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# Afghanistan Economy, and Its Accession to the World Trade Organisation

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## Abstract

Afghanistan has a longstanding wars for many years which lead to the destruction of Afghanistan's infrastructures and local economy. After 2001 upon the start of transition government especial attention has been given to the economy, as it is believed the insecurity and instability linked to the weak economy and poverty. One of the good measures have been initiated by the Afghanistan government is its request to membership to World Trade Organisation (WTO). Membership to WTO would allow Afghanistan to have higher economic growth and jobs creation. Moreover, Afghanistan economy has been always vulnerable due to unfair completion by some big corporations which to sale their product with a lower price at Afghanistan's market. This problem can be tackled since the WTO membership would allow its members to use Antidumping Laws to prevent the local industries from injury. However, in order of Afghanistan to use these Laws, it should allow its laws in conformity with WTO guidelines. Afghanistan can follow the successful India's Antidumping laws, in order to protect its local industries from any unfair completion and injury by the big corporations.

**Keywords:** Afghanistan economy, WTO, Antidumping laws.

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## 1.1 INTRODUCTION

Afghanistan was always known to be one of the countries in the lowest position in terms of human development as well as poverty even prior to the destruction caused by relatively continuous wars starting with the Soviet attack in 1979. Tested by topography, geography and scarce establishments, decentralization has occurred within the nation with low connectivity to and between groups.Several groups stay past the main government's capability to manage as well as to observe. Generally,an agrarian and trading culture, about 80% of the workforce was occupied with rural farming even prior to the war in the 20th century.[1]

Economic modernization and promising industrialization started in the 1930s with state-led infrastructure projects continued by a handful of small and medium-scale light industrial businesses. The aforementioned actions resulted with a subtle capital city in Kabul, thus profits were frequently allocated towards increasing industrial development. As export business sectors expanded, Afghanistan's farming products and delicacy reached Europe as well. Political elites played a strong and supportive role behind the scenes to private sector decisions until Mohammed DaoudKhan was appointed to be Prime Minister in 1953, after which a significant part of the prospering formal economy was nationalized to encourage faster development and modernization. The endeavours above were to be carried out progressively during the 5-year advancement plan in 1956-1972, the initial points of which were concentrated within government enterprises, heavy industry as well as infrastructural plans.[2]

Unfortunately, ministries in government demonstrated to be administratively too feeble and technically incapable of actualizing a viable state-managed economy. At the beginning of war, little

[1]Richard Ghiasy, Jiayi Zhou, and Henrik Hallgren, *Afghanistan's Private Sector: Status and Ways Forward* (SIPRI, 2015).
[2]Ibid.

contribution was provided by modern industry to the economy of Afghanistan: domestic production was not able to take care of the domestic demand intended for consumer merchandise, and simultaneously, exports continued as conventional agrarian products, which in 1977 made up approximately 60-75 percent of exports. Even though advances were introduced in infrastructure and water system, agriculture kept on being subsistence-based and merely 20 percent of wheat harvested advanced toward markets. It was exceedingly powerless against the components: overwhelming starvation and drought of the early 1970s appear differently in comparison to food self-sustenance accomplished when good weather occurred at the end of the decade. Subsequent to the 1950s, the state-led economy of Afghanistan was highly dependent on financial assistance from international bodies, profiting tremendously in terms of monetary from the rivalry between the United States and the Soviet Union regarding political power. A capital average of 75% was provided for five-year plans of Daoud by foreign sources, and by 1973, more than half of the government's revenue was provided by them. Dependency towards aid was linked as well to the awfully minimum government's fiscal capacity — a persistent problem. Nonetheless, this assistance fund was mainly specified for certain projects that were delivered and executed on the donors' conditions of geostrategic urgencies and aligned with their politico-economic principles. Minimum competition, as well as coordination among donors, resulted in a fragmented development plan where the major government possessed minimum rights. The majority of the projects, such as up-scaled water system projects were troubled in execution, operation, as well as long-term sustainability. The current Afghanistan's aid-coordination and developmental obstacles reflect those that the country experienced back in the 1960s as well as 1970s..[3]

[3]Ibid

### 1.2 International intervention: 2001–2014

The global interference that tumbled the Taliban, as well as decimated al-Qaeda prisons in the end of 2001, had demonstrated a subsequent striking economic advancement. In 1980-2001, Afghanistan faced zero/negative development but economic development subsequent to 2001 intervention has been erratic yet powerful at an average of 10.5 percent in 2005 until 2012. In any case, a great part of the development was led neither by local demand nor supply, but rather by the presence of the international community especially after the surge in battle and adjustment procedures post-2009. The development is likewise an element of the basis used for measurement. Civilian as well as military help developed from the 'light footprint' figure of $404 million in 2002/2003 to a huge $15.7 billion in 2010/2011, which was similar to the country's total gross domestic product (GDP) in that year. In 2009-2012, Afghanistan was recognised as the highest official development assistance's (ODA) yearly beneficiary. During the cold war, the country has turned again into very reliant on foreign aid as opposed to locally motivated economic dynamism.[4]

It was established by the intervention that the economy of Afghanistan would be reconstructed on free market-based standards. The 2002 National Development Framework expressed that among the three foundations of the post-war state-building is the development of the private sector, which can sustainably become the foundation of growth and opportunity for all social classes. However, economic development neither contributed to the tremendously security-oriented needs in the global community nor was it organized by the governance of Hamid Karzai. A plan to build up private sector was portrayed formally in 2008 via the Afghan National Development Strategy (ANDS), where the principle economic objectives for the years of 2008–2013 were to diminish poverty, at the same time guarantee sustainable improvement with a private sector-led market economy.

[4]Ibid

Even though this technique had several striking imperfections, there are major explanations behind the powerless execution were the minimum contribution from ministerial shareholders in the scheme as well as constrained high-level government's execution support.[5]

Even though the foreign, as well as domestic state-builders, agreed that the market needed to push the economy of Afghanistan, not much has been successfully done within the recent decade regarding administration mechanisms essential for a comprehensive, formalized, as well as aggressive marketplace. Not enough effort was formed to provide support for the underprivileged economic involvement: the country's unemployed, female as well as Afghan youth. The administrative umbrella of the state is a long way from ready to cover, or even record the majority of the nation's economic movement. Informal and unregulated markets have been controlling and extending from legal yet unreported micro-, small- and medium-enterprises (MSMEs) as well as criminal exercises, where opium productions, as well as smuggling, keep on increasing. Without a practical substitute, livelihoods as well as solid demand, the black market narcotics economy of Afghanistan has taken off since global interference. In spite of the billions of dollars used for counter-narcotics, almost all of Afghanistan's districts have poppy production in the Taliban period.

In 2004, 61 percent was the export value of opium of the licit GDP. This figure reduced significantly (perhaps due to the economic development of Afghanistan), but still, 2014 was the highest on record of poppy cultivation. These are outside the government control along with the smuggling as well as illegal market trade. In fact, these unlawful exercises shape what Weinbaum alludes to an extremely active and energetic capitalist system with overflow impacts to whatever remains of the economy. Economic activities often deal with illicit extra-market condition: these may involve systematic

[5]Ibid

corruption, as well as distortionary interferences by political elite and those with high authority including the use of coercive measures and control over information assets to hinder rivalry, as well as socio-cultural standards that demoralize comprehensive support for female, among a large group of problems. The mafia-like systems' tenacity whose exercises obscure between the legal and unlawful economy demonstrates state administrative disappointments. At the same time, it also reflects the longstanding historic examples of informal bodies and also new progression in a warfare situation where dangers are high, at the same time social capital needs to be low.[6]

The state system is possible to be enhanced by policy interference, more extensive trust within the public arena as well as in market needs time and expanded good socioeconomic connections to be assembled. All things considered, there have been striking victories. A broadly incorporated market is gradually rising, to some degree because of the recovery of highway transport infrastructure. Transports on the street have expanded from less than 200,000 in 2003 to almost a million. On the other hand, the telecom and media divisions that are led by private enterprises have experienced enormous development. There were more than 20 million mobile subscriptions in 2012 from 2 phones for each 1000 Afghans in 2002. It ought to be noticed that the telecom and media divisions entered a market where skilled players are needed, demonstrated exceptionally sharp financial entry hindrances, and was not subjected to the nation's difficult geography. International trade was still vigorously unjust, specific light ventures like plastics and shoes industries have seen yearly production increments (this does clearly not ensure profitable sales), and Afghanistan is presently utterly independent in beverages. In addition, agribusiness keeps on shaping a remarkable section (25.45% of GDP in 2012–2013) of what is a generally service-

[6]Sarah Lister and Adam Pain, *Trading in Power: The Politics of" free" Markets in Afghanistan* (Afghanistan Research and Evaluation Unit, 2004).

centredeconomy (50.29% of GDP in 2012–2013), even though both GDP and employment rate has decreased lately.[7]

The state system is possible to be enhanced by policy The absorptive capability of the agrarian division in Afghanistan is frequently questioned as urbanization progresses. Meanwhile, it maintains having the biggest employments in other areas, especially after taking the nation's human capital conditions into consideration. In spite of increasing amount of cash having been spent on Afghanistan than was given subsequent to World War II to the sum of Europe under the Marshall Plan, Afghanistan is still among the least economically developed countries in the world. Social pointers stay low, despite the increment: the adult literacy rate in 2012 (15 years old and above) was 31.4%; 45.4% for men and only 17.0% for ladies. In 2015, Afghanistan's average age is assessed to be 17.1 years, and become one of the world's most youthful populaces. While in principle, youth can possibly take part in the country's private region, high-quality education, workshops as well as corresponding employment are required.[8]

### 1.3. Framing the private sector

#### 1.3.1. Formal vs. informal economy

Formal occupations speak to just approximately 9% of the aggregate work share in Afghanistan, 20% of them are in public sector. Municipal area rules the formal labour market, at the same time gives double the quantity of private sector paid occupations. No less than 65,000 undertakings are enlisted formally; however, this number may not precisely speak to the numerous organizations that are probably enlisted with nearby authorities as well as districts. Extensive national information regarding this has not been totalled, gathered or upgraded.

[7]Ghiasy, Zhou, and Hallgren, *Afghanistan's Private Sector: Status and Ways Forward*.

[8]Ibid.

Indeed, lesser is known with respect to the informal area.[9]Official economic bodies have only been formed in Afghanistan recently and have not reached a large scope as of yet. In 2005 approximations was made and 80-90% of the country's economic action is unlisted and have not improved over the previous decade.[10]The Non-formal economic movement includes entirely economic exercises happened beyond the administration's regulatory system, including in-kind transactions and subsistence, legal however informal action, as well as sporadic or unlawful circulation and products production as well as ventures. In Afghanistan and numerous developing countries, the association between the informal as well as the formal economy is regularly irregular, incorporating a similar human network, and also using the same loose economic assets..[11]

Certain overflow from non-formal sector-led development has been detected. Capital accumulationwithin the informal area is possible to serve the event of the official division, by expanding costumers buying ability and giving access to an investment source.[12]The informal division takes a solid part in poverty diminishment through utilizing and overhauling markets at the pyramid's bottom. In 2005, the World Bank expressed that informal activity has been the reason for Afghanistan's recent robust economic growth. In the meantime, informality—despite it is legal places a barrier to advancement. By working together and contending with formal economic administration frameworks, informality prompts to an endless loop where the government cannot produce the resources essential, through tax collection, to give an empowering situation to formal enterprises. Parts that the state could play linked to welfare, as

[9]Ibid.

[10]Johan Holmberg et al., *Afghanistan-State Building, Sustaining Growth, and Reducing Poverty* (The World Bank, 2005).

[11]Ghiasy, Zhou, and Hallgren, *Afghanistan's Private Sector: Status and Ways Forward.*

[12]Anna Paterson, *Going to Market: Trade and Traders in Six Afghan Sectors* (Afghanistan Research and Evaluation Unit, 2006).

well as work insurance, are likewise decreased; socioeconomic protections are now given through non-formal channels, which make extra hindrances to formalize.[13]

Generally, motivating forces for formalization by legal actors stay low. A study involved small-scale business actors in 2011 uncovered that enrolment brings few advantages regarding contract and law authorization, government service delivery, government insurance (involving work), or access to reasonable fund. Registered enterprises frequently confront costs as far as sector requirements, taxes, coercion and bribery by authorities, and also extensive and complex bureaucratic procedures. Qualifications are mainly made between barriers to formalization: absence of data or perplexity with respect to methodology, education, or issues of access in rustic Afghanistan in comparison to sensible choices to remain unlisted based on the above cost–benefit assessment. Policy interventions are vital at all ends. On the other hand, study has additionally found a 'informality of indifference' whereby legal changes and formal procedural yet low state capability has not modified pre-intervention economic examples. Currently, minimum action has been implemented to energize or encourage unlisted organizations in creating a network with the government and it will take time before the government can earn the private sector's trust and declare themselves a legitimate business.[14]

As the Ministry of Commerce and Industries (MOCI) has expressed, "for the private sector to expand and fulfil its role as the main engine for growth, additional efforts must be made to address the needs and maximize the contribution of the many informal enterprises, family-run farms and self-employed men and women that conduct business there."A requirement for the state and policy makers to create

[13]Ghiasy, Zhou, and Hallgren, *Afghanistan's Private Sector: Status and Ways Forward*.
[14]Ibid.

a relation with legal informal sector actors is present, to incorporate more customary trade enterprises.[15]

Governments, as well as shareholder procedures and forums, are not to just consider the minimum formal division of enlisted enterprises, the public sector, and non-profit driven bodies, as well as incorporate the perspectives of Afghans where the exercises remain not considered and implicit for. For example, informal labours are excluded in the 2007 Labor Law. Specific care ought to be included as well to unload the various layers of homeless or poverty-stricken populaces that include female, underage workers, transients and evacuees—who are included in informal exercises.[16]

### 1.3.2 Economic integration

Joining international markets has been both beneficial and harmful for Afghanistan's struggling economy. Foreign services and items' accessibility builds alternatives for consumers, however, products from more developed and state-supported economies swarms out market space for aggressively impeded Afghan suppliers. Imports supposedly represent more than 80–90% of the buyer advertise, at the same time the trade disparity is extreme.[17]

Regional economic integration has been widely known to be helpful for the development of. Afghanistan could be an international hub that gives access throughout Central and South Asia, as well as the Middle East and South Asia. Prospects of positive economic overflow with easy approvals are there against Iran, where Chabahar port may be a major central area for Afghan trade. Nonetheless, territorial economic activities negotiation proceeds with a background of the vigorously politicized provincial environment. Local economic integration, especially with neighbours Iran and Pakistan, is solid, yet

[15]Ibid.
[16]Ibid
[17]Ibid

lopsided. Trade agreements with neighbours regularly hinder Afghanistan especially when they are implemented.[18]

The process of economic integration of Afghanistan should be more rule-based and equitable. Afghanistan is at disadvantage with their foreign counterparts because some of these foreign producers are often supported by the subsidies from the government as well as higher import tariffs. Even though the WTO accession will bring Afghanistan's enterprises and policies aligned or closer with international standards, the competitiveness of Afghan industries in the global market and their survival remains unclear. Afghanistan needs to be very cautious.[19]

The country's present liberal trade system is a result of low state capability and configuration: trade channels are inconsistent whereas the majority of the supposed customs revenue keeps on being misused for corruption as well as smuggling. In this manner, Afghanistan becomes a dumping arena for neighbours' goods, the neighbouring markets remained closed to Afghan merchandise, and trucks frequently slowed down and halted at outskirt intersections, harming delicate items. Afghanistan's ability to arrange better negotiations in the last decade has been feeble. Moreover, legal merchandises that pass by are usually raw materials or lower-value items where neighbours add value, thus gain profits. More valuable items are exported, yet they are frequently relabelled and resold at inflated prices to different parties.[20]

The local market in Afghanistan is not well-coordinated. As opposed to a single economic space, there are rather various confined markets. Urban areas are not well linked to rural areas, especially in terms of infrastructure and economic means. The biggest common capitals — Kandahar, Mazar-e Sharif, Herat as well as Jalalabad—are

[18]Ibid.
[19]Ibid.
[20]Ibid.

all the more economically coordinated with their contiguous neighbours than they are with each other. Meanwhile, in cross-border trade policies, past issues of rampant corruption, customs are coordinated across borders. These price differences are obligated to, and sellers have abused which harms domestic producers.[21]

Fragmentation likewise goes past undeveloped infrastructure and physical availability, incorporating difficulties of closed business network and informal trade relations. Such absence of inner coordination worsens the market access and broken value chains problems, retaining the economy at the bottom level of local and international economic value chains. Current local needs for final items as well as for pre- and post-production materials that could be supplied locally frequently remain neglected and supply-demand links are underdeveloped.[22]

### 1.3.3 Private sector actors

A great majority of Afghans (approximately 90%) are hired in enterprises with fewer than 5 staff members, and sole proprietors are the most common. An encouraging private sector environment for micro-enterprises is instrumental in reducing poverty as well as in employing the nation's workforce, especially for youth as well as women. While a couple of Afghanistan's substantial industries are low in employment, they are the vital part in increasing tax revenue of government, drawing in foreign direct investment (FDI), giving certain basic administrations, (construction and telecommunication for example), presenting innovation and management principles, at the same time help from small businesses. Foreign ownership outside of the service sectors associated with the international presence is minimal and mostly concerned with technology-intensive businesses like telecom and mineral extraction. Substantial Afghan-owned

[21]Ibid.
[22]Ibid.

businesses usually have a familial ownership and administration structure, including male individuals of the same family.[23]

Numerous substantial business communities go back to prior the Russian attack, but a new prosperous businessmen group rose with the post-2001 service-oriented economy. Although this group keeps up the centre business line, the major corporate groups have often chosen to invest in multiple sectors; including logistics, finance, security, trade and development, to be a way to support their fundamental ventures, reinvest profit or diversify risk. Numerous Afghan business groups, even with abroad headquarters, keep up a solid business base in their locale of origin, where they regularly connected with the ethno-political foundation. While this model fortifies the current interest arrangement side-lines businessmen, it is a route as well for these businesses to diminish chance in the unpredictable and shaky situation, at the same time keep up interest in the Afghan economy.[24]

Though formal business associations have just been presented in the nation recently, the various urban small- and small business have historically organized insenfs (sector-based societies) where they coordinate on common issuesas well as resolve problems. This model causes them to be stronger to external factors, even though it ought to be noticed that it might likewise prevent certain entities to non-domestic companies by putting restriction to free competition. Approximately 500,000 active small-businesses across the nation are among the significant sources of work and apprenticeship, mainly in the informal segment. The Federation of Afghanistan Craftsmen and Traders (FACT) have 75,000 individuals, huge numbers of them with informal enterprises, arranged approximately 1000 senfs.[25]

[23]Ibid.
[24]Ibid.
[25]Ibid

Considering the fast urbanization rate and the part of these businesses drawing in mostly male young adults (especially in apprenticeships), the manageability, as well as flexibility, of the longstanding economic foundations will continue to be more vital. A modern private sector rose through collaboration between the international community and Afghan enterprises which shared a common concern for enhancing the business environment. A few critical initiatives to transform the business environment have recently been funded by Harakat, a non-governmental association held by the British Government's Department for International Development (DFID).[26]

The Afghanistan Chamber of Commerce and Industries (ACCI) is thought to be the eminent national business association in the country. In 2004, it was created by a merger of an MOCI-controlled office as well as a chamber established by influential Afghan entrepreneurs to encourage investment. Though its independence of main business interests has been controversial, ACCI is the only voluntary membership services association with leverage in policy lobbying accessible to multiple areas of the private sector. A few business associations are found in ACCI—such as the Afghan Women's Business Federation (AWBF), FACT, the primary national umbrella association for active women in business. The AWBF and various current, most donor-initiated, networks as well as associations are entirely restricted to confront the many difficulties that are confronting economically active female at present, both in terms of everyday support and advocacy. Albeit most female entrepreneurs and representatives confront different types of discrimination, the shared characteristics among the nation's active female in the economic area may somehow be dubious. Their role as single delegates of Afghan

[26]Ibid

ladies in the private sector still blocked the significance of these affiliations.[27]

The last crucial point to be noted is the unbalanced concentration of privately owned businesses to urban regions as well as the absence of an organized private sector in agricultural processing and farming. Employees from rural areas generally do not have the traditional organizedrepresentation made conceivable by FACT. Though agrarian processing is responsible for 90% of the nation's manufacturingas well as agribusiness, it utilizes approximately 60% of the workforce, thus such absence of representation is hazardous. The scattered populace and differing needs created other types of cooperation, yet as much optimism is attached to productivity of the agricultural sector, the essential need tosafeguard worker rights and protect investments will be increased.[28]

### 1.4 Afghanistan, World Trade Organisation and Anti-Dumping system.

The WTO has been informed by Afghanistan that its Parliament has sanctioned its Protocol of Accession, removing the last obstacle for its WTO enrolment. Afghanistan will be the 164th member of the Organization on 29 July as indicated by WTO rules, 30 days subsequent to the receiving of its instrument of acknowledgment at the WTO. Afghanistan's ambassador, Dr. Suraya Dalil, kept the acceptanceinstrument of the nation's Protocol of Accession with Director-General Roberto Azevêdo. On 18 June, the nation's accession Protocol was endorsed by Afghanistan's parliament. In 2004, Afghanistan applied for WTO enrolment with accession working party individuals finishing up the arrangements on 11 November 2015.[29]

[27]Ibid.
[28]Ibid.
[29]"WTO | 2016 News Items - Afghanistan to Become 164th WTO Member in One Month's Time," accessed December 31, 2016, https://www.wto.org/english/news_e/news16_e/acc_afg_29jun16_e.htm.

On 17 December 2015, WTO members formally affirmed Afghanistan's accession amid a special function at the Nairobi Ministerial Conference. Afghanistan's First Deputy Chief Executive, Mohammad Khan Rahmani co-signed the Protocol of Accession with DG Azevêdo. Afghanistan is the ninth least developed country (LDC) and the 36th government to join the WTO subsequent to the accession negotiations since the establishment of WTO in 1995. On 14 July,Liberia, another LDC will then be the 163rd WTO member. LDCs cover approximately 20% of the WTO membership.[30]

Director-General of World Trade Organisation Roberto Azevêdo stated regarding the accession of Afghanistan: "I am proud to welcome Afghanistan to the WTO as our newest member. This is a historic day for the country and its integration into the global economy. We arrived at this point thanks to the commitment of President Mohammad Ashraf Ghani and the government of Afghanistan. I congratulate them on this achievement, particularly given the very challenging circumstances," DG Azevêdo continued. "WTO membership will be a foundation stone in the country's future development. I also want to commend all WTO members for their support in this process, and their commitment to helping LDCs to participate in the multilateral trading system." On 11 November 2015, Working Party members approved Afghanistan's accession package followed by 17th December 2015's approval by Ministers at the Nairobi Ministerial Conference.[31]

## 1.5 Afghanistan's commitments towards World Trade Organisation

The Accession Package of Afghanistan is considered by Working Party Members to be high quality, which would add to reinforcing the

[30]Ibid

[31]"WTO | 2016 News Items - DG Azevêdo Welcomes Afghanistan as 164th WTO Member," accessed December 31, 2016, https://www.wto.org/english/news_e/news16_e/acc_afg_29jul16_e.htm.

rules-based Multilateral Trading System and giving a long haul motivation to legislation-based local changes in Afghanistan. The terms and conditions for the WTO Accession of Afghanistan are intended to accomplish its improvement priorities. These involve encouraging local changes for modification to a profitable market economy, pulling in investments and creating opportunities as well as enhancing the welfare of Afghans. Its WTO commitments will apply to all WTO Members, on an MFN premise. Afghanistan was congratulated by the members for its dedication to aspiring WTO-steady changes.[32]

### 1.5.1 Market access for goods and services

As a component of the accession discussions, Afghanistan concluded 9 market access agreements to bilateral market on goods and 7 bilateral market access agreements on services. On goods, Afghanistan has implemented tariff concessions and commitments that bind tariff rates for all items on average at 13.5 percent. For agricultural items, the average is 33.6 per cent while for non-agrarian items the average is 10.3 per cent. Afghanistan resolved to join the Information Technology Agreement (ITA) upon accession, a WTO plurilateral agreement accommodating members to totally dispense obligations on IT items secured by the ITA Agreement. Afghanistan's export tariffs will be destined for 243 tariff lines as well. Of these, 29.6% are bound at 10%, 24.2% are bound at 2.5%. Afghanistan has made specific arrangements in 11 service sectors, including 104 sub-sectors.[33]

#### 1.5.1.1 Horizontal commitments

Foreign natives or juridical people will have a right to lease land from the state for up to 90 years (this term could be expanded). From 1 January 2021, Afghanistan would not require contractual workers and

[32]"Overview of Afghanistan's Commitments," accessed January 3, 2017, https://www.wto.org/english/news_e/news15_e/afgancommitmentsmc10_e.pdf.
[33]Ibid.

permit holders under the Hydrocarbons Law 2009 and the Minerals Law 2014, respectively, to obtain Afghan services that are comparable and proportional in quantity, quality, and price to services abroad. Entry for intra-corporate transferees and people in charge of the foundation of business presence in Afghanistan will be allowed for a time of one year (this period might be expanded, every year); for services vendors and people who give services without building up business presence in Afghanistan – 180 days amid one year.[34]

**1.5.1.2 Telecommunications:**

No restrictions other than as demonstrated within the horizontal commitments. Consented to apply the WTO Basic Telecommunications Agreement.[35]

**1.5.1.3Insurance:**

No restrictions on utilization abroad and business presence. On risk insurance related to commercial aviation, marine shipping, and space cargo and launching (counting satellites), with such protection to cover any or all of the mentioned: the products being transported, the vehicle transporting the merchandise and any risk emerging consequently; and products in international transit - there will be no market access and national treatment restrictions, in six and ten years after accession respectively.[36]

**1.5.1.4Banking:**

No market access restrictions on business presence for internationally reputable banks and specialized banks in terms of deposits acceptance and other repayable funds from the general population. Unbound for others. Afghanistan will have the privilege to enforce limits on the amount of transferable cash.[37]

**1.5.1.5 Distribution:**

[34]Ibid.
[35]Ibid.
[36]Ibid.
[37]Ibid.

For business presence, external investment should be more than Afs 6 million (around US$120,000), balanced for expansion.[38]

### 1.5.1.6 Bilateral Deals:

Afghanistan's deals on bilateral market access were: On products with Canada, Thailand, Japan, Korea, the European Union, Norway, Turkey, the United States and Chinese Taipei.[39]

On services with Canada, Korea, Japan, the United States-Norway, the European Union, and Chinese Taipei. Subsequent to the conclusion of all bilateral market access discussions between the acceding government and interested members, the WTO Secretariat solidifies the outcomes of all concluded, consented to and deposited bilateral arrangements into a Schedule of Concessions and Commitments on Goods ("Draft Goods Schedule") and a Schedule of Specific Commitments on Services ("Draft Services Schedule"). The Schedules are the "Final Market Access Offers" by the acquiescing governments which, when received, get to be widely accessible to all WTO Members.[40]

### 1.5.1.7 Rules Package:

Afghanistan's Accession Working Party Report contains 37 particular commitment paragraphs on its rule package. General Commitments identified with the Trade Regime All Afghanistan's STEs will work in a way alongside the WTO Agreement. Afghanistan will apply its pricing policy in a WTO-steady design. The full legislation package required for WTO accession will be instituted by Afghanistan before its WTO enrolment. Afghanistan's laws and directions will give people or businesses influenced by any administrative action subject to WTO provision, the privilege to advance such activity to a higher authority or to the courts or other autonomous tribunals incongruity

[38]Ibid.
[39]Ibid.
[40] Ibid.

with WTO commitments. WTO provisions will be enforced consistently all through the customs region of Afghanistan and different regions under its control. When a situation occurred where WTO arrangements are not applicable in a non-uniform way, Afghanistan's central authorities will act to uphold them not requiring affected parties to appeal to through the courts. Afghan and foreign natural people and legitimate elements will have the privilege to take part in export and import activities. To be a distinctly an importer of record, a natural individual or a legitimate substance abroad should either: (i) go into a purchase-sale contract with an Afghan legal body or natural individual in Afghanistan; or, (ii) enlist as a legal individual working in Afghanistan. All laws and directions related to the privilege to export or import merchandise and all expenses, taxes or charges imposed on such rights will adjust to Afghanistan's WTO commitments. Investments in Afghanistan would not be a prerequisite for taking part in foreign trade activities.[41]

**1.5.2 Specific Commitments on the Import Regime:**

Afghanistan will be an Information Technology Agreement member. Afghanistan would not enforce other obligations and charges, with the exception of the 0.2% Red Crescent Tax applied on most tariff lines. The Red Crescent Tax will be removed approximately 15 years from the date of accession. Afghanistan will execute tariff exemptions conformed to the WTO provisions. Afghanistan will apply its expenses or charges imposed or regarding importation and exportation as per Article VIII of the GATT 1994. In particular, the expenses for customs storage and the charges for licenses to import drugs and therapeutic equipment will fit in with WTO arrangements. Afghanistan's laws, controls and different measures related to internal charges and taxes on imports will be enforced in conformed to its WTO commitments. The 2% fixed tax on imports will be terminated before 1 January 2021. The Business Receipts Tax (BRT) on imports will be substituted with the Value Added Tax (VAT) no later than 1

[41] Ibid.

January 2021. The VAT will be enforced as per the WTO Agreement.[42]

Afghanistan will terminate and will not present, represent or apply quantitative limitations or other non-tariff measures on imports, (for example, licensing, permits, licensing requirements, quotas, bans, prior authorization requirements, and different confinements having impacts alike that can't be defended under the arrangements of the WTO Agreement). Afghanistan will remove its import prohibition on table salt, cotton seeds, gypsum, powdered salt, anhydride, and plasters. Afghanistan may force balance-of-payments measures, if required, in a WTO-reliable way. Afghanistan will apply the Agreement on Customs Valuation and Decision 4.1 on Valuation of Carrier Media Bearing Software for Data Processing Equipment. It would not utilize fixed valuation plans or minimum prices for the imports' valuation. Afghanistan's laws and controls on guidelines of origin will consent to the Agreement on Rules of Origin. Afghanistan Customs Department will accommodate an appraisal of the origin of the import upon the demand of an exporter, merchant or any individual with a reasonable cause. Demands for such evaluations will be acknowledged before trade in the products concerned started; these results will be binding for three years.[43]

The operation of a pre-shipment review scheme, if initiated, will be aligned with the WTO Agreement. Charges and expenses for pre-shipment examination will conform to Article VIII of the GATT 1994. Pre-shipment elements will set up and keep up appeal systems. Afghanistan will control and apply business strategy measures accommodated in its regulation proposed to ensure domestic production or generally propel national business interests in similarity with the applicable WTO Agreements. Afghanistan would not enforce any anti-dumping, countervailing or defend measures until it had

[42]Ibid.
[43]Ibid.

executed proper WTO-reliable laws. It will merely apply such measures incongruity with the important WTO provisions.[44]

**1.5.2.1 Export Policies:**

Afghanistan will erase all fees, duties, taxes and charges on exports which are not conformed to Article VIII of the GATT 1994. The 2% fixed tax on exports will be terminated before 1 January 2021.[45]

**1.5.2.2 Industrial Subsidies:**

Afghanistan would not present or keep up restricted subsidies. It will manage any subsidy programs conformed to the SCM Agreement. Export promotion measures will be enforced similar to WTO requirements.[46]

**1.5.2.3 Agricultural Policies:**

Afghanistan will keep export subsidies on agriculture at zero.[47]

**1.5.2.4 Technical barriers to trade (product standards and certification):**

Total implementation of the TBT Agreement will begin from 1 January 2018. Amid the changing period, current TBT measures will be applied on a non-biased premise. Any progressions made in Afghanistan's laws, controls and work amid the changing period would not bring about a lesser level of consistency with the TBT Agreement than existed at the date of accession.[48]

**1.5.2.5 Sanitary and phytosanitary (SPS) measures:**

Total implementation of the SPS Agreement will begin from 1 January 2020. Amid the changing period, current SPS measures will be applied on a non-prejudicial premise. Any progressions made in Afghanistan's laws, directions and work amid the changing period

[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.

would not bring about a lesser level of consistency with the SPS Agreement on than existed at the date of accession. Afghanistan will counsel with Members upon demand, if they consider that any measures found amid the changing period influence their trade adversely.[49]

### 1.5.2.6 Trade-Related Investment Measures (TRIMS):

Investment regime of Afghanistan will be TRIMs-consistent. Local content rules for merchandise in the Hydrocarbons Law 2009 (applied to contactors) and the Law on Minerals 2014 (applied to holders of licenses and approvals) will be removed by 31 December 2020.[50]

### 1.5.2.7 Free Zones and Special Economic Zones (SEZs):

Any special economic areas or free trade zones established in Afghanistan will be managed in accordance with WTO provisions. The right of firms for the establishment and operation of these zones will not be subject to trade balancing, export performance, or local content requirements in accordance with these obligations. The production of any goods in any such areas/zones, will be subject to normal customs formalities when incoming the rest of Afghanistan, as well as the application of tariffs and taxes.[51]

### 1.5.2.8 Transit:

Afghanistan will apply any laws, directions or different measures controlling transit of products similar to the WTO Agreement, specifically Article V of the GATT 1994.[52]

### 1.5.2.9 Government Procurement:

Within one year from accession, Afghanistan will start the discussion on joining the Agreement on Government Procurement.[53]

[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.

### 1.5.2.10 Trade-Related Intellectual Property Rights (TRIPS):

Total implementation of the TRIPS Agreement will begin no later than 1 January 2019. Articles 3, 4 and 5 of the TRIPS Agreement will apply from the date of accession. Any progressions made in Afghanistan's laws, directions and practice in the changing period would not bring about a lesser level of consistency with the TRIPS Agreement provisions that existed on the date of accession. Afghanistan will look for technical aid to guarantee that its ability to authorize its TRIPS-consistent lawful administration, upon the termination of the changing period.[54]

### 1.5.2.11 Services:

From 1 January 2021, Afghanistan will abolish the rule where mining and hydrocarbon operators in Afghanistan shall prioritize local providers. International service providers would not be liable to rivalry conditions less great than those applied to local service providers. Afghanistan's licensing procedures and conditions would not be autonomous obstructions to get to the service market. In its permitting systems and conditions, Afghanistan will indicate sensible time periods for audit and decision by all related authorities. Candidates will have the capacity to ask for licensing without individual invitation. The experienced authorities of Afghanistan will let know the candidate whether the application was viewed entirely under Afghanistan's local laws and controls and, on account of inadequate applications would be given a chance to correct errors. In the event that an application is ended or denied, the candidate will be informed in writing immediately regarding such action. When the examinations are held for professional licensing, such examinations will be booked at sensible interims. For the services incorporated into the Schedule of Specific Commitments on Services of Afghanistan, the suitable administrative bodies will be isolated from, and not subordinated to, any of the service suppliers controlled by them before

[54] Ibid.

1 January 2021. International providers will have the privilege to pick their partners.[55]

**1.5.2.12 Transparency:**

Afghanistan will execute the transparency provisions in the WTO Agreements requiring publication and notification. No law, direction, administrative ruling, judicial decision, or different measures of general application, relating to or influences the exchange products, services and TRIPS, aside from laws, controls, and different measures including national crisis or security, or for which publication will obstruct law authorization, will get to be distinctly compelling before its publication. All laws and rules in regards to the application and level of expenses and charges enforced by Afghanistan on or regarding importation and exportation will be publicized by the Ministry of Commerce and Industries in a location or website. Afghanistan will gazette all laws, directions and different measures of general application relating to or influence the trade in services. The publicity of such laws, controls, and different measures will incorporate the viable date of these measures and the general extent of services or exercises influenced. It will likewise announce a rundown of all bodies in charge of approving, authorizing or directing service exercises for every service area and its licensing techniques and conditions.[56]

The licensing methods and conditions will be gazetted before effectively implemented. Afghanistan will publicize any controls or other executing measures of general application that it proposed to take. It will give interested parties (involving Members) good chance to remark on such proposed rule/executing measure. An adequate timeframe between rule announcement or other executing measure and its effective date will be given. Afghanistan will present every preliminary notification required by the WTO Agreement. Any laws,

[55] Ibid.
[56]Ibid.

rules, or any measures implemented further by Afghanistan, required to be informed according to the WTO Agreement, will be told as well. In particular, Afghanistan's rules of origin will be advised to the WTO Committee on Rules of Origin; all vital data on subsidy programs will be informed to the SCM Committee; TRIPS legislation, in a draft and promulgated form, will be told to the TRIPS Council. Afghanistan will give reports to WTO Members on improvements in its privatization programme, only if a programme is in presence. Anti-dumping, countervailing or safeguard measures will not be applied to the Afghanistan until it has notified appropriate laws conformed to the provisions of the relevant WTO Agreements. Afghanistan will announce any progressions of its fees, duties, taxes and charges on exports upon the arrival of their announcement / no less than 30 days before any such changes implemented.[57]

### 1.6 The benefit of Accession to WTO for Afghanistan

The World Trade Organization (WTO) officially adopted Afghanistan's terms of accession on December 17, 2015, at its tenth Ministerial Conference in Nairobi, Kenya. What does this mean for Afghanistan's future?There are numerous reasons why WTO membership will benefit Afghanistan.[58]

#### 1.6.1 Economic growth, investment opportunities, and job creation for Afghanistan

Afghanistan's export structure is mostly based on agricultural items and production of some goods, such as carpets and textile. As a member of WTO, Afghanistan will profit a lot by accessing to the new markets, worldwide supply chains, of course with lower tariff regimes, eventually will be leading toward making a better competitive job market which will allow more Afghans to have a higher income. [59]

[57]Ibid.

[58]"8 Ways World Trade Organization Membership Will Benefit Afghanistan | Chemonics," accessed January 3, 2017, http://blog.chemonics.com/8-ways-world-trade-organization-membership-will-benefit-afghanistan.

[59]Ibid.

### 1.6.2 More support for the Afghan industries

Membership to WTO will give access to the global markets and products, permitting Afghan corporations to buy goods at a lower cost and empowering local industries to produce products with a better range of prices. Membership to WTO will as well help Afghanistan to compete better in both exports and imports, which will lead to quality improvement of the goods and exports regulations. The importation will be utilized as materials, components, and the equipment for the Afghanistan local industries. Trade will permit Afghanistan to import more goods as well will permit the world to purchase goods even further from Afghanistan's export. [60]

### 1.6.3More extensive choice of lower-cost products for customers

Afghans will have the capacity to purchase vegetables and fruits out of season, different range of items that used to be viewed as "exotic," and a wide range of books, household products, music, and films from all over the globe. Access to the variety of choices will permit buyers to purchase foreign goods and products at cheaper prices. This will decrease the expenses of production (since raw imports which are used in production are less expensive) alongside the costs of services and furnished goods. [61]

### 1.6.4 Fair trade with WTO members

The consensus among the members is used to make all the decisions in World trade Organisation. The agreements in WTO are consulted by all the members of WTO, affirmed by the censuses among the members, and in every one of members' parliaments has been ratified. These agreements are applicable to everyone. There is a single arrangement of the rule that applies to all WTO members which streamline all the trade systems and provides governments a clear image of which trade strategies are acceptable to ratify. Wealthy and poor nations have the same rights to challenge and sue each other in dispute settlements of WTO. Afghanistan will have the advantage to

[60]Ibid.
[61]Ibid.

make alliance with big economic powers, to pool resources and to have the bargaining power as the member of World trade Organisation. [62]

### 1.6.5 Protection from neighbouring countries and regional trading powers

Members of WTO have to direct their disputes to WTO, at the same time cannot act unilaterally. Under WTO dispute settlement ("DSU") which is understood as the foundation of dispute settlement, permits all the member countries to be dealt equally as indicated by the legal framework and guarantees their trade rights under international business are reasonably protected throughout dispute settlement. Article 24 of DSU obligates all the members to give specific attention to the circumstances of Least developed countries, where Afghanistan will gain advantage from this distinction.[63]

### 1.6.6 Road towards better government

WTO rules require member nations to have a more liberalised economy as well as active trade sectors that are hard to turn around. In addition to that WTO rules requires that member nations to have reduced tariffs and non-tariff barriers decreased levies and non-duty obstructions, likewise it requires to avoid unwise policies and helps the member countries to reduce the corruption. For instance, clear regulations for product safety and standards, transparency, as well as nondiscrimination helps to avoid making arbitrary decisions and stops cheating. [64]

### 1.6.7 Access to WTO: grants and capacity building initiatives

Afghanistan will be given the preferential treatment from WTO members under the special and differential treatment provisions in the WTO agreements due to its least developed country status. These agreements can encompass granting longer time for executing commitments and agreements, capacity building in tackling of disputes and execution of technical standards, higher trading

[62]Ibid.
[63]Ibid.
[64]Ibid.

opportunities, or safeguarding interests by the WTO members. Afghanistan may ask as well for the WTO's direct technical aid to enhance national capability regarding policy-making, trade as well as dispute resolution.[65]

### 1.6.8 Peace, prosperity, and stability through trade

Moreover, trading brings wealth to a nation, and prosperous individuals are more averse to bring about or return to conflict. If the trading between the states goes freely without any interruption and healthy financial ties are established, political clashes rarely happen between countries. With its understanding of an agreement which based on consensus and strong concentration on observing and abiding the rules, the WTO is a key trust builder. WTO members don't have to be worried that other members will increase trade barriers and are in a better state of mind to coordinate. [66]

Afghanistan as a landlocked, help the dependent economy and war-torn as of now is experiencing security issues. nonetheless, the recent progress on the trade by the Afghan government is a turning point toward enhancing the lives of all Afghans both economically and in terms of stability. A free and unrestricted trade environment can help Afghan trading establish stronger ties with the global economy. [67]

As stated by the Afghan president, Mohammad Ashraf Ghani, " Our country's accession to the WTO will serve as a catalyst for domestic reforms and transformation to an effective and functioning market economy that attracts investment, creates jobs and improves the welfare of the people of Afghanistan." [68]

## 1.7 Afghanistan and Anti-Dumping Laws

As Afghanistan recently formally joined The World Trade Organization (WTO) on December 17, 2015, at its tenth Ministerial Conference in Nairobi, Kenya, Afghanistan as of now does not have

[65]Ibid.
[66]Ibid.
[67]Ibid.
[68]Ibid.

any laws in regards to Anti-dumping, Countervailing or protected measures. It has been expressed also in the timetable of accession of Afghanistan and its duties with World Trade Organization that Anti-dumping, countervailing or protect measures would not be enforced by Afghanistan until it has informed proper laws conformed to the provisions of the applicable WTO Agreements.[69]

Nonetheless, as Afghanistan currently has no laws on Antidumping, it would be appropriate if Afghanistan sets its anti-dumping regulations from India in order to protect its local industry from dumping of the products which hurts its industry. India has been one of the most everlasting and recurrent measures of Anti-dumping among the developing nations. Considering Afghanistan's susceptibility to dumping, it is vital to utilize the successful experience of India in shielding Afghanistan's ventures from discriminating rivalry by the neighbouring nations. One of the examples is a few economy sectors like light industry and as well as farming, may require transitory support to pick up a reliable foundation in the local market. This support strategy could assist Afghanistan as well to jump up the economic value chain. Policies ought to guarantee that any protectionismlevel does not result in reduce of aggressiveness, rent-seeking and opposing effect on customers.[70]

India has become amongst the most regular clients of antidumping measures within the developing countries. India charged its first antidumping duty in 1993. India started 176 cases (individual country-wise) in 1995-2000 which are 12% of the aggregate cases started worldwide. Among the active user nations representing 66% of the aggregate antidumping examinations amid 1995-2000, India is the second biggest nation regarding occurrence, right after Argentina.[71]

[69]"Overview of Afghanistan's Commitments."

[70]Ghiasy, Zhou, and Hallgren, *Afghanistan's Private Sector: Status and Ways Forward*.

[71]Aradhna Aggarwal, "Anti Dumping Law and Practice: An Indian Perspective," *Indian Council for Research on*, 2002.

The economic justification that is mostly offered by antidumping laws is that these laws protect the aggressive procedure and the buyer from foreign exporters' monopoly power. Recognising the reasoning in antitrust literature, most researchers characterize economic efficiency with regards to purchaser welfare standards. Applying this standard to antidumping remedies result in elimination of the protection of domestic producer interest, mainly as an essential economic justification for the remedies. Nonetheless, there are two protection-based justifications for forcing antidumping duties: strategic trade policy and optimal tariff argument of protection. While the first focuses on externalities created by a few divisions, the second accentuates terms of trade gains from insurance.[72]

The consumer welfare argument states that the economic rationale of antidumping laws is to combat predatory pricing. The idea of predatory pricing is obtained from the local competition policy. Since competition policies are intended to anticipate against aggressive practices essentially by local firms, such policies characterize predatory pricing as the circumstance where local firm prices below cost in order to drive rivals out of the market and gain or keep up a dominant place. Predation includes struggles to accomplish or abuse monopoly power, limits rivalry in local markets and harms customers through monopoly pricing over the long haul. Competition policies stop predatory pricing by local firms to safeguard the practice of rivalry and secure the consumers' interests. An open trade policy additionally goes for accomplishing these objectives. In that circumstance, the antidumping policy is proposed to be a trade policy instrument that, if utilized properly, checks against aggressive practices by external firms by deflecting predatory pricing.[73]

According to economists, despite the fact that the present WTO antidumping regulation does not unequivocally express the hidden method of reasoning for antidumping law and does exclude predation as a condition for dumping, avoiding predation remains to

[72]Ibid.
[73]Ibid.

be the most grounded economic justification of antidumping laws. They highlighted that charging at least two prices for the same item in at least two markets parted by tariffs, transport costs, and technical standards is economically reasonable much of the time. For example, an enterprise may increase the profit by charging higher prices in markets with lower price elasticities of demand, yet bring down prices in markets with higher price elasticities of demand. When the price elasticities of demand happen in the enterprise's home market with respect to its outside markets, the enterprise may charge a higher price in home markets to boost its profits. Besides, an exporter may charge customers a lower price in foreign markets when he presents an item in another market to advertise for the said product.[74]

India is not legitimately obliged to utilize a predation test in antidumping. In any case, antidumping activities can be defended in economic terms if these are observed to be constrained to predatory dumping. It is in this way vital to analyse whether the antidumping law does maintain conceivable idea of organized commerce and truly targets predation.[75]

There is no particular provision in the WTO Agreements requiring that the national authorities keep a handbook or guide clarifying local practice as for antidumping and countervailing duty measures. This guide is probably going to give an insight of anti-dumping laws and methodology for the advantage of the local business. Nonetheless, since it is not obligatory to keep such guide, some member nations (like Mexico) do not have it. Sometimes, it is not upgraded. India gives an Anti-Dumping Guide by the directorate General of Anti-dumping and associated Duties, Ministry of Commerce, Govt. of India. The guide gives expansive rules on the lawful provisions of antidumping instrument in India.[76]

[74]Ibid.
[75]Ibid.
[76]Ibid.

### 1.7.1India's laws towards Dumping and its regulatory framework as a good model for Afghanistan to follow

In India Section 9A of the Customs Tariff Act, 1975 (hereinafter referred to as "the Act") as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as "the Rules") framed thereunder form the levy of anti-dumping duties and a legal basis for anti-dumping investigations. These are in line with the WTO Agreement on anti-dumping measures. As a result, legislative framework is formed by these rules for all matters relating to dumping of products which include the rules related to practice substantive rules, procedure, regulatory mechanism and administration.[77]

#### 1.7.1.1 Substantive Rules

"Dumping" implies products exports by a nation/domain to another nation/region's market at a price less than the normal value. When the price of export is less than the normal value, dumping is established. Subsequently, #two essential parameters are utilized for dumping measurement, to be specific, the export price as well as the normal value. Both components must be thought about at a similar trade level, for the most part at explant level, for evaluation of dumping.[78]

"Normal value" is the equivalent price where the merchandises under protest are sold, in the common course of trade, in the exporting country's local market. When the normal value cannot be controlled by a method for the local deals, there are two options that might be utilized to quantify the normal value:

Comparable representative export price to an appropriate third country. Constructed normal value, i.e. the cost of production in

[77]"Eastern Book Company - Practical Lawyer," accessed January 4, 2017, http://www.ebc-india.com/lawyer/articles/854.htm.

[78]Ibid.

the country of origin with reasonable addition for administrative, selling and general costs and reasonable profits.[79]

The "export price" of the merchandise allegedly dumped into India implies the price used when traded to India. It is normally the CIF value subtracted by the adjustments on ocean cargo, insurance, commission and others in order to reach the value at explant level. The "margin of dumping" is the distinction between the export price and normal value of the merchandise under complaint. It is mainly known as a rate of the export price.[80]

"Domestic industry" implies the local producers in general occupied with the production of dying like the article and any movement associated therewith. Another definition is those whose aggregate yield of the said article constitutes a noteworthy extent of the aggregate local production of that article aside from when such producers are linked to the importers or exporters of the claimed dumped article or are themselves importers thereof in which case such producers might be considered not to be part of local industry.[81]

"Uke article" implies an article which is indistinguishable or alike in all regards to the article under investigation for being dumped in India or without such article, another article which despite the fact that is not alike in all regards, has attributes intently taking after those of the articles under examinations. With respect to harm to the local business, the industry must have the capacity to demonstrate that dumped imports are carrying or have the potential to result in "material injury" to the local business. Material retardation to the establishment of an industry is likewise viewed as harm. The material injury or risk thereof cannot be founded on assertion, articulation or guess only. Adequate proof must be given to support die contention of material injury.[82]

[79]Ibid.
[80]Ibid.
[81] Ibid.
[82]Ibid.

An anti-dumping measure may not be executed unless it is determined, pursuant to an investigation conducted conformed to the procedural requirements, that: (i) there is presence of dumped imports; (ii) there is material injury to a local industry; and (iii) there is a causal link between the dumped imports and the harm.

The essential prerequisite for determining injury is that there is an objective examination, based on positive results of the volume and price impacts of dumped imports and the resulting effect of dumped imports on the local business, for example, decrease in sales, selling price, production, market shares, profits, and so on. The acknowledgment of the causal link between the dumping and harm to the local business is a sine qua non for anti-dumping duty imposition. The causal link is mainly clarified the volume and price dumping impacts. The volume dumping impact links to the market share of the local business opposite of the dumped imports from the subject nation. Whereas price impact must be taken into consideration, whether there has been a noteworthy price undercutting by the dumped imports as contrasted and the price of the like item in India, or whether the impact of those imports is generally to reduce prices to a critical degree or forestall price increment which generally would have jumped out at a huge degree.[83]

The help for the local business against merchandise dumping from a specific nation is a form of Anti-Dumping duty forced against that nation, which could be the dumping margin. These duties are nation particular and exporter particular. Under the WTO course of action, the national authorities have the authority to force obligations up to the margin of dumping, or in other words the distinction between the export price and normal value. The Indian law states that the anti-dumping duty should not surpass the suggested or imposed anti-dumping duty. An Anti-dumping duty levied under the Act, unless disavowed earlier, will remain up to 5 years from the imposition date. The survey may be conducted by the designated authority to establish the requirement for the proceeded with the

[83]Ibid..

inconvenience of the anti-dumping duty, every once in a while. Such an audit should be possible suomotu or on the premise of demand from an invested individual in perspective of the changed conditions.[84]

Anti-dumping duty is a source-specific duty i.e. forced against dumped imports. Anti-dumping duty is forced on a fair premise, pertinent to all imports of such articles from whatever sources discovered dumped and making harm to the local industry with the exception of in the cases from those sources from which price undertaking has been acknowledged. The WTO Agreement and the Indian law stated that the harmed local industry is allowed to petition for alleviation under the anti-dumping and countervailing obligations. Unfortunately, no article might be subjected to both countervailing and anti-dumping duties to adjust for a similar circumstance of dumping or export endowment.[85]

### 1.7.1.2Practice and Procedure

One goal of the procedural necessities is to standardize transparency of procedures, a fully open door for parties to protect their interests, and sufficient clarifications by assessing authorities of their conclusions. The broad and thorough procedural necessities regarding assessments focus on the adequacy of petitions to guarantee that merit-less examination is not taking place, on the foundation of eras for the culmination of examinations, and on the provision of access to data to all invested individuals alongside sensible chances to introduce their perspectives and contentions. Supplemental procedural prerequisites related to offering, acknowledgment, and price undertakings administration by exporters in lieu of anti-dumping measures imposition. The Rules additionally accommodate the planning of the imposition of anti-dumping duties, the span of those obligations, and forces Designated Authority to intermittently survey the continuous need for price undertakings and anti-dumping duty. It is additionally expressed that India may, at its carefulness, use anti-

[84]Ibid.
[85]Ibid.

dumping activities for and at the demand of a third nation, who the World Trade Organization's member.[86]

The anti-dumping proceedings are started in view of an application made by or for the benefit of the concerned local industry to die Designated Authority in the Department of Commerce for an investigation concerning alleged dumping of an item into India. Under the Rules, a substantial application can be made just by those solicitors/local producers who explicitly support the application and responsible for over 25% of the aggregate local production of the like article being referred to. The application is thought to have been made by or in the interest of the local business, on the off chance that it is supported by those local producers whose total yield constitutes more than 50% of the total production of the like article made by that segment of the local business conveying either resistance or support for all things considered, to the application. In any case, such producers may bar the individuals who are identified to die importers or exporters of the charged dumped article or are themselves importers thereof. Conversely, a local producer who is identified with the importer or exporter of die dumped article or is himself an importer thereof may not be dealt with as part of the local business regardless of the possibility that he supports or submit an anti-dumping request.[87]

The invested individuals to Anti-dumping assessment include:

- The domestic industry' on whose complaint the proceedings are initiated;
- The exporters or the foreign producers of the like articles subject to investigation;
- The importers of the same article allegedly dumped into India;
- The exporting country/countries' government(s).
- The business or trade relation of the local producers/importers / consumers enterprises of the dumped item.

[86]Ibid.
[87] Ibid.

As a rule, the Designated Authority starts the procedures for anti-dumping activity on the premise of an appeal from the local business asserting dumping of specific products and the harm brought on to it by such dumping. Nonetheless, Rule 5(4) accommodates suomotu initiation of anti-dumping procedures by the Designated Authority on the premise of data from the Collector of Customs delegated under the Customs Act, 1962 or from some other source. the Authority starts the anti-dumping assessment all alone with no complaint/petition submitted in such manner where the Authority has fulfilled that adequate proof exists with regards to the presence of dumping, damage and causal link between the dumped imports and the claimed harm. After the suomotu examination's initiation uses the similar technique, as the one based on a petition as specified in the Rules, is taken after. The remedy against dumping is not necessarily anti-dumping duty. The assessment might be ended or suspended subsequent to preliminary findings when the exporter concern made effort to change his price to expel the dumping or the harmful impact of dumping. No anti-dumping duty is prescribed on such exporters from whom price undertaking has been acknowledged.[88]

An interim belief as a temporary anti-dumping duty, pending the conclusion of examination procedures, can be given to the local industry impacted as well. Such temporary duty not surpassing the margin of dumping might be forced by the Central Government on the premise of the preliminary finding collected by the Designated Authority. The temporary duty can be forced simply after the expiry of 60 days from the date of assessment initiation and will stay in compel just for a period not surpassing 6 months, extendable to 9 months in specific situations. When the final duty required is not as much as the temporary duty which has been imposed and gathered, the differential sum effectively gathered as temporary duty might be compensated. When the final duty levied is more than the temporary duty effectively levied and gathered, the difference should not be gathered. When temporary duty is withdrawn then the temporary duty

[88] Ibid.

officially gathered should be reimbursed bases on the final findings collected by Designated Authority.[89]

Anti-dumping duty can be imposed on a review premise as well in the event that: there is a background marked by dumping which created harm or that the importer was, or ought to have known that the exporter performs dumping and that such dumping would be harmful; and the damage brought on by enormous dumping of an article imported in a moderately brief time based on the planning and the volume of imported article dumped, different conditions is probably going to truly undermine the remedial impact of the anti-dumping duty at risk to be demanded. Nonetheless, the anti-dumping duty cannot be imposed reflectively in less than 90 days from the notification date on duty enforcement.[90]

### 1.7.1.3 Regulatory Framework

In India, anti-subsidies, anti-dumping and countervailing measures are managed by the Directorate General of Anti-dumping and Allied Duties ("DGAD") under the Department of Commerce in the Ministry of Commerce and Industry. At the same is directed by the "Designated Authority". The Central Government may, by publication in the Official Gazette, select a man not lower than the rank of a Joint Secretary to the Government of India or any individual that Government may think appropriate as the Designated Authority. There is an authority in India — DGAD that is assigned to start vital activity for examinations as well as further enforcement of anti-dumping duties.[91]

The Designated Authority is a semi-legal authority notified under the Customs Act, 1962. A senior level Joint Secretary and Director, 4 costing staffs and 4 investigating staffs help the DGAD. Additionally, a sector under the DGAD is directed by the Section-Officer to manage the observing as well as coordination of die functioning of the DGAD. The power of Designated Authority,

[89] Ibid.
[90] Ibid.
[91] Ibid.

nonetheless, is just to lead die anti-dumping/anti-subsidy and countervailing duty assessment and to provide suggestion to the Government for the inconvenience of anti-subsidy or anti-dumping measures. Such duty is enforced by a Notification of the Ministry of Finance. Hence, while the Anti-dumping duty is prescribed by the Department of Commerce, it is the Ministry of Finance that recommends such duty.[92]

The law states that an order of determination of the existence, degree, and effect of dumping is appealable before the Customs, Excise, and Gold (Control) Appellate Tribunal (CEGAT) — a legal tribunal. It audits last measures and is free of regulatory authorities. This is aligned with the WTO arrangement of autonomous tribunals for a request against conclusive determination and surveys. No interest will lie against the preliminary findings of the Authority and the temporary duty forced on the premise thereof. The appeal to the CEGAT ought to be submitted before 90 days.[93]

Subsequently, due to free market and trade liberalization, a few countries have turned into the objective of dumping by the international enterprises to sell their items at lower price accordingly. The anti-dumping law is important to sustain favourable position over foreign dumping. Foreign dumping makes a counterfeit as opposed to a genuine comparative standpoint, as the low sale price of the item does not lead to cost-efficiency. The outcome is the market distortion that provides signs to local producers as the prices show that sufficient returns would not be accomplished for the dumped item.[94]

Steward Terence wrote to address this issue: “Left unchecked, the "false signals" which occur in cases of price discrimination or sales below cost can have a "snowball" effect on other producers’ decisions, creating a veritable avalanche of inefficiency in the market. If selling below cost is allowed to continue, other competitors (and potential competitors) will make business decisions based on this

[92] Ibid.
[93] Ibid.
[94]Ibid.

initial false market signal. They will fail to enter a product market, fail to expand capacity, fail to improve productivity and fail to use all other resources efficiently, based on the other company's ability to price below cost. There can be, and often are, multiple levels of economic inefficiency caused by these false signals. And although competitive pricing (and efficient resource allocation) may return at a later date, this only occurs after a substantial loss in total economic growth, as companies in the competing industry and other affected downstream businesses disinvest and then reinvest more efficiently".[95]

A more concrete safeguard of anti-dumping law with regards to the similar favourable position is recommended by Clarice Morgan. As per her dumping may bring about the fall of cost in the market of importing country which is lower than the dominant world market price and if the buyers in the market are price takers, "the prevailing price signals in the market will be distorted so as to stimulate overproduction of the exportable goods and underproduction of importable goods".[96]

## 1.8 Conclusion:

Afghanistan has been the dumping place for a long time by bigger wealthier companies to dump their items at a lower price to cripple local industries in order to be the sole distributor of the merchandise to Afghan market. It is critical for Afghanistan to have a firm approach when it comes towards dumping, and the author trusts the effective experience of India's Anti-dumping law can be a reverse the damage caused by dumping of products by the neighbouring states. For that, Antidumping laws are important for Afghanistan to establish again the pricing in leading world economy and with that it leads to the allocation of resources more efficiently.

[95]Tran Viet Dung, "Anti-Dumping, Competition and the WTO System: Implications for Vietnamese Legal Reforms," 2008.

[96]Ghiasy, Zhou, and Hallgren, *Afghanistan's Private Sector: Status and Ways Forward*.

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