REPORT ON

ATTACHMENT PROGRAMME AT

PERMANENT MISSION OF PAKISTAN TO THE WTO, GENEVA

Submitted by:

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GOVERNMENT OF PAKISTAN

MINISTRY OF COMMERCE

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Under Public Sector Capacity Building Project (PSCBP), the undersigned (Mr. Muhammad Arifullah, Section Officer (Imp.II), Ministry of Commerce, Islamabad) participated in the attachment programme from 20 May to 03 June, 2007 at permanent Mission of Pakistan to the WTO in Geneva. Mr. Ahmad Mukhtar, welcomed me on behalf of the Mission on 20th May 2007.

2. I paid a courtesy call to H.E. Dr. Manzoor Ahmad, the Ambassador. The Ambassador highlighted the objectives of the programme and give an overview of the issues in the fields of Agriculture, Dispute Settlement System and Trade Policy Review with deeper understanding of the multilateral trading system keeping in view the national priorities.

3. The work plan of the attachment programme consists of two parts. The first part relates to briefing by Officers of the Mission and second attending the different meetings in the WTO Secretariat.

4. Briefing was given by Dr. Zafar Iqbal Qadir, Economic Minister / DPR about Trade Policy Review Mechanism of WTO in general and about India in particular.

5. Madam Shaista Sohail, Economic Counsellor briefed me about the over all spirit of the WTO negotiations, development and Services sector in detail.

6. Mr. Ahmad Mukhtar, Commercial Secretary give a detailed briefing in the Agriculture Sector.

7. Ms. Shandana Gulzar Khan, Legal Affairs Officer briefed me about the Dispute Settlement Mechanism and the issues which are discussing in the WTO negotiations.

Agreement on Agriculture

The WTO Agriculture negotiations are organized around the three pillars mainly market access, domestic support and export competition. Now each will be taken separately.

Market Access

(i) **Tariff reduction:**

G-20 proposed lower tariff reduction and longer implementation period for developing countries and proposed formula within the tiers, each tariff subject to a linear (uniform) cut for both developed and developing countries

For developed countries

0-20, cut of 45%
20-50, cut of 55%
50-75, cut of 65%
75 and above, cut of 75%

For developing countries

0-30, cut of 25%
30-80 cut of 30%
80-130, cut of 35%
130 – above cut of 40%

Level of cuts for developed countries required over all tariff reduction by developed countries of at least 54% on average and by developing countries of maximum 30% on average.

Tariff cap for developed countries = 100%
Tariff cap for developing countries =150%

Although there is a strong convergence on the G-20 bands and thresholds, but the position on the level of cuts is as divergent as ever. The EU had given indication of "topping up" their offer of market access to the tune of 44% to 50%, but nothing has so far been explicitly proposed by them. On the other hand the US is not even agreeable to the 54% tariff cuts proposed by G-20, which according to them does not deliver market access that they desire.

Pakistan is strongly encouraging all WTO members to agree to at least the G-20 position on the thresholds and tariff reduction formula. The G-20 formula would result in a significant increase in the magnitude of tariff reductions compared with the EU proposals. Pakistan has already liberalized its agriculture and food market. Its applied tariff for agriculture has been reduced to 0-25% while its bound tariff is generally 100%. Thus Pakistan is prepared to accept much larger tariff cuts than proposed by the G-20, if there was a consensus among members to do so.

Sensitive Products (SP)

G-20, Cairns and US, view sensitive roducts as exceptions while EU considers it part of market access. G-20 and Cairn's if of the view that there should be number of sensitive product (SP) and tariff line for the developed countries should exceed 1% of total tariff line and for developing countries it should be 50% higher than the developed countries. G-20 TRQ expansions and stresses that sensitive products until be subject to tariff capping.

Regarding the SP the discussion is still inconclusive as to the selection and treatment. There was a movement towards a "Hybrid Approach" to TRQ expansion whereby bth the current level of TRQs and the domestic consumption level of the product would be used as the basis of expansion. The US, Cairns and G-20 are pushing for meaningful expansion through an increase of 5% - 6% of domestic consumption in the TRQ of the concerned products, whereas EU & G-10 want the current level of the TRQ to be taken as basis of expansion. The question of number of sensitive products is still contentious. Pakistan would like to see minimal numbers of sensitive products to be designated by developed countries and thus had been supporting the figure of 1% of tariff lines. It has been seen through various studies on this issue that any agreement above 2% to 8% would have similar effects on the result of tariff reduction of the developed countries.

Special Safeguards (SSG) and
Special Safeguard Mechanism (SSM)

Article 5 of AoA on SSG allows WTO members to impose additional duties on imports of Agricultural products when the volume of imports exceeds a specific threshold and when prices fall below a specified reference price. The special safeguards is available only for products market as SSG in the schedule of commitments of each member. Only a few developing countries that undertook tariffication during the Uruguay Round have access to SS. Under the provisions of SSG, members do not need to prove injury or threat thereof to the domestic industry to invoke the measure. The SSG is thus triggered automatically.

The objective of SSM would be to allow developing countries to respond effectively to import surges and price depressions. The mechanism should improve on the current SSG in the sense of responding to the particular circumstances of developing countries.

On SSM there remain sharp differences on the trigger and scope or products to be covered by the mechanism. The G-33 proposals covering all products and a 105% volume trigger is being criticized by developed as well as some developing countries as being too brood and defensive in operation.

Pakistan supports the implementation of special safeguard mechanism to protect against import surges for those products whose tariff was reduced according to standard tariff reduction formula. The guidelines for invoking the special safeguard mechanism should be rigorous and transparent.

Tariff Escalation

The developing countries are of the opinion that the issue of tariff escalation should be addressed through a formula, whereby additional across the board reduction in tariff of semi-processed and processed products should be required to be undertaken. The

EU and G-10 insist that such cuts should only be applied to tariff lines of special interest to developing countries. No further discussion has been taken place on this issue.

Pakistan supports the elimination of tariff escalation on processed food products. Pakistan supports larger tariff cuts for tropical products.

Tariff Simplification

Most developing countries, including the G-20 and Cairns group are of the position that all bound duties on Agricultural products should be expressed as simple as advalorem duties. The EU and the G-10 are insisting that only highly complex forms of bound duties, such as complex matrix tariffs shall be simplified.

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Trade Distorting domestic support

There is a strong convergence and implicit consensus on the thresholds of the formula for reductions i.e. US$ 01-10, 10-60 and above 60 billion.

No consensus yet on the cut in each band. The range of cuts proposed by different members i.e. 31% - 70% 9EU) 53% - 75% (US) and 70% - 80% (G-20) respectively are too varied. The G-20 and Cairns Groups are pushing for the highest levels in the range of cuts as per G-20 proposals. There remain clear divergences on the issue of the base period for the calculation of the overall base amount of trade distorting domestic support. The EU and US have proposed years 2000-2004, where the spending was highest. The G-20 and Cairns are trying for 1995-2000 being the more representative period.

Aggregate Measure of Support (AMS)

Reduction commitments in AMS, there is a strong convergence on the G-20 proposals on thresholds and cuts i.e. US$ billions 0-15, 15-25 and above 25 and 60%, 70% and 80% respectively. Agreement on these needs to be locked in. The question of the base period also need to be resolved in a manner consistent with the approach in the over all trade distorting domestic support. The matter of product specific cap.

DEVELOPMENT:

The development issues are covered under the review of special and differential treatment provisions for developing countries and LDCs in WTO Agreements. The implementation related issues and concerns of WTO Agreements were partly decided at Doha and some are remaining. Since before the fourth Doha Ministerial Conference, developing countries had called for a review of all special and differential treatment provisions contained in the WTO agreements with the objective of strengthening them and making them more precise, effective and operational. There are 88 such proposals specific to various WTO Agreements. Accordingly, all the 88 Agreement-specific proposals were divided into three broad categories. Category I contained 38 proposals comprised of the 12 proposals on which Members had agreed in principle, and 26 other proposals on which there appeared to be a greater likelihood of making recommendations and which appeared to have a greater developmental value. Category II comprised of 38 proposals, 27 of which had been made in areas on which mandated negotiations were ongoing, and 11, the operative part of which was being considered in the respective WTO bodies. Category III contained 12 proposals on which there appeared to be a wide divergence of views, and on which progress did not seem possible without a certain degree of redrafting of the original text. Agreement was reached on 28 of the above mentioned 88 proposals before the Cancun Ministerial in 2003. However developing countries felt that the ensuing economic benefits were negligible and they were not harvested. Agreement was reached on five proposals at Hong Kong that relate to the LDC duty free quota free market access for all products, expeditious waivers for LDCs, the Enabling Clause, the Agreement on Trade-Related Investment Measures and the Decision on Measures in Favour of Least-Developed Countries. In addition, some work has also

been done on the remaining Agreement-specific proposals, beginning with those tabled by the African Group.

There are some Systemic and institutional cross-cutting issues also. These include, 'Principles and objectives of special and differential treatment', 'Definition of a developing country', 'Pros and cons of a single or multi-tiered structure of rights and obligations', 'the Monitoring mechanism'. The establishment of the Monitoring Mechanism discussed e.g the structure and possible role of the Mechanism and the sources of the information it should use to conduct its work. Difference of opinion, remained on the institutional structure of the Mechanism and the timing for its coming into force. The general view is that it should be an open-ended body. Some Members believe that the monitoring of special and differential treatment should be carried out in the regular sessions of the CTD, or by the CTD in sessions dedicated exclusively to the issue, while other Members are of the view that a Sub-Committee of the CTD should be established for this purpose. The Chair has come up with a 'non-paper' which will be discussed in the June session of the CTD.

The undersigned also attended the CTD dedicated session on 'small economies' with Madam Shaista Sohail. The Chair introduced the compilation paper prepared by the secretariat. The paper recalls the mandate on small economies as contained in paragraph 41 of the Hong Kong Ministerial that instructs the CTD in dedicated session to monitor progress of small economies proposals in the negotiating and other bodies. The paper is a compilation of the reports of the Chairs of the Agriculture, NAMA, Services, SCM, trade facilitation, aid for trade and excerpts from minutes of meetings referring to small economies proposals. Ambassador of Barbados thanked the secretariat for the document and said that the progress on fuller integration of small vulnerable economies into the multilateral trading system was an important part of the monitoring function of the CTD. Some Members insist that the objective of paragraph five of the Doha Development Agenda is the integration of small, vulnerable economies into the multilateral trading system, and not to create a sub-category of WTO Members. Barbados, Fiji, Mauritius, Papua New Guinea, Solomon Islands and Trinidad and Tobago, El Salvador, Bolivia, Dominica, Mongolia are some of the SVEs.

AID FOR TRADE: Supply side capacity. Aid for trade is the concept which is being made operational to help developing countries build their supply side capacity and avail the, market access that will be yielded after the Doha round.

SERVICES:

General Agreement on Trade in Services (GATS) was agreed upon in the Uruguay round. The agreement covers four modes of services supply.

Mode 1 - cross border supply (telecom and postal services).
Mode 2 - consumption abroad (tourism, study abroad and treatment abroad)
Mode 3 - commercial presence abroad (opening a branch or subsidiary abroad
Mode 4 - movement of service providers (temporary movement of service providers like nurses, engineers, plumbers) seeking employment abroad. Mode 1 and Mode 4 are of importance to Pakistan for its services export interests.

GATS Flexibilities: Members can open in the sectors of their choice and to the extent they want with a positive list approach. Moreover Developing country flexibilities call for opening up of market access for sectors and modes of supply of export interest to them; strengthening their domestic service capacity and efficiency through access to services technology etc.

In services negotiations have been going on in the areas of Market Access and Rules. For getting meaningful commitments for businesses to access trading partners markets Members engaged in the bilateral request offer process and tabled their initial and in many cases revised offers on the basis of trading partner's requests during 2003-06. Pakistan tabled its initial offer on 24 th May 2005. The break in negotiations in July 2006 led to the deadline of 31 st July 2006 agreed upon in Hong Kong for tabling revised or the re-revised offers passing unfulfilled.

Earlier the bilateral request offer process found to be slow and not showing tangible results was supplemented with the plurilateral request offer method where Members sharing common interests in certain services sectors sent joint requests to

another group of Members in whose markets they were interested. Two such rounds were held which were generally thought to have been helpful in involving Capital officials in the process and in apprising requested and requesting members of each others positions.

SUBSIDIES: The 'negotiating guidelines' of the ongoing services negotiations state that Members complete negotiations on services subsidies prior to the conclusion of the services market access negotiations. The progress has been slow with members still not having consensus on how to go about information exchange.

ESM: Emergency safeguard mechanism: The ASEAN Countries are strong proponents while other developing countries believe that such a mechanism could be used against developing countries by developed countries and by developing countries against each other.

Government procurement in services Article 13 of GATS: The European Communities are the proponents and presented a communication on the structure of an annex to the GATS on procedural rules for government procurement.

Disciplines on domestic regulations:

The General Agreement on Trade in Services (GATS) recognizes the right of members to regulate and introduce new regulations to meet national policy objectives like quality of service, safety of consumers, code of conduct etc. Such regulations must be reasonable, objective and impartially enforced. A balance is required between market access provided to service suppliers and the domestic regulations affecting the supply of that service/service supplier to ensure that market access recorded in schedules is not rendered useless by excessively restrictive and burdensome regulations. Pakistan is for balanced progress in rules and market access. being used in a balanced manner to allow effective market access without compromising on regulatory objectives like consumer protection and quality of the service.

- Effective regulatory regimes are prescribed as an indispensable requirement for successful liberalization of services sectors.Regulatory bodies are essential to

check market failures and need space for achieving social objectives. Members may apply licensing requirements, qualification requirements and technical standards in order to meet national policy objectives, including provision of essential services to general public and the development of rural areas and vulnerable, disadvantaged sections of population.

- At the same time there is valid concern that onerous domestic regulations may act as barriers to GATS scheduled market access. During the discussions in the Working Party on Domestic Regulations (WPDR) there has been progress in negotiating disciplines under Article VI.4 of the GATS that are balanced and check use of regulatory measures for protectionist purposes.

DISPUTE SETTLEMENT BODY

WTO dispute settlement mechanism is basically different from GATT as it has definite timelines for each stage like consultation formation of panels etc. The Members cannot unilaterally block the cases.

Consultations and Conciliations

One of the important principles of DSB is that a dispute should be tried to be solved through consultations and bilateral basis. For this purpose the office of Director General or any other person may be used to mediate. If the bilateral consultation does not produce the desired results within 60 days, then the matter will be referred to DSP for establishing panel.

Panel

A panel normally consists of three persons. The names of the persons to be appointed the panel are proposed by the WTO Secretariat from the list maintained by it of governmental and non-governmental experts. The membership of the panel is usually settled in consultation with the parties to the dispute. The panel is generally required to submit report to DSB within a period of six to nine months containing their recommendations after making objective assessment of the facts of the case.

Appellate Body

The establishment of the Appellate Body as a kind of court of Appeal is a new addition to the dispute settlement system. The Body consists of seven persons of recognized authority with expertise in law, international trade and subjects covered by various agreements. They must not be affiliated to government. Of the seven only three persons are called to serve in any case. The appeal can be made by any of the parties to the dispute. The report of the Appellate Body which will be confined to the issues of law in the panel report and the legal interpretation developed by it has to be submitted to DSB within period of 60 to 90 days

Implementation of The Report

The Report of the Panel is to be implemented in the following three ways:-

(i) Compliance within Reasonable period of time (RPT)
(ii) Provisions of Compensation

Secondly when the party in breach does not comply within a reasonable period the party that has involved the dispute settlement procedure may request compensation. Alternatively the party in breach of the obligations may itself offer to pay compensation.

Authorization of Retaliatory Action

Third where the party is breach fails to comply and adequate compensation were requested are not provided, the aggrieved party may request DSB to authorize it to take retaliatory action by suspending concessions or other obligations under the Agreement. This means that where the party is for instance in breach of its obligations under GATT or under one of its associate agreements the aggrieved party may be authorized by DSB to raise tariff on products which it imports from the party in breach, the trade on such products should be approximately equal to that affected by measure complained about it.

Generally the retaliatory actions are authorized in the same sectors where the panel or AB has found violation. However, it if is not possible DSB can authorize retaliations under other sectors of the same agreement. Only in rare cases and as a last resort can DSB authorize retaliation across Agreements. The retaliation is temporary and the ultimate solution is for the country, which is in breach of the obligations to implement recommendations. The rules require DSB to keep such cases under review to secure their full implementation.

SOME IMPORTANT ISSUES

(i) Third Party Rights

(ii) Sequencing

(iii) Composition

(iv) Remand

(v) Amices Curie Briefs

(vi) Suspension of concessions and other obligations

(vii) Litigation costs

(viii) ***Mutually Agreed solution***

Third Party Rights

A Group of seven G-7 Argentina, Brazil, Canada, India, Mexico, New Zealand and Norway submitted the issue of balancing the enhancement of third party rights at all level of the dispute settlement process with the preservation of the interests of the main parties involved in a dispute. The revised text contains four main elements.

(a) Granting right to third party to join consultation members have to prove a substantial trade interests in a case, which gives the defending country considerable latitude to regret the third party requests. Disagreeing with long standing GATT & WTO, the G-7 questioned the effective sense of the definition of substantial interest and proposed that a defendant should only be able to reject a Member's request for a third party right in all other such requests were also declined;

(b) The second element is related to the right of the third parties to attend panel hearing and receive recommendations;

(c) The third element proposes that under certain conditions, third party rights should be granted to members at the appellate stage without requiring participation at the panel stage. Lastly to secure parties the right to attend all meetings;

Granting all Members a de facto right to be accepted as third parties in any dispute, including access to all meetings and submission would enable developing countries to participate in the WTO dispute settlement process inspite of a lack of legal and financial capacity to initiate cases or prepare documentation showing a substantial trade interest. From broader perspective, this would also provided an important opportunity to WTO members that have not previously participated in dispute settlement proceedings to gain first hand experience about the system without having to fulfill the ever more complex requirements demanded from a complaining or defending party. Such experience would build developing countries capacity to defend their trade interest in future disputes, as well as negotiations on DSU.

Sequencing

The sequencing problem relates to non-compliance and retaliation. The inconsistency between time lines for completion of a compliance ruling and the request for trade sanctions came to light during the long-running banana dispute.

The issue of sequencing has recently become more controversial, however, with joint submissions by EU and Japan outlining a procedure to be followed when a member under trade sanctions notifies the WTO that it has brought the condemned measures into compliance with the dispute settlement ruling. The two proponent suggest that if the members applying the sanctions does not require a compliance panel within 60 days of the notification the DSB shall upon request withdraw the authorization to retaliate.

The proposals reflect the beef hormone dispute, where the EU notified its compliance measures to the WTO in 2003. But the US and Canada maintain that the

measure do not constitute compliance and therefore refuse to lift the trade sanctions they have applied since 1999. As the latter two has refused to request a panel to determine whether compliance has been achieved, the EU has invited new case against what it regards as their unilateral determination. The root cause for both sides reluctance to request a panel on the substance of the EU measures appears to be party initiating compliance proceedings bears the burden of proving its case.

Composition

EU reiterated its call for establishment of a permanent roster of panel which will save time and resources and it would ensure that the panel is more experienced, facts-finding and adjudication. The latter consideration is important as panel continue to face increasing factual and legal complexity in their proceedings. Some developing countries delegates have pointed out that compared to the issues such as third party rights, sequencing and transparency the panel roster debate represents merely a fine-tuning of the DSU. They advocate finding a better balance between the two levels of the discussion. Pakistan favors the permanent roster of panel.

Remand

The G-6 proposed that Appellate body should be required to send an issue back to original panel for review if it is unable to make a ruling on the basis of the panel findings. The establishment of such a remand procedure under the DSU would respond to many members wish to see the dispute settlement system rule on all issues raised in a complaint, including those that currently remain un-addressed on the grounds that the panel report lacked a sufficient factual basis for Appellate Body to complete its analysis.

According to the proponent, in such cases the Appellate Body should offer a detailed description of the nature of the findings that would be required to complete the analysis. After the adoption of an Appellate Body (AB) report, the issues highlighted therein could upon request be brought before the original panel, which would make its findings in accordance with the guidelines provided by the Appellate Body. All issues

brought before WTO panel and the AB would thus be addressed, unless the principle of judicial economy was found to be applying.

Mutually Agreed Solution

Notifications of mutually agreed solution (MAS) is the only means for Members other than the parties to learn about solutions agreed to between the parties Transparency demands that the term of such solutions are made available to WTO members in sufficient details and without undue delay after arriving at the solution. This proposal proposed by LMG to amend Article 3.6 of the DSU so as to have parties to a dispute to notify in sufficient details and without undue delay after arriving at the solution. This proposal proposed by LMG to amend Article 3.6 of the DSU so as to have parties to a dispute to notify in sufficient detail to the DSB within 60 days of the settlement. Currently there is no specified time for notification and there are no indications as to what the notification should contain.

Amicus Curiae Briefs

The proponents recognize that this proposal has meet with a strong opposition from a few members in the past. However, for the reasons, which are well known in the light of earlier discussion on the subject including the debate on this issue in the General Council, the LMG continue to require a change to the DSU to ensure a correct interpretation of the word "seek" in Article 13 of the DSU. In light of the discussion so far the proposal now recognizes the right of the panel to seek information contained in Article 13.The proposal limits this right to information or advice that the panel seeks so as to exclude unsolicited inputs into the dispute settlement process.

LMG proposed clarification of the word *seek* in article 13 of DSU so as to ensure that Panel and AB do not accept unsolicited amicus curiae briefs and proposed a footnote to paragraph 9 of the Article 17 relating to the AB shall seek or accept information only from participants and third parties to the dispute.

Suspension of Concessions and Other Obligation

LMG has found that when developing countries get involved in a dispute, they often find that securing compliance from the defaulting member to be a difficult task. When these developing countries have to seek recourse to suspension of concessions and other obligations under Article 22 the economic cost of withdrawal of concessions would have a greater adverse impact on the complaining developing country member than on defaulting developed country member and would only further deepen the imbalance in their trade relations already seriously injured by the nullification and impairment of benefits.

So LMG proposed that a complaining developing country Member should be permitted to seek authorization for suspending concessions and other obligations in sectors of their choice (IPR). They should not be required to go through the process set out in Article 22.3 which requires them to prove that it was not practicable or effective to suspend concessions in the same sector.

LMG is proposing an insertion of Article 22.3 bis which essentially provides that where a complaining party is a developing country Member and the other party which has failed to bring its measures into consistence with the covered Agreements is a developed country Member, the complainant shall have the right to seek authorization for suspensions of concessions or other obligations with respect to any or all sectors under any covered agreements.

Litigation Costs

LMG proposes for S & D treatment to be accorded to developing country members in disputes against developed countries members.

There is a proposed insertion of Article 3 bis which provides that if a developed country Member is found to be in violation of its obligations under the WTO covered agreements in a dispute is brought by it, the panel / AB shall determine a reasonable

amount of the legal costs and other expenses of the developing country member to be borne by the developed country member.

The amount proposed is US$ 500,000/- or actual expenses whichever is higher.

Conclusion

Being an Officer of Commerce & Trade Group I have studied the WTO Agreements in special training programme conducted by Foreign Trade Institute of Pakistan but that was a theoretical approach and understanding. This training programme was really a unique practical experience and exposure in International level which give me deeper inside an understanding about practical negotiations of multilateral trading system.