PAKISTAN

In 1997, the U.S. trade deficit with Pakistan was $208 million, a shift of $219 million from the U.S. trade surplus of $11 million in 1996. U.S. merchandise exports to Pakistan were $1.2 billion, an decrease of $43 million (3.4 percent) from the level of U.S. exports to Pakistan in 1996. Pakistan was the United States' fifty-second largest export market in 1997. U.S. imports from Pakistan were $1.4 billion in 1997, a increase of $176 million (13.9 percent) from the level of imports in 1996.

Overview

After years of inward looking trade policy that restricted participation in world markets, the Government of Pakistan (GOP) since the late 1980's generally has reduced levels of tariff and non-tariff protection and state intervention in trade as part of a comprehensive macroeconomic and structural reform program. The administration of Nawaz Sharif, approaching one year in power in early 1998, has embraced the direction of and selectively accelerated the pace of policy change toward WTO standards. Nevertheless, many of Pakistan's trade practices have not been brought into conformity with announced policy. Lags, disparity, and inconsistency have always been characteristic of implementation. However, the traditional flux and disarray have been exacerbated over the past year. Announcement of new textile reforms (November 1996), an economic revival package (March 1997), agricultural reforms (April 1997), trade reforms (July 1997), investment reforms (November 1998), and substantial reorganization (January 1998), all have impacted on trade policy. However, the fast pace of announced reforms, the slow pace of implementation, and the distraction of economic and political crisis over the past year, augmented by continued corruption, all have affected adversely the practical results.

IMPORT POLICIES

Under the IMF enhanced structural adjustment facility and extended fund facility (ESAF/EFF) initiated in October 1997, the GOP has undertaken to continue trade liberalizing reforms. The GOP had previously lowered the maximum tariff rate from 65 to 45 percent, simplified the tariff structure, and eliminated the 10 percent regulatory duty for most imports. Consequently, the average tariff rate fell from 18.2 to 16.6 percent and the GOP experienced loss of important tariff revenue equivalent to 0.5 percent of GDP per year. Despite the revenue losses, the GOP has committed to moving further along the path of tariff reduction by lowering the maximum rate of tariff to the range of 30 to 35 percent by 1999.

Also under the ESAF/EFF the GOP committed to eliminating numerous quantitative restrictions on imports by the end of the ESAF/EFF plan period. However, the GOP has not committed to removing quantitative restrictions based on "health, safety, social, national security, religious, or environmental concerns."

Current macro economic policy stresses export led growth through emphasis on higher value added to items and elimination of residual "anti-export" bias in GOP. Recent incentives include reducing the cost of export financing, and lowering duty on imported raw material incorporated into export products, especially engineering products and non-traditional exports. GOP shares the cost with exporters of some ISO certification programs.

Pakistan

Certain detrimental import restrictions, mostly questionable fees, continued into early 1998, including for soda ash (estimated U.S. export loss $25-50 million). For pharmaceutical packaging and raw materials preferential tariff rates are usually granted only if the goods in question are not manufactured locally. For example, the drug Paracetamol is manufactured in Pakistan but the local product does not meet the user's specification. Nevertheless, the imported raw material attracts a 45 percent duty as well as 12.5 percent sales tax. For other pharmaceutical raw materials or products which are not manufactured locally, the duty is 10 percent and there is no sales tax. U.S. industries have expressed particular concern with the Government of Pakistan's discriminatory application of the internal sales tax between imported pharmaceutical raw materials (taxed at 12.5 percent) and the same domestically produced raw materials (exempt from taxation). Moreover, industry believes that Pakistan's imposition of price controls on pharmaceutical end products further impedes U.S. pharmaceutical manufacturers from maintaining a constant profit margin on sales of pharmaceutical end-products. Industry estimated that removals of these barriers would result in increased sales of U.S. pharmaceutical companies' products of $50-100 million.

With the past year Pakistan did replace the previous preshipment inspection regime run by Swiss firms with an import trade price system run by Pakistan customs agency. This change has not eliminated complaints. In numerous disputes importers assert that import trade prices are set arbitrarily by customs.

The Pakistani tariff regime is generally characterized by complexity, broad bureaucratic discretionary powers, and very limited transparency. Administrative decisions frequently grant exemptions and concessions from general rules under the system of Special Regulatory Orders (SRO) that amount to temporary duty suspension decrees. As a result, different rates are applied to the same product and average applied rates are sometimes lower than statutory duties. The IMF ESAF/EFF program addresses these problems and the U.S. Embassy believes simplifying the tariff regime will benefit U.S. exporters. Other U.S. exports that continue to face market access restrictions include (actual basic tariff rate in parenthesis) instant print film (50 percent) and instant print cameras (40 percent). In addition to the range of border and internal market restrictive barriers in Pakistan on the industry's products, U.S. film and entertainment industry representatives have estimated an annual loss due to the entertainment taxes of approximately $1 million.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Pakistan's barriers to trade often are expressed as extra fees. Less frequently, usually in the context of protecting some domestically manufactured product, the U.S. exporter will encounter difficulty with "Quality" standards.

GOVERNMENT PROCUREMENT

The GOP, along with its numerous state-run corporations, is Pakistan's largest importer. Work performed for government agencies, including purchase of imported equipment and services, often is awarded through tenders that are publicly announced or issued to registered suppliers. The GOP subscribes to principles of international competitive bidding, but political influence on procurement decisions is common, and these decisions are not always made on the basis of price and technical quality alone. Charges of official corruption and long delays in bureaucratic decision-making are common. The sanctity of contracts also has been an issue for some companies dealing with the government. The U.S. Embassy estimates that if these barriers were eliminated, U.S. exports would increase by $10-25 million.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as government financing and tariff concessions on imported inputs, and income and sales tax concessions. Pakistan has established an export processing zone with benefits including tax holidays, indefinite carry forward of losses, exemption of imports from taxes and duties, and exemption from labor laws and various other regulatory regimes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The United States has taken various steps to ensure that Pakistan complies with its TRIPS commitment to fulfill its obligation to establish a "Mailbox" for agricultural chemical and pharmaceutical product patent applications. After repeated bilateral consultations and a U.S. request for establishment of a WTO Dispute Settlement Panel, the GOP issued an Executive Ordinance on February 4, 1997, establishing a mailbox system and granting exclusive marketing rights to patent applicants under certain conditions. U.S. and Pakistani officials notified the WTO on February 28, 1997 that this matter had been settled based on a common understanding of the appropriate implementing regulation necessary for Pakistan to meet its TRIPS obligation.

The laws in Pakistan generally provide for protection of intellectual property rights. Nevertheless, intellectual property piracy in Pakistan remains widespread. Upper level government officials are aware of the negative impact of Intellectual Property Rights violations on Pakistan's investment climate. The government has undertaken the task of rewriting legislation in the areas of copyrights, patents, and trademarks. Separate committees have been formed in each area under the leadership of the ministries of education, industries, and commerce respectively. This work is just getting underway, however, and in the meantime intellectual property piracy in Pakistan remains widespread. Authorities have taken some steps to strengthen enforcement, including raids on pirated-video rental shops. The government has pledged to continue such efforts. However, the fines applied to violators have been too small to provide a credible deterrent. In addition, continuing civil unrest has hampered enforcement efforts in general.

The U.S.-Pakistan Treaty of Friendship, Commerce and Navigation guarantees national and Most-Favored-Nation (MFN) treatment for patents, trademarks, and industrial property rights. Pakistan is a member of the Berne Convention, the Universal Copyright Convention , and the World Intellectual Property Organization, but not a member of the Paris convention for the Protection of Industrial Property.

Patents

Recently, law protected only process patents for a duration of sixteen years, although the government is committed to eventually offering product patents in accordance with its WTO obligations. U.S. Industry has complained that the right of the patentee is not adequately protected by law, permitting infringers to continue freely manufacturing illegal products. In addition, recently only the patent-owner, not licensees, could file a suit against an infringer. There also is always the threat of revocation of the patent or compulsory licensing. Further, backlogged cases in the courts result in the delay of justice. As a result, injunction orders against the infringer cannot be issued expeditiously.

Trademarks

Pakistan

There have been occasional instances of trademark infringement, involving a range of products such as toys, playing cards, and industrial machinery. In August 1994, the Pakistani Government issued new drug labeling rules requiring the generic names of substances to be printed with at least equal prominence as that of the brand name. This rule serves to dilute in the minds of consumers existing difference in quality, efficacy, and safety, and incorrectly implies total interchangeability and equality among different products. The U.S. Embassy estimates a loss of $5-10 million in U.S. exports for patent and trademark violations.

Copyrights

Violations of intellectual property rights in Pakistan are most common in the area of copyrights, where the piracy levels are exceptionally high. Th market for imported computer software has remained nearly 100 percent pirated, while U.S. industry has estimated that the piracy rate for videos has declined to around 80 percent. As a result of strengthened law enforcement (356 raids reported in first half of 1997), some video outlets are taking steps to offer legitimate products. Nevertheless, U.S. industries continue to express concern over the high rate of video piracy in the form of back-to-back copying of videos in video outlets. Piracy of copyrighted textile designs and reprint piracy of books (especially computer books, business titles, and medical texts) continue to be significant problems. Export of counterfeit products made in Pakistan have been reported.

Despite improvements in enforcement, the courts have been lax regarding successful prosecution of copyright infringement. According to industry representatives, penalties for infringement imposed by the courts are not strict enough to provide an effective deterrent to piracy. For example, typical penalties imposed on pirate video outlets have amounted to fines of only $16 and no imprisonment. Further, the courts remain extremely backlogged stemming from inefficient procedures. In the area of copyright infringement alone, in Pakistan, the International Intellectual Property Alliance estimated that piracy of films, sound recordings, computer programs, and books resulted in trade losses of $70.6 million in 1997.

SERVICES BARRIERS

The new investment policy announced in November 1997 promises liberalization, including in services, but it is too early to assess how the new policy will be implemented. Additionally, Pakistan improved its offer in the context of WTO financial service negotiations in December 1997. This promises some liberalization by granting the right of establishment for banks, as well as grandfathering acquired rights of foreign banks and foreign securities firms.

Previously, several sectors, including banking, insurance, transportation, telecommunications and entertainment have been affected by services barriers. Portions of major service industries are nationalized and run by the government.

Foreign banks generally have been restricted to few branches, faced higher withholding taxes than domestic banks, and experienced restrictions on doing business with state-owned corporations. Foreign brokers may join one of the country’s three stock exchanges only as a part of a joint venture with a Pakistani firm.

New foreign entrants to the general insurance market virtually have been barred. Foreign firms wishing to compete in the life insurance market, while not barred, also faced severe obstacles. Those few foreign insurance companies operating in Pakistan faced various tax problems, long delays in remitting profits, and problems associated with operating within the insurance cartel.

Basic telephony remains the monopoly of the majority state-owned Pakistan Telecommunications Corporation, but competition among private providers is now allowed in cellular telephony.

In WTO negotiations on basic telecommunications services, Pakistan made commitments on basic telecom services, with phase-in on some obligations. For instance, Pakistan is to provide national treatment for voice services, private leased circuit services, and telegraph services by 2004. Pakistan also agreed to permit foreign ownership or control of all telecommunications services and facilities by 2004. As part of the agreement, Pakistan also adopted certain pro-competitive regulatory principles but took an MFN exemption on accounting rates. Services barriers in the form of admission price controls by provincial governments remain a matter of concern for U.S. film and entertainment industries. Admission price controls coupled with high entertainment taxes have made it very difficult for theaters to be profitable; theater owners lack the authority to set admission prices according to market conditions.

If all service barriers were eliminated, the U.S. Embassy estimates an increase in U.S. exports of $25-100 million.

INVESTMENT BARRIERS

As mentioned above, the new investment policy of November 1997 promises liberalization of the climate for foreign direct investment. It is too early to know exactly how the announced policy will be implemented. Local content requirements can occur in the automobile, electronics, electrical products, and engineering industries under Pakistan's "Deletion Program." The program is ostensibly not compulsory. However, at least one telecom equipment producer has reported that telecom licensees must adhere to the import deletion program. Investors who "voluntarily" undertake to increase the local content of their output enjoy lower tariffs on imported inputs but are subject of fines for non-compliance with an agreed-upon import deletion schedule. In the auto sector, U.S. Industry reports that the GOP expects new motor vehicle assembly plants to achieve a local content level of at least 40 percent within five years of starting production. U.S. Industry reports further that 40 percent local content level is a firm requirement after seven years of starting production of motor vehicles in Pakistan. Local content requirements such as these will have to be phased out before January 1, 2000, in order for Pakistan to comply with the WTO Agreement on Trade Related Investment Measures (TRIMS).

Investors often face unstable policy conditions, particularly on large infrastructure projects. Changes in governments can significantly alter the conditions and assumptions under which an investment agreement was signed or is being pursued. Also, security concerns can be disruptive factors influencing company choice of location of facilities and areas of operation. Security concerns can result in changes of plan to accommodate shifting patterns of instability.

OTHER BARRIERS

Lack of transparency is a recurrent and substantial problem in many areas, including government procurement and customs valuation. Two Federal Government bodies take an interest in this problem, in addition to various government departments that might investigate allegations of corruption under their purview. The Monopolies Control Authority is credited with being reasonably effective at combating the practices covered by the law it is charged with enforcing, although the law is narrow in scope. The Federal Anti-Corruption Commission is considered politicized, and therefore a less effective body.

Regulations governing product registration also act as a barrier to U.S. goods. U.S. industry has expressed concerns in particular to the Pakistan government's unilateral adoption of a discriminatory policy against transnational pharmaceutical companies by insisting that they can only register products that are on sale in the country of incorporation of the respective company. Local companies, however, are not held to such a standard, as they can register products from any source. This results in a policy that discriminates against the research-based companies operating in Pakistan. In addition, the time required for the registration process for many multinational pharmaceutical companies in Pakistan is often 2 years, if not longer. Further, industries have also expressed concern with Pakistan's drug labeling rules, noting that these laws appear to place Pakistan in violation of the WTO TRIPS rules protecting trademarks.