules, regulations and procedures notified by the SBP from time to time.

Foreign businesses that import goods or provide services in Pakistan must comply with:

- The Foreign Exchange Regulation Act 1947 and rules issued by the SBP.
- The Customs Act.
- Sector-specific laws (for example, the Banking Companies Ordinance and rules and regulations of the SBP relating to the banking sector).

FOREIGN TRADE BARRIERS

19. What is the procedure for local exporters to complain against foreign trade barriers contrary to the WTO or other trade agreements?

Domestic exporters facing unfair or unreasonable trade restrictions can approach the MOC, which will first seek to resolve the issue through diplomatic channels. If the issue is not resolved and has a significant impact on Pakistan's exports, the government may take the matter to the relevant Committee/Council of the WTO through the Permanent Mission of Pakistan to the WTO.

Pakistan has more than 50 commercial sections (in its embassies/consulates) in 40 countries. Commercial officers in foreign missions are involved in several trade activities, from export promotion to other trade-related diplomatic issues. They are engaged in developing friendly trade relations by promoting Pakistan's image as a reliable trading partner. In the event of a trade dispute between Pakistan and the host country, a commercial section must provide its services to help resolve the dispute.

DEVELOPMENTS AND REFORM

20. Are there impending developments or proposals for reform affecting international trade in goods and services?

Since 2016, Pakistan has implemented about 300 reforms to improve the investment climate in the country. As a result, Pakistan improved 39 positions in the Ease of Doing Business ranking over the last two years. The *Doing Business Report 2020* highlights some major reforms adopted by Pakistan.

Pakistan is implementing the National Single Window (NSW) in line with the recommendations of the United Nations Economic Commission for Europe (UNECE)/ United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT). The NSW allows parties involved in trade and transport to lodge standardised information and documents with a single-entry point to fulfill all import, export, and transit-related regulatory requirements. The complexity to conduct trade has an impact on Pakistan's competitiveness, and on the country becoming a regional hub for trade and transit. As part of its trade facilitation and regional connectivity agenda, Pakistan is committed to reforming, modernising, upgrading, and automating its system to match the ongoing investments in its infrastructure for cross-border trade.

Practical Law Contributor Profiles

Saifullah Khan, Managing Partner

S.U.Khan Associates, Corporate & Legal Consultants

T +92 (51) 2344 741 2
F +92 (51) 2344 743
E saifullah.khan@sukhan.com.pk
W www.sukhan.com.pk

Professional Qualifications. Advocate of the High Court, Pakistan; Fellow Member, Institute of Cost & Management Accountants of Pakistan; Member, Chartered Institute of Arbitrators (UK)

Areas of Practice. International trade; IT and e-commerce; competition law.

Non-Professional Qualifications. Executive Education Program on "Mastering Trade Policy", Harvard Kennedy School, Boston, US

Experience

- 20 years' experience in international trade policy and law advisory, serving a large client base in the domestic and international market.
- Has been engaged in over 85% of the anti-dumping investigations initiated by the National Tariff Commission to date.
- Providing trade remedial consultancy services to the domestic industry as well as foreign producers/exporters in various countries.

Publications. Author of papers on subjects relating to international trade laws, competition law, dispute settlement, preferential trade agreements, data protection and e-commerce, trade in services, and so on.

Saeed Hasan Khan, Partner

S.U.Khan Associates, Corporate & Legal Consultants

T +92 (51) 2344 741 2
F +92 (51) 2344 743
E saeed.hasan@sukhan.com.pk
W www.sukhan.com.pk

Professional Qualifications. Advocate of the High Court, Pakistan; Affiliate Institute of Chartered Accountants of Pakistan; Associate Member of the Chartered Institute of Arbitrators (UK)

Areas of Practice. Taxation; corporate; regulatory compliance; contractual obligations.

Non-Professional Qualifications. Master's degree in Public Administration

Experience

- Advising clients on various issues, including taxation, corporate matters, regulatory compliance, contractual obligations and so on, and representing them before the public authorities.
- Advising and representing clients in matters relating to direct and indirect taxes.
- Advising on cross-border transactions, international tax treaties and tax due diligence, corporate structures, and shareholders' agreements.