

PROTOCOL TO AMEND THE FREE TRADE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA

AND

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

The Government of the People’s Republic of China (“China”) and the Government of the Islamic Republic of Pakistan (“Pakistan”) hereinafter referred to as “the Parties”;

RECALLING the *Free Trade Agreement between the Government of the People’s Republic of China and the Government of the Islamic Republic of Pakistan* (Free Trade Agreement) done at Islamabad on November 24, 2006;

COMMITTED to improving liberalization level based on the commitments and outcome of the first phase negotiation of the Free Trade Agreement, so as to further reduce and eliminate tariff barriers to trade and encourage further expansion and diversification of trade between the Parties;

DETERMINED to further strengthen the special bonds of friendship and cooperation between their countries;

CONFIDENT that the enhancement of the Free Trade Agreement will contribute to deepening and expanding the scope of cooperation and promoting trade and investment between the Parties; and

PURSUANT to Article 79 of the Free Trade Agreement;

HAVE AGREED AS FOLLOWS:

CHAPTER 1

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS¹

Article 1: Tariff Elimination

1. Article 8(1) (Eliminate Customs Duty) of Chapter III (National Treatment and Market Access for Goods) of the Free Trade Agreement shall be deleted and substituted entirely by a new Article 8(1) as set out below:

“Except as otherwise provided in this Protocol, each party shall progressively eliminate its import customs duties on goods originating in the territory of another Party in accordance with its tariff elimination schedule (Schedule), as set out in Annex 1-A of this Protocol.”

2. Article 8(2) of Chapter III (National Treatment and Market Access for Goods) of the Free Trade Agreement shall be deleted and substituted entirely by a new Article 8(2) as set out below:

“If at any moment a Party reduces its applied most-favored-nation customs duty rate after the entry into force of this Protocol, that duty rate shall apply as regards trade covered by this Protocol if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule to Annex 1-A.”

Article 2: Review and Modification

Article 8(1) (Review and Modification) of Chapter III (National Treatment and Market Access for Goods) of the Free Trade Agreement shall be deleted and substituted entirely by a new Article renumbered as Article 8 (4) and read as under:

“Review and modification of tariff reduction modality and the lists shall be as follows:

- (a) Tariff Reduction Modality and the lists shall be reviewed and modified every five years by the Committee on Trade in Goods.
- (b) The review shall be undertaken on the basis of friendly consultation and accommodation of the concerns of the Parties.

¹ For greater certainty, this Chapter shall constitute an integral part of Chapter III (National Treatment and Market Access for Goods) of the Free Trade Agreement, and the provisions of Chapter III that are not substituted by this Protocol shall remain in force.

- (c) The first review and modification shall be undertaken either at the end of the fourth year or at the beginning of the fifth year of entry into force of this Protocol.
- (d) Either party may request for an additional review at any time after coming into force of this Protocol. Such a request shall be favorably considered by the other Party.”

Article 3: Measures to Safeguard the Balance of Payments

This article shall be incorporated into Chapter III (National Treatment and Market Access for Goods) of the Free Trade Agreement and read as under:

“Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, adopt measures deemed necessary.”

CHAPTER 2
RULES OF ORIGIN²

Article 4: Certificate of Origin

1. The "a government authority" in Article 23 of Chapter IV (Rules of Origin) of the Free Trade Agreement shall be replaced by "an authorized body", and "government authorities" in Rule 1,2(a),3,6,9,10,11,13(a),19(b) and 20(b) of Annex 2 of the Free Trade Agreement shall be replaced by "authorized body" or "authorized bodies" respectively.

2. "The issuing government authorities" in Rule 16(d) of Annex 2 of the Free Trade Agreement shall be replaced by "the government authorities".

²For greater certainty, this Chapter shall constitute an integral part of Chapter IV (Rules of Origin) of the Free Trade Agreement, and the provisions of Chapter IV that are not substituted by this Protocol shall remain in force.

CHAPTER 3
CUSTOMS COOPERATION³

Article 5: Electronic Data Exchange

Both Parties shall ensure implementation of the Memorandum of Understanding on Electronic Data Exchange between Customs Administrations, which was signed on November 3, 2018, and endeavor to take further step including suitable mechanism to address the concern on export price information.

³ For greater certainty, this Chapter shall constitute an integral part of the Free Trade Agreement.

CHAPTER 4
TRADE REMEDIES⁴

Article 6: Bilateral Safeguard Measures

Article 27 of Chapter V (Trade Remedies) of the Free Trade Agreement shall be deleted and substituted entirely by a new Article 27 which reads as under:

1. Definition

For the purpose of this Chapter:

- (i) **Competent authority** means:
- (a) in the case of China, the Ministry of Commerce, or its successor; and
 - (b) in the case of Pakistan, the Ministry of Commerce, or its successor;
- (ii) **Domestic industry** means, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
- (iii) **Safeguard measure** means a measure described in paragraph 2(ii);
- (iv) **Directly competitive product** refers to the product which, having different physical characteristics and composition to those of the imported product, fulfills the same functions of the latter, satisfies the same needs, and is commercially substitutable;
- (v) **Like product** refers to the identical product, that is, the product that is the same in all aspects as the imported product, or in the absence of such a product, to another product which, in spite of not being the same in all aspects, has characteristics closely resembling to those of the imported product;

⁴ For greater certainty, this Chapter shall constitute an integral part of Chapter V (Trade Remedies) of the Free Trade Agreement, and the provisions of Chapter V (Trade Remedies) of the Free Trade Agreement that are not substituted by this Protocol shall remain in force.

- (vi) **Serious injury** means a significant overall impairment in the position of a domestic industry;
- (vii) **Threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and
- (viii) **Transition period** means ten years for the products under Categories A-0 and MOP1 as indicated in Annex 1-A; for the products under Categories A-5, A-7, A-10, A-15 and MOP2 as indicated in Annex 1-A, transition period means the period beginning from the starting date of tariff elimination or reduction and ending eight years from the date of completion of tariff elimination or reduction for that product.

2. Imposition of a Bilateral Safeguard Measure

- (i) A Party may apply a measure described in paragraph 2(ii), during the transition period only, if as a result of the elimination or reduction of a customs duty pursuant to this Protocol, or as a result of unforeseen developments in conjunction with the existence of a preferential tariff under this Protocol, an originating product is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof to a domestic industry producing a like or directly competitive product;
- (ii) If the conditions in Paragraphs 2(i) are met, a Party may, to the extent necessary to prevent or remedy serious injury, or threat thereof to facilitate adjustment:
 - (a) suspend the further reduction of any rate of duty provided for under this Protocol on the product;
 - (b) increase the rate of duty on the product to a level not to exceed the lesser of:
 - (1) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is taken, and

(2) the MFN applied rate of duty in effect on the date of entry into force of this Protocol;⁵

- (iii) On the termination of a safeguard measure, the rate of duty shall be the duty set out in Annex 1-A of this Protocol as if the measure had never been applied.

3. Standards for a Definitive Bilateral Safeguard Measure

- (i) Neither Party shall maintain a safeguard measure:
 - (a) except to the extent and for such time as may be necessary to prevent or remedy serious injury or threat thereof, and to facilitate adjustment;
 - (b) for a period exceeding three years, except that the period may be extended by up to two years if the competent authority determine that the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment, and that there is evidence that the industry is adjusting;
 - (c) beyond the expiration of the transition period, except with the consent of the Party against whose originating product the measure is taken;
- (ii) No safeguard measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

4. Notification, Investigation and Consultation

- (i) A Party shall promptly notify the other Party when:
 - (a) initiating an investigation under this Article;
 - (b) applying a provisional measure;

⁵ The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of a safeguard measure.

- (c) making a finding of serious injury or threat thereof caused by increased imports;
 - (d) taking a decision to impose or extend a definitive safeguard measure;
- (ii) In making the notification referred to in paragraph (i)(b) and (i)(c), the Party proposing to apply or extend a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the product involved and the proposed measure, proposed date of introduction and expected duration; the Party proposing to apply a measure shall also provide any additional information which the other Party considers pertinent;
 - (iii) A Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation set out in Paragraph 5;
 - (iv) A Party shall apply the measure only following an investigation by the competent authority of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made a part of this Protocol, *mutatis mutandis*;
 - (v) In undertaking the investigation described in paragraph 4(iv), a Party shall comply with the requirements of Article 4.2(a) and (b) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) and (b) are incorporated into and made a part of this Protocol, *mutatis mutandis*;
 - (vi) The investigation shall in all cases be completed within one year following its date of initiation.

5. Compensation for Loss of Trade and Suspension of Concessions

- (i) A Party applying a safeguard measure for an overall period beyond 3 years shall, in consultation with the other Party, provide mutually-agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties

expected to result from the measure during the period of extension of the measure beyond the aforementioned 3 years. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 45 days after the decision to extend the measure. Such consultations shall take place prior to the effective date of the extension;

- (ii) If the Parties are unable to reach agreement on compensation within 45 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure;
- (iii) The exporting Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 5(ii);
- (iv) The obligation to provide compensation under paragraph 5(i) and the right to suspend concessions under paragraph 5(ii) shall terminate on the date of the termination of the safeguard measure.

6. Provisional Bilateral Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional safeguard measure shall not exceed 180 days, during which period the pertinent requirements of paragraph 2, 3 and 4 shall be met. Such a provisional safeguard measure shall take the form of an increase in the rate of customs duty not exceeding the lesser of the rates in paragraph 2(ii), which shall be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a safeguard measure.

CHAPTER 5
INVESTMENT⁶

Article 7: Future Work Programme

The Parties are committed to encouraging investments from the other Party and agree to strengthen the cooperation in the field of investment to provide stable, transparent and predictable investment environment for the investors of both Parties. The Parties agree to enter into negotiations to upgrade Chapters IX (Investment) of the Free Trade Agreement in due course.

⁶ For greater certainty, this Chapter shall constitute an integral part of Chapter IX (Investment) of the Free Trade Agreement, and the provisions of Chapter IX (Investment) of the Free Trade Agreement that are not substituted by this Protocol shall remain in force.

CHAPTER 6
FINAL PROVISIONS

Article 8: Annexes and Footnotes

The annexes and footnotes to this Protocol constitute an integral part thereof.

Article 9: Amendment

1. The Parties may agree on any amendment to this Protocol.
2. When so agreed, and entered into force according to Article 10 (Entry into Force and Termination), the amendment shall constitute an integral part of this Protocol.

Article 10: Entry into Force and Termination

1. The entry into force of this Protocol is subject to the completion of necessary domestic legal procedures by each Party.
2. The Parties shall notify each other the completion of such procedures through diplomatic channels in writing. Unless otherwise agreed by the Parties, this Protocol shall enter into force 30 days after the date of receiving the latter notification or after such other period as the Parties may agree.
3. This Protocol is valid within the validity period of the Free Trade Agreement.
4. Either Party may terminate this Protocol by written notification to the other Party. This Protocol shall be terminated 180 days after the date of receiving such notification.

Article 11: Authentic Texts

This Protocol shall be done in duplicate in Chinese and English, both texts being equally authentic.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Protocol.

DONE at Beijing, in duplicate, this twenty-eighth day of April in the year two thousand and nineteen.

For and on behalf
of the Government of
the People's Republic of China

For and on behalf
of the Government of
the Islamic Republic of Pakistan

Yu Jianhua
Vice Minister of Commerce of PRC and
Deputy China International Trade
Representative

Masood Khalid
Ambassador of Pakistan
to the People's Republic of China