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Afghanistan- Pakistan Transit Trade

*Background, Legal Perspective and the
Agonies of a Landlocked Country*

Shoaib A. Rahim



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About The Author



Shoaib A. Rahim is the Director General for Financial Sector Strengthening at Da Afghanistan Bank (Central Bank). He holds an MBA(Finance) degree from Institute of Management Sciences, Pakistan and an MSc. Degree in Development Economics from University of Sussex, England. He is also lecturer on international economics at Kardan University, Kabul and a regular contributor at national and international media about political economy of Afghanistan and the region.

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Abstract

The transit trade problems of Afghanistan are typical to any other landlocked country. As a landlocked country, Afghanistan has relied on Pakistan for its international trade. However, the transit trade of Afghanistan has remained unstable akin to escalated political relations between the two countries. Given economic importance of access to sea, the landlocked countries continued to raise their voice at the United Nations. Afghanistan was at the forefront along Bolivia, and Czechoslovakia to fight for the rights of landlocked states. This resulted in international laws and conventions which ensured that the landlocked states have free access to sea and their disadvantaged geographic position is not exploited by neighboring countries. However, despite the international laws and conventions, the transit trade of Afghanistan continues to suffer till date.

Introduction

In 2007 book “The Bottom Billion”, Professor of Economics at Oxford University Paul Collier tries to explain why countries with a combined population of one billion are stranded at the bottom of the poverty. He states that while some of the countries were able to migrate out of poverty in the recent decades, other remained stuck in it. He further states that there are four distinct traps which explain why the problem of bottom billion countries. One of the four traps he pointed out is being land-locked with bad neighbors. He further elaborates that being land-locked might not necessarily condemn a country into poverty or slow growth, but thirty eight percent of people living in the bottom billion societies are in countries that are land-locked.

The geographic location is of significant importance as the land-locked countries lack territorial access to sea in which case the land-locked state needs to rely on one or more neighboring countries for transit and trade of the goods. This significantly increases the time and cost for trade which make imports more expensive and render exports less competitive. The fact is supported by data. The average Gross Domestic Product (GDP) per capita a landlocked state is approximately 57 percent less than the neighboring maritime state.¹ As a group, the land-locked developing countries are among the poorest countries in the world. The GDP per capita in eighteen landlocked developing countries is less than \$1000.²

The case of Afghanistan reflects the conventional traits of a landlocked country. It is one of the ten land-locked countries in Asia along with Mongolia, Nepal, Lao People’s Democratic Republic, Bhutan, Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan, and Uzbekistan. It shares border with the latter three Central Asian Republics (CAR’s), China, Pakistan and Iran. Being a land-locked country, it bears significant ramifications for the political

¹ Faye, M. L.; McArthur, J. W.; Sachs, J. D.; Snow, T. (2004). “The Challenges Facing Land-locked Developing Countries”. *Journal of Human Development*.

² UN- OHRLLS 2013.

economy of Afghanistan. As such, it faces similar trade and transit barriers to the land-locked developing countries in different parts of the world.

As a land-locked state, historically Afghanistan has relied on Pakistan for transit trade with rest of the world. In spite of international conventions, laws and bilateral transit agreements which insist on freedom of transit, the country has remained deprived of smooth, reliable and efficient transit trade via Pakistan. The paper explores the international legal perspectives, history of bilateral transit agreements between the two countries, and the major problems that Afghanistan has been facing in the realm of transit trade via Pakistan.

Afghanistan's Trade and Transit Overview

Afghanistan is one of the ten land-locked countries in Asia along with Mongolia, Nepal, Lao People's Democratic Republic, Bhutan, Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan, and Uzbekistan. It shares 936 km border with Iran, 744 km with Turkmenistan, 137 km with Uzbekistan, 1206 km with Tajikistan, and 76 km with China. Pakistan is the sixth neighboring country where a 2430 km Durand Line³ separates the two countries.

Table 01: Afghanistan Imports (million \$)

No	Country	1392 (2013-14)	1393 (2014-15)	1394 (2015-16)
1	Iran	1510	1506	1808
2	Pakistan	1742	1328	1346
3	China	437	1038	1044
4	Uzbekistan	582	722	328
5	United Arab Emirates	1247	515	321
6	Turkmenistan	640	465	632

³ The Durand Agreement of 1893 made explicit the demarcation of the frontier between British India and Afghanistan. Imposed over Afghan objections, the Durand Line divided the Pashtun tribes living in the area. ... No Afghan government ever accepted the Durand Line as an international border. [Barfield, T. (2007). *The Durand Line: History, Consequences, and Future*. In *Report of a Conference organized by the American Institute of Afghanistan Studies and the Hollings Center in Istanbul, Turkey, American Institute of Afghanistan Studies and the Hollings Center*].

7	Kazakhstan	325	390	427
8	Japan	85	259	292
9	Russia	522	258	157
10	Other Countries	1634	1248	1362
Total imports		8724	7729	7717

(Source: Central Statistics Organization of Afghanistan)

Table 02: Afghanistan Exports (millions \$)

No	Countries	1392 (2013- 14)	1393 (2014- 15)	1394 (2015- 16)
1	Pakistan	198	188	227
2	India	103	160	188
3	Iran	43	33	29
4	Turkey	35	40	18
5	United Arab Emirates	26	28	24
6	Iraq	23	18	17
7	Russia	14	21	19
8	China	20	15	10
9	Germany	10	17	6
10	Other Countries	43	51	33
Total Exports		515	571	571

(Source: Central Statistics Organization of Afghanistan)

As a typical land-locked country, Afghanistan has mainly relied on its neighbors for trade. The main import items of Afghanistan mainly include petroleum, metals, machinery and equipments, and food items. Table 01 shows that among the nine leading exporters⁴ to Afghanistan, five are its immediate neighbors. The annual import figures of Afghanistan are on decline following the withdrawal of a significantly large number of international troops in 2014, which was one of the major drivers of Afghan economy. Along this, the international aid to Afghanistan has declined. These two major factors resulted in sluggish economic activity in the country.⁵ Afghanistan finds its neighbors particularly Iran, Pakistan and China as important trading partners. The data reveals that Pakistan's share in Afghanistan imports is gradually decreasing. This is partly due to the transport and security problems that Afghan businessmen have been facing in Pakistan, that forced them to turn to Iran as an import trading partner. On the other hand, the main export items of the country are fresh and dry fruits, carpet, animal skin and medical herbs. The Table 02 portrays that Pakistan, India and Iran are the leading⁶ export destinations for Afghan goods. The Afghan exports to countries beyond the region by and large depends on the reliable, efficient and cost-effective transit facilities.

Afghanistan made transit agreements with Iran, Pakistan, and land-locked Tajikistan, and Uzbekistan. Historically, Afghanistan has mainly relied on Pakistan as a transit country. The international trade is mainly done via Pakistan where the import and export items reach Pakistan's sea- ports before connecting to road linkage to Afghanistan and vice versa. The transit goods are transported through the agreed trade routes in Pakistan. These goods then reach major cities of Afghanistan through agreed border entry and exit points. The approximate distance and travel time between Pakistani port city of Karachi and major cities of Afghanistan are as below:-

Karachi to Kandahar:	913 km	(3-4 Days)
Karachi to Mazar e Sharif:	2500 km	(16-18 Days)
Karachi to Jalalabad:	1640 km	(07-08 Days)
Karachi to Kabul:	1843 km	(08-10 Days)

The Afghan transit trade through Pakistan reached new heights after the reconstruction work started in the country in the post 9/11 scenario. The graph⁷ below reveals that between 2005 and 2010, the transit exports of Afghanistan via Pakistan stood below \$1000

⁴ The ranking is based on the total imports of Afghanistan from a given country during the mentioned three years.

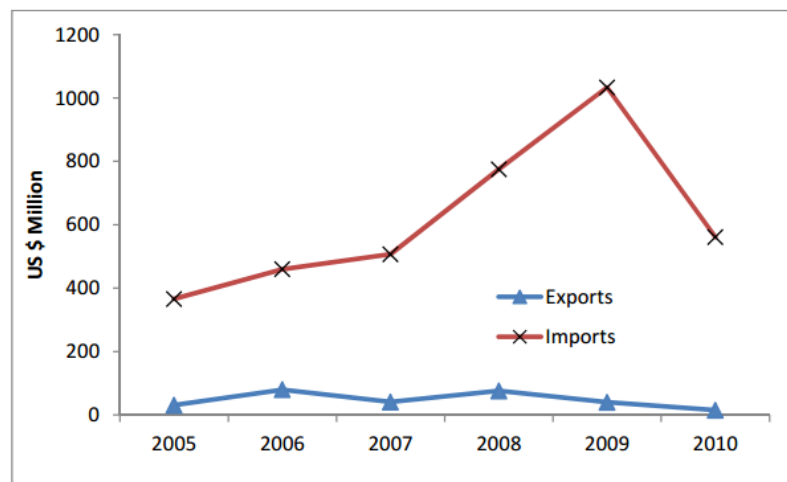
⁵ Can Afghanistan's Economy Rebound in 2017? [<http://thediplomat.com/2017/01/can-afghanistans-economy-rebound-in-2017/>].

⁶ The ranking is based on the total exports of Afghanistan to a given country during the mentioned three years.

⁷ Graph and data taken from Briefing Paper for Planning Commission of Pakistan "Afghanistan Pakistan Transit Trade Agreement" [<http://mpr.ub.uni-muenchen.de/27157/>].

million with \$800 million in 2006 while \$40 million in 2009. On the other hand, the transit import witnessed an upward trend with \$366 million in 2005 and \$1 billion in 2009. In the following years, the transit trade via Pakistan witnessed a downward trend. A study⁸ reveals that as compared to 2009- 2010, the commercial transit as measured by number of containers, has dropped to half from more than 75,000 to just above 35,000 in 2014. The reduction is partly due to the slowdown of economic activities in the post 2014 scenario of Afghanistan. However, it points out other reasons which hinder the transit trade via Pakistan. The problems include higher compliance cost of trade and transit related documentation, weak road and ports related infrastructure to support an increased transit flow and frequent changes in on- ground customs regime specific to Afghanistan.

Afghan Transit Trade via Pakistan



Another survey⁹ of major transporters reveals similar results. One of the respondents from Chaman crossing point stated that the about 100 containers passed Chaman per day during 2009- 2010 which decreased to 50 in 2010-11 and now (in 2013) it stands at 5 containers per day . Another leading clearing and forwarding agent reported that Afghan transit trade had seen a 60 percent decline between 2012- 2013, year on year. The reasons for decline, among others, delays caused by customs agencies, extortion fees, and under power trucks. This why Afghan traders were shifting to Iran as they did not have to pay any additional costs in the name of documentation or Customs clearance while transiting through Bandar e Abbas (Iranian Port) to Islam Qala (South- Western border city of Afghanistan).

⁸ Ahmad, V, Shabbir, S, "Trade & Transit Cooperation with Afghanistan: Results from a Firm-level survey from Pakistan", *Sustainable Development Policy Institute*, April 2016.

⁹ Survey conducted by Pakistan Afghanistan Joint Chamber of Commerce and Industry (PAJCCI) and reported in "Pak- Afghan Trade: Trends and Issues Perceptions of Business Community", December 2013.

Land- locked States and International Legal Perspective

The problems of land-locked states are not new and there have always been debates on international forums to address their problems. The land-locked states are disadvantaged as they cannot carry out free trade like their coastal neighbors, which limits the prospects of economic growth. Therefore, the UN has been making efforts to come up with consensus to address the transit trade problems of land-locked states to ensure their economic development. Article 55 of the UN promotes economic progress and find solutions to international economic problems as it stipulates:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. Higher standards of living, full employment, and conditions of economic and social progress and development;*
- b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and*
- c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*

Therefore, under the provision of Article 55, it has been actively engaged in addressing the problems of land- locked states through different conferences and conventions ever since its establishment. The UN General Assembly Resolution 1028 (XI)¹⁰ focused on the transit trade needs of land- locked countries, and economic development in the context of expansion of international trade. The text of resolution reads:

The General Assembly, Recognizing the need of land-locked countries for adequate transit facilities in promoting international trade, Invites the Governments of member states to give full recognition to the needs of land- locked member states in the matter of transit trade and, therefore, to accord them adequate facilities under the auspices of international law and customary practices, in this regard, bearing in mind the future requirements resulting from the economic development of land- locked countries.

In the same way, the UN Convention on High Seas¹¹ addressed the problems of land- locked states in Article 3:

In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

¹⁰ 656th plenary meeting, February 20, 1957.

¹¹ Signed on 29 April 1958 and entered into force September 30, 1962.

- a. *To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and*
- b. *To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.*

The 1965 UN Convention on Transit Trade of Land-locked Countries¹² was a landmark development that addresses the problems of landlocked countries. Mr. R Makil termed the convention as the first international agreement to recognize the special disadvantaged position of land-locked states.¹³ The convention was an international treaty which followed the General Assembly resolution 1028 (XI) on the land-locked countries and the expansion of international trade. The treaty reaffirmed the principles which were adopted by the United Nations Conference on Trade and Development (UNCTAD). These principles and articles in the treaty asked the coastal states to provide free access to sea to neighboring land-locked countries. The signing countries were obligated to ratify the convention.

The UN Convention on Law of Sea ¹⁴ supersedes the UN Convention on High Seas and UN Convention on land-locked countries. It has similar provisions for transit arrangements to be made land-locked and coastal states. The Article 125 of this international treaty entails "Right of access to and from the sea and freedom of transit". The first paragraph of this Article focuses on provision of freedom to the land-locked states:

Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

The Article is the one desired by the land-locked states. But in practice, the coastal states exercise and focus on paragraph (2) and (3) of this Article which have been at times used to by coastal state to exploit its geographic position and put pressure on the land-locked state by establishing strict modalities and terms. These articles state:

1. *The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, sub-regional or regional agreements.*

¹² 1965 Convention On Transit Trade Of Land-Locked States; Adopted in New York, the United States of America signed on 8 July 1965 and came into force on June 9 1967; [http://treaties.un.org/doc/Treaties/1967/06/19670609%2022-19%20AM/Ch_X_03p.pdf].

¹³ R. Makil, "Transit Right of Land-locked Countries: An Appraisal of International Conventions", *Journal of World Trade Law* 4:35 at 46 (1970).

¹⁴ The United Nations Convention on Law of Sea (UNCLOS) was signed on December 10, 1982 and came into force on November 16, 1994 [www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf].

2. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

The international legal perspective aims to address the needs of and the challenges faced by the land-locked countries. However, in practice, a number of land-locked countries continue to suffer despite the freedom of access to sea they have been provided by the international laws and conventions.

The Afghanistan- Pakistan Transit Trade: A Historical Trajectory

The relations of Afghanistan with its neighboring country Pakistan have always remained tense with implications for its political economy. In 1950s, the access to sea was a critical for Afghanistan's economic growth as it was facing serious transit problems from Pakistan. This is the reason why Afghanistan was at the forefront to raise the problems of land-locked countries at the United Nations. In fact, it was the alliance of Afghanistan, Bolivia, and Czechoslovakia that created a strong agenda and put intense pressure on the UN General Assembly to recommend to Conference of Plenipotentiaries to conduct a study on the problems of free access to the sea for land-locked countries. For this purpose, Geneva Conference of 1958¹⁵ established the Fifth Committee in which the delegates Jaroslav Zourek from Czechoslovakia, Guevara Arze from Bolivia and Abdul Hakim Tabibi from Afghanistan were elected as the Chairman, vice- Chairman and Rapporteur respectively. The committee was asked to examine the regime of free access to the sea and to draft a convention that could be a part of a general codification of rules relating to the regime of the sea.

Pakistan had remained in strong opposition to the right of freedom of land-locked states to access sea in the conferences and conventions held on the subject issue. In a conference in 1950s, Pakistan delegate declared that a state had no obligation at all to grant to others privilege of transit upon its territory. ¹⁶ In the Fifth Committee meeting, the delegate of Pakistan, Mr. Bhutto maintained his country's stance against freedom of access to sea. During the meeting, he insisted that:

- The relations between land-locked countries and transit states were satisfactorily regulated by bilateral and multilateral treaties as the obligations devolving from those treaties constituted the safest guarantee.
- The sanctity of a contract voluntarily arrived at was infinitely better than a contentious, nebulous right.

¹⁵ The UN Conference on the Law of the Sea, held at Geneva from February 24 to April 27, 1958. It resulted in the Geneva Convention on the High Seas. *Convention on the High Seas*, done at Geneva, April 29, 1958. 450 U.N.T.S. 82; T.I.A.S No. 5200; 13 U.S.T. 2312; 450 U.N.T.S. 82; 54 Am. J. Int'l L. 751 (1958).

¹⁶ Declaration of the Delegate of Pakistan, in *Acts of the United Nations Conference on the Law of the Sea* (A/CONF 13/43, 1958).

- It was paradoxical, and even tragic, that the land-locked countries considered that their interests would be better served by departing from such a favourable situation.¹⁷

The committee proceedings were taking place in a situation when Afghanistan was facing great problems due to transit barriers posed by Pakistan. In response to Mr. Bhutto's arguments, Afghan delegate Mr. Abdul Hakim Tabibi presented the account of appalling persecution Afghanistan was facing due to unfair transit regime of Pakistan. He pointed out that:

- Mr. Bhutto's views were in contradiction with promises made by the members of Pakistani government.
- After the independence of India and Pakistan in 1947, the transit treaty concluded with United Kingdom about forty years back had lapsed. However, Afghanistan had been unable to persuade Pakistan that the treaty should be replaced by another instrument regulating the question of transit (as on that day).
- On the initiative of Afghanistan, the Economic Commission for Asia and the Far East (ECAFE) had adopted a resolution recommending that every transit facility be accorded to land-locked countries. However, that recommendation had not brought any improvement in Afghanistan's difficult position.
- In 1955, Pakistan had subjected Afghanistan to a blockade which had paralyzed Afghanistan's economic life and caused great hardship to its population.¹⁸

These efforts of land-locked states at the UN resulted in New York Convention (Convention on Transit Trade of Land-locked States) 1965. This was the first multilateral agreement that dealt exclusively in a single instrument with the specific problems of transit trade. As a contributor to New York Convention, Abdul Hakim Tabibi of Afghanistan wrote, "In the view of land-locked states, the legal recognition of their rights on a universal level presents a victory they searched for during forty years."¹⁹ He further added that the New York Convention created not only an atmosphere of cooperation between land-locked states and their transit neighbors but also stimulated the foreign trade of land-locked states, the majority of which are situated in Africa and Asia.²⁰

As a result of international conventions and laws, Pakistan was required to provide transit facility to Afghanistan resulting in Afghanistan Transit Trade Agreement (ATTA) 1965, which was then replaced by Afghanistan Pakistan Transit Trade Agreement (APTTA) 2010.

¹⁷ Tenth Meeting of the Fifth Committee on March 25, 1958; Summary Record of meetings and Annexes [http://legal.un.org/diplomaticconferences/lawofthesea-1958/vol/english/5th_Cttee_vol_VII_e.pdf].

¹⁸ Eleventh Meeting of the Fifth Committee on March 29, 1958; Summary Record of meetings and Annexes.

¹⁹ A. H. Tabibi, *The Right of Free Access to the Sea* 19 (Publisher unknown 1966).

²⁰ *ibid.*

However, despite these agreements, Afghan trade has continued to suffer due to challenges posed by Pakistani officials.

Afghanistan Transit Trade Agreement (ATTA)

The transit relations of Afghanistan and Pakistan stem from the United Nations Conventions and General Agreement on Tariffs and Trade (GATT) which was signed on October 30, 1947 and was effective from January 1, 1948. As such, Pakistan had to provide transit facility to Afghanistan under UN Conventions and Article 5 of GATT which focused on freedom of transit. Both countries had further agreed on different arrangements under which Afghanistan was using Pakistan's territory as a transit state. Finally, both countries codified and regulated the prevailing arrangements and provisions under bilateral treaty ATTA which became effective on March 2, 1965.

As per ATTA, Afghanistan could use Karachi Port and Port Qasim as entry while Torkham and Chaman as exit border points. There was no provision for Afghanistan to access China via China- Pakistan border at Sost while the provisions for trade between Afghanistan and India via Pakistan through Wahga border were never finalized. The trade routes with land crossing points within Pakistan and Afghanistan were left unspecified. In the same way, Afghan trucks were not allowed in Pakistan and the transportation was initially managed by Pakistan Railways or later the National Logistic Cell (NLC).

Afghanistan- Pakistan Transit Trade Agreement (APTTA)

In the years that followed signing of ATTA treaty in 1965, major developments were witnessed in the modes of transportation as heavy duty open trucks equipped with advanced technology had come to market, and the customs procedures were modified several times. In the same, the security situation and political economy of the region had significantly changed particularly after liberation of Central Asian Republics (CAR) in 1991 following the dissolution of Union of Soviet Socialist Republics (USSR). The newly formed CAR's surfaced as potential markets for export of goods and import of energy resources for important regional players India and Pakistan. In the same way, the onset of new regime in Afghanistan in the aftermath of 9/11 debacle signaled the onset of new era with implication for trade and transit in the region. The international community started huge reconstruction work with efforts to ensure sustainable Afghanistan through increased regional integration and economic cooperation.

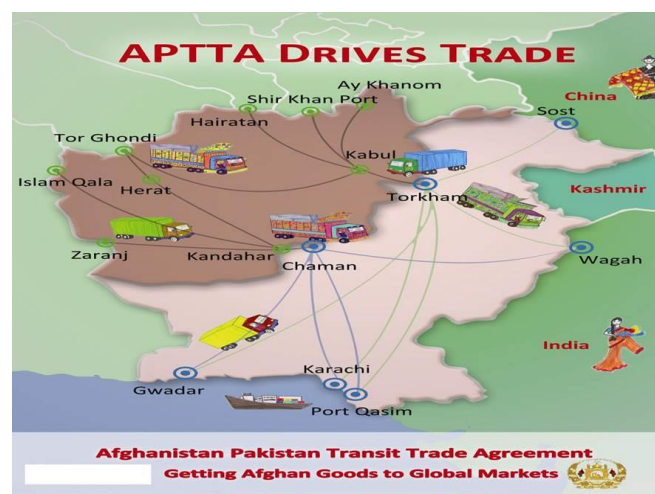
The new dynamics and changing context of the region prompted Pakistan to think about accessing the potential export markets of CARs. Further, it had been facing problems like duty fee evasion through premature offload of transit goods declared as Afghan bound in Pakistan and delivered to its different cities with the help of corrupt Pakistani officials. On the other hand, Afghanistan is blessed with significant strategic location which labels it as gateway to CARs as well as the trade with and via Pakistan had been significantly

increasing due to heavy reconstruction work in the country. Therefore, Pakistan initiated discussions to revise ATTA.

The negotiations between the two countries started in 2008. The draft text of new treaty was prepared by World Bank consultants based on World Customs Organization's (WCO) Revised Kyoto Convention (RKC)²¹ and presented by Afghan delegation to Pakistan. In May 2009, the Foreign Ministers of Afghanistan and Pakistan signed a Memorandum of Understanding (MoU) and agreed to conclude the new version of agreement by December 31, 2009. Finally, the agreement was signed by Commerce Ministers of two countries on October 28, 2010 in Kabul and became effective on June 12, 2011. The fifty-eight articles, two annexure, and four protocols of the new treaty make it more detailed and contains provisions for transit and trade for both countries as per their respective contemporary priorities. It covers trade and transit related issues of both countries.

Under APTTA, Afghanistan gained access to three entry points Port Qasim, Karachi Port as well as Gawadar Port while the two countries agreed in principle about a third border crossing point i.e., Gulam Khan along with previously agreed Torkham and Chaman borders. The agreement provides Afghanistan access to China via Sost on China- Pakistan border. Moreover, Afghanistan's export to India via Wagha was finalized while Indian exports to Afghanistan were not allowed at the time of signing agreement. The trade road routes for trade through Pakistan to Afghanistan and through Afghanistan to Central Asia for Pakistan were specified. In the same way, Afghan trucks were allowed to carry Afghan exports to Pakistani seaports and Wagah.

Entry and Exit Points for Afghanistan and Pakistan under APTTA²²



²¹ The International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) entered into force in 1974 and was revised in 1999. The Revised Kyoto Convention entered into force on February 3, 2006. It promotes trade facilitation and effective controls through its legal provisions.

²² Photo taken from Ministry of Commerce and Industries of Afghanistan.

The agreement provides Pakistan access to all neighboring countries of Afghanistan as per the entry/ exit points listed below:-

- Iran via Islam Qila and Zaranj border;
- Uzbekistan via Hairatan;
- Tajikistan via Ali Khanum, Sher Khan Bandar;
- Turkmenistan via Aqina and Torghundi.

Major Transit Trade Barriers

The transit trade relations of Afghan and Pakistan have remained unstable due to escalated political tension between the two countries. The international conventions and laws paved the way for treaties like ATTA and APTTA. However, these treaties could not bring significant resolutions to address the transit problems facing Afghan traders, who continue to face the challenges posed by Pakistani authorities. The situation worsens when the political tensions between the two countries escalate. In such circumstances, the disadvantaged geographic position of Afghanistan brings economic hardship. Over the years, the appalling transit trade barriers were used as cards to create pressure and dictate political influence over landlocked Afghanistan.

At this stage, highlights of the major transit trade barriers that the landlocked Afghanistan has been facing are relevant to the discussion.

Closure of Main Crossing Points

APTTA allows transit trade via Chaman- Spin Boldak and Torkham as main crossing points. Every day, hundreds of trucks cross these points to carry import and export goods of Afghanistan. As the key export items of Afghanistan are perishable fresh fruits and vegetables *inter alia*, it is very important for the trade route to be smooth, reliable and time efficient. On the other hand, the timely delivery of goods keeps the economic wheel moving as Afghanistan is a heavily import dependent country. In this context, sudden and prolonged closure of crossing points by Pakistan has harmed the Afghan economy every time it was exercised.

There are a number of instances when the crossing points were closed for goods and people posing serious economic and humanitarian problems. On August 18, 2016, Pakistan closed the Chaman-Spin Boldak crossing point claiming that a group of Afghans had set Pakistani flag on fire. This was a time when farmers in the Southern Province of Kandahar were collecting grapes. As per provincial chamber of commerce head, Mr. Haji Nasrullah Zahir, despite impressive yield of grapes, only limited quantity of grapes could be exported due to border closure during peak crop collection time. Due to limited exports, the farmers were forced to dry the grapes for raisin, which reduces the financial gains. He indicated that the blockade would cause heavy losses to farmers. The head of Fresh Fruit Traders' Association Haji Nanai Agha stated that Afghan farmers and traders were suffering

financial losses of 12 million Afghanis everyday due to closure of route.²³ The crossing point remained closed for fourteen days, which implies the extent of losses faced by Afghan farmers

A prominent Pakistani news paper Dawn News affirmed that grapes and pomegranate exports significantly suffered due to frequent closure of Pakistan- Afghanistan border. It added that the sight of hundreds of long-haul trucks stuck along border towns had become all too common in 2016, with tonnes of fruits and perishable items going to waste and forcing some farmers to return to the more lucrative cultivation of poppy. The report further added that in 2015, around 52,000 tonnes of pomegranates were exported to Pakistan, the UAE and India. Last year (2016) the exports dropped to 15,000 tonnes, a small fraction of the total production. Other fruit exports also suffered.²⁴ On this, Haji Nasrullah Zahir commented that they were ready and hoping to export up to 40,000 tonnes of grapes from Kandahar, but Pakistan closed the gate for 17 days [in October], not allowing Afghan traders to export their produce. He further added that this was not the first time that border closures had happened. They had exactly the same issue in 2015 during harvest time. The Afghan Minister for Agriculture Mr. Asadullah Zamir commented on the issue that Pakistan used security issues as pretext to sabotage exports.²⁵

The most recent incident of border closure took place after a suicide attack on a Sufi Shrine which killed at least 80 people on February 18, 2017. The sudden closure left thousands of Afghans stranded on both sides of the border. The Chairman of leading political Party Pakistan Tehreek-e Insaf (PTI) expressed his concerns over the issue and stated that it was building into humanitarian crisis and urged that people with valid travel documents and perishable goods should be allowed to cross border to mitigate suffering of ordinary people on both sides.²⁶ However, such appeals were not heeded by authorities as Afghan travelers continued to suffer. The Afghanistan Chamber of Commerce and Industries (ACCI) revealed that based on data they had, 1000 trucks were stranded in Torkham and another 1000 in Spin Boldak on Pakistan side of Durand Line. Another 300 trucks were stranded on Afghan side while 1200 more trucks transporting goods from Pakistan to Afghanistan were stranded elsewhere in Pakistan waiting for the gates to open.²⁷ The closure of border extended heavy losses to Afghan traders. Pakistani newspaper commenting on the entire scenario stated that border closure shut down all trade between the two countries, because

²³ Kandahar's grape exports fall; alternative route sought

[<http://www.pajhwok.com/en/2016/10/24/Kandahar%E2%80%99s-grape-exports-fall-alternative-route-sought>].

²⁴ ²⁴ Poor Kabul-Islamabad ties affect Afghan fruit exports [<https://www.dawn.com/news/1305951>].

²⁵ *Ibid.*

²⁶ Closure of Pak-Afghan border building into humanitarian crisis, says Imran [<https://www.geo.tv/latest/133250-Closure-of-Pak-Afghan-border-building-into-humanitarian-crisis-says-Imran>].

²⁷ Border Closure Decreases Trade Value: ACCI [<http://www.tolonews.com/business/border-closure-decreases-trade-value-acci>].

of which traders on both sides suffered huge losses, but land-locked Afghans bore the brunt. Price hike in Afghanistan caused by the closure badly impacted the ordinary Afghans, resulting in a surge in the already very high anti-Pakistan sentiment.²⁸

In the meantime, Pakistan hosted the 13th Economic Cooperation Organization (ECO) Summit on March 1. During the summit, Afghan envoy Dr. Omar Zakhilwal urged Pakistani Prime Minister to order reopening of border. He said, “They (border crossing points) have now been closed for about two weeks, without adequate reasons, causing enormous hardship to ordinary people and a lot of damage to traders on both sides.”²⁹ However, not attention was paid. Finally, the borders were re- opened on March 20, 2017 after more than a month of closure.

Barriers on Trade with India

India and Afghanistan share strong political and economic relations. The two countries have had great trade ties historically. Based on export data in table 02, India is ranked as second important export destination for Afghan export products.³⁰ The export figure grew from \$103 million in 2013-14 to \$160 million in 2014-15 and to \$188 million in 2015-2016. However, the imports do not show similar growth rate. The imports have been \$131 million, \$108 million, and \$147 million for the same period.

The reason for the exports being relatively higher is that it is more of a one-way traffic in terms of trade with India by land. Afghanistan can export to India via Pakistan but cannot import. At the moment, the Afghan vehicles are allowed only up to Wagha, but not allowed to go to border town of Attari, which is less than a kilometer away. The goods, mostly fresh fruits, dry fruits, vegetables and herbs are then carried through carts, to Attari and then loaded on again, which causes spoilage as well as loss of time. The Afghan trucks could easily offload the goods in Attari and carry Indian goods on return, while at the moment they have to return empty under APTTA. Therefore, the Afghan trucks have to charge much higher price to compensate for the empty truck on return. This creates a favorable environment for Pakistani trucks to carry the goods to Wagha and then reload to transport goods to other parts of Pakistan. Hence, Afghan transporters are excluded from competition.

In the recent years, both India and Afghanistan have attempted to convince Pakistan to allow transit facility to India. There is great potential for bilateral trade between Afghanistan and India if Pakistan provides transit facility to India. On the other hand, Afghanistan has showed its intention to provide Pakistan transit route to Central Asian

²⁸ Pak-Afghan border crossings open after a month of closure [<https://www.dawn.com/news/1321930>]

²⁹ Afghan envoy urges PM Nawaz to reopen Pak-Afghan border.

[<https://tribune.com.pk/story/1342646/afghan-envoy-urges-pm-nawaz-reopen-pak-afghan-border/>].

³⁰ The ranking is based on the total exports of Afghanistan to a given country during the mentioned three years.

Republics. This would not only benefit the three nations but significantly contribute towards increased regional trade. There have been repeated requests for transit of Indian goods via land to Afghanistan, but Pakistan always declined the requests. At the Heart of Asia conference held in Islamabad in December, 2015, Indian Minister for External Affairs Sushma Swaraj said that if Afghan trucks could carry Indian products to markets in Afghanistan and Central Asia, that would be the best way to make trucking from Afghanistan cost-effective and viable, and bestow benefits to the whole region. Indicating at the strategic importance of Afghanistan in the region and the need for trade, she added, “The ‘Heart’ of Asia cannot function if arteries are clogged.”³¹

In the same way, during the Joint Economic Commission (JEC) meeting in Islamabad in November 2015, Afghanistan requested for access to New Delhi via Wagha-Attari crossing. However, Pakistan declined the repeated requests citing security issues as a reason.³² While Pakistan has continued to bluntly decline requests of Afghanistan to provide transit facility to India, it has firmly put forward its requests to Afghanistan for land access to Central Asia. In response to refusal of Pakistan, the Afghan government declined Pakistan’s request for access to Tajikistan border.³³ Afghan president also urged Pakistan to provide transit facility to Indian goods. After repeated requests, when Pakistan maintained its frozen stance on the issue, he warned them and said, “If Pakistan does not allow Afghan traders to use the Wagha border for imports and exports of their goods, Afghanistan will also not allow Pakistan to use Afghan transit routes to reach Central Asia and other countries for exports.”³⁴

The trade and transit by road will not only ensure economic gains for the three countries but also for the entire region. India estimates that if the political economy of the region improves and as little as 20 percent of western its trade is sent by roads, \$100 billion dollars worth of goods will pass through Afghanistan (and Pakistan).³⁵

Inefficient Risk Management System

The Standard 6.3 of the Revised Kyoto Convention (RKC) and the corresponding Guidelines define risk management as the systematic application of management procedures and practices which provide Customs with the necessary information to address movements or consignments that present a risk. Under One- Customs system of Pakistan, only 2 percent

³¹ At Heart of Asia conference in Islamabad, Swaraj calls for land access to Afghanistan [http://www.business-standard.com/article/economy-policy/at-heart-of-asia-conference-in-islamabad-swaraj-calls-for-land-access-to-afghanistan-115120901126_1.html].

³² Islamabad refuses Kabul trucks access to Delhi [https://tribune.com.pk/story/997226/via-wagah-attari-islamabad-refuses-kabul-trucks-access-to-delhi/].

³³ *Ibid.*

³⁴ Open Wagah or lose transit route, Ghani warns Pakistan [https://tribune.com.pk/story/1179752/rising-tensions-open-wagah-lose-transit-route-ghani-warns-pakistan/].

³⁵ Starr, S. F., Farhadi, A., & Arha, K. (2012). *Finish the Job: Jump-start Afghanistan's Economy: a Handbook of Projects*. Central Asia-Caucasus Institute, Paul H. Nitze School of Advanced International Studies.

of consignments need to be randomly selected for inspection while the inspection of further 3 percent is at the discretion of senior customs officials as part of risk management mechanism. However, the percentage is different for Afghan transit consignments under APTTA. The paragraph No. 4 in Article 21 of APTTA states:

Up to 5 percent of containers arriving at port of entry will be subject to examination under the risk management system. No further inspection is allowed en route unless irregularity is suspected as provided in the Revised Kyoto Convention, 1999.

This Article is exercised roughly and unfairly. The practice is that authorities examine 5 percent of consignments while the additional examination is at the discretion of senior Customs officials even for the low risk commercial consignments. Apart from this, additional checks are conducted by the law enforcements agencies of Pakistan. The inefficient risk management mechanism causes delays, increases the transaction costs as well as creates enabling environment for corruption. The findings of a survey conducted by Afghanistan Pakistan Joint Chamber of Commerce and Industry (APJCCI) reveals that the customs verification is a major challenge as the transporters have to go through double verification of 40 percent physical examination as against 5 percent risk based examination agreed in APTTA in addition conducting scanning of cargo.³⁶ In such a scenario, the transporters typically have to pay bribes to officials to speed up the process.

Unfair Demurrage Charges and Extortion Fees

The survey conducted by APJCCI reveals that the loading and unloading of containers and the system for clearance of documentation at the Customs at Pakistani ports cause unnecessary delays which have cost implications in the form of demurrage charges for Afghan traders. They imply that Afghan traders do not have to go through these troubles while transiting via Iran.³⁷

There is a specific time period i.e. 12 days within which the trader has to receive the container from the firm which has sold the goods. After the mentioned number of days, the company charges the trader \$60 per day. These charges then increase to \$80 per day and the fine increases after every 20 days. On the other hand, Pakistani government charges \$20 per day for each 40" container after 12 days, which is doubled after every 20 days.³⁸ This not only increases time and cost but also has impact on the prices of goods imported to Afghanistan. The story of unfair charges does not end here. The Frontier Constabulary

³⁶ Pak- Afghan Trade: Trends and Issues, Perception of Business Community; Pakistan Afghanistan Joint Chamber of Commerce and Industry (PAJCCI), December, 2013.

³⁷ *ibid.*

³⁸ ACCI Press Release: ACCI Ask to solve Afghan trade's problems [<http://www.acci.org.af/archive/122-acci-ask-to-solve-afghan-trades-problems.html>].

(FC) and Levies force collect extortion fees at each self- made unofficial check points. These fees are often around 40,000 per truck until they finally cross the border.³⁹

Security Overkill

Pakistani officials have always raised their concerns over the illegal or unauthorized trade. First, the transit goods meant for Afghanistan are diverted to Pakistan for sale/ consumption with support from corrupt Pakistani officials. Secondly, due to the long and porous area along Durand Line, the goods are brought back to Pakistan after they enter Afghanistan. This, according to officials, has been affecting Pakistan's revenue stream. Therefore, they have kept a very strict security system to control the unauthorized trade.

They have placed three security layers under APTTA:

- Insurance Guarantees;
- Bonded Carriers;
- Tracking devices.

In practice these are too tight measures to tackle the underlying problem. Insurance guarantees equal to the leviable duties and taxes are required to release the goods. The insurance guarantees are needed as Custom Security. The rule No. 619 of Afghanistan-Pakistan Transit Trade Rules states that:

The Afghan importer of goods shall furnish Customs Security in the form of an insurance guarantee. The insurance guarantee should be valid for at least one year and en-cashable in Pakistan. The amount of Customs Security for transit operations is determined by the Appraising Officer (AO) and the Principal Appraiser (PA) of the office of departure. In case transport units are registered in Afghanistan, a bank guarantee or revolving bank guarantee equal to ten percent of the amount of duty needs to be lodged and in case a transport operator desires to operate less than four transport units, there is a requirement for a bank guarantee amounting to one hundred percent of the amount of duties involved.

The Afghan traders are seriously suffering due to strict insurance guarantee condition. The problem is that a large number of insurance guarantees have not been released even after the goods cross Samarkhmel (for Torkham Crossing Point) and Spin-Boldak (for Chaman Crossing Point) of Afghanistan and reached their destinations. The long delays in release of insurance guarantees significantly increase the transactions costs for Afghan traders.

The second issue is that the goods have to be carried only through the bonded carriers under APTTA. The Pakistani trucks which have been authorized to carry Afghan transit goods from Pakistani ports do not comply with technical requirements of vehicles in terms of engine capacity given the mountainous road networks of Afghanistan. Moreover, as

³⁹ Ibid.

there is absence of clarity on cost of clearance, fees and other charges in border crossings, it is hard for a transporter to estimate the total transit cost. As a result, it is observed that there is variation in charges levied on bonded carriers. These variations usually fluctuate between PKR 100,000 – 150,000 per vehicle for a 24- feet container.

The third issue is that tracking devices must be installed in the vehicles. According to Rule 328 of Pakistan Custom's law, in case of transshipment, the bonded carriers will be allowed to use only such vehicles/ trailer units which have a permanently installed tracking device from a reputable company. The installation of devices in carriers might help in controlling the illegal trade by tracking the movements of trucks to some extent. However, given the technical nature of the activity and associated costs, it would be hard to install these devices in short term. Moreover, the tracking devices would allow Pakistani authorities to track the trucks even after they cross the Durand Line and enter Afghanistan, which would have implications for security and sovereignty of the country.

The severe security measures to curb unauthorized trade have significantly affected the transit trade of Afghanistan. The lengthy documentation process at the port, insurance guarantees, bonded carriers and the requirement for installation of tracking devices have only added to the problems of Afghan traders. These measures have led to delays, increase in cost, and damage of perishable goods. They are among the major reasons why Afghan traders are opting for Iran as an alternative transit route for trade. Unless solid steps are taken to ensure easy, efficient and reliable transit, the transit trade of Afghanistan via Pakistan would continue to suffer.

Image Source: <http://static.panoramio.com/photos/large/36328187.jpg>

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VIVEKANANDA INTERNATIONAL FOUNDATION

3, San Martin Marg, Chanakyapuri, New Delhi – 110021

Phone: +91-11-24121764, 24106698

Email: info@vifindia.org, Website: <http://www.vifindia.org>

Follow us on [twitter@vifindia](#)