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# Bangladesh-Bhutan Preferential Trade Agreement: WTO Compliance and Implications for LDC Graduation

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## Abstract

The purpose of this article is to assess the prospects of the maiden Preferential Trade Agreement (PTA) between Bangladesh and Bhutan. The complexity of complying with the legal provisions of this PTA between a WTO member (Bangladesh) and a non-WTO member (Bhutan) has been scrutinized in light of GATT/WTO rules. Also, the trade development challenges of these trading partners have been presented. In addition, the Least Development Countries (LDC) graduation issue is a potential threat for each country as they become qualified to exit from the LDC category in the next few years. Therefore, the efficacy of this PTA is likely to be vital with regard to the economic growth and trade development of these countries.

**Keywords:** Least Developed Country, Preferential Trade Agreement, Regional Trade Agreement, Special and Differential Treatment, Generalized System of Preferences, Sanitary and Phytosanitary measures

## Introduction

The recent surge of Preferential Trade Agreements (PTAs<sup>1</sup>) is fast reshaping the architecture of the world trading system and the trading environment of developing countries (Chauffour and Maur, 2011). The number of PTAs has skyrocketed over the past twenty years (Baccini, 2019). A preferential trade agreement was signed between Bangladesh and Bhutan on December 6, 2020. While Bangladesh has stepped into this maiden bilateral preferential trading agreement with Bhutan, Bhutan had previously signed their maiden Free Trade Agreement (FTA) with India long before signing this PTA with Bangladesh. Since Bangladesh does not have any experience with signing a bilateral trading arrangement (PTA or FTA), the signing of this PTA with Bhutan could be seen as a testing ground with a minor trade partner. Regarding the above, prior to the signing of this Preferential trade agreement, Bhutan was not a member of the World Trade Organization (WTO), although they are under procedures to be a member. However, Bangladesh is already a member of the WTO. Under the PTA, 100 Bangladeshi products, including ten new goods, will enjoy duty-free access in the Bhutanese market (Khan, 2020). On the other hand, 34 Bhutanese items, including 16 new products, will also enjoy duty-free access in the Bangladeshi market, Bangladesh having less developed country (LDC) status in the WTO.

This paper provides a background of this PTA and the trade relationships of these countries. In addition, it provides a legal analysis of this preferential trade agreement between Bangladesh and Bhutan. In this regard, it is noted that the scrutiny has been assessed based on the legal provision of this PTA in relation to the GATT/WTO rules and its compliances. First, the question of the validity of a preferential trade agreement between a WTO (Bangladesh) and a non-WTO member (Bhutan) has been dealt with. Second, the complexity of ensuring non-discriminatory treatment between these contracting parties has also been discussed. Additionally, the compliance issue of Anti-dumping Duty, and the Sanitary and Phytosanitary measures (SPS) and its challenges of both trading partners have been highlighted.

The loopholes of the trade Dispute Settlement Mechanism (DSM) provision of this PTA has been scrutinized. Furthermore, the reviews of the trade challenges of this PTA and the possible ways to overcome the obstacles between these contracting parties has been highlighted. Moreover, it has been examined whether this PTA would outweigh the apparent challenges stemming from the graduation of both countries from Least Developed Countries (LDCs) to non-LDC countries. Finally, the proper function of each government has been emphasized to successfully implement and reap uninterrupted trade benefits from this PTA.

Few qualitative or analytical research that has been conducted on this topic. Therefore, this article aims to carry out a qualitative study regarding this PTA. As precedence, there has been a preferential trade agreement (PTA) between Iran and Turkey and a Free Trade Agreement (FTA) between Turkey and Serbia, where Iran and Serbia were not WTO members at the time of the signing. Also, the analysis of the effectiveness of this PTA while Bangladesh and Bhutan qualify to graduate from Least Developed Countries (LDCs) would be a new dimension brought to the literature by this paper. Although the issue of challenges after exiting the LDC league has been discussed in the literature, but ways to cope with the challenges brought up in this paper have been less explored. Therefore, this PTA could be useful as a study that can provide insight into how to cope with these specific concerns.

### **Legal Issues Arising from the Bangladesh- Bhutan PTA**

In a Regional Trade Agreement (RTA), if both trade partners become members of the WTO, generally, there is no ambiguity or complexity in complying with WTO/GATT rules (WTO, 2013). However, if Bhutan's accession to the WTO takes place before Bangladesh's notification about the PTA to the WTO, the discourse may change. On the contrary, non-accession could also bring about some difficulties. In a similar fashion, the conclusion of the Preferential Trade Agreement (PTA) between Bangladesh and Bhutan may be subject to the complexity of GATT/WTO legal compliances after its enforcement.

### **Validity of the Bangladesh and Bhutan PTA**

This section examines the validity of a Preferential Trade Agreement between a WTO member and a non-WTO member state. In this regard, the legitimacy of member RTAs with non-WTO members has never been formally settled within the WTO, but, in practice, the political and economic driving forces behind the RTAs have been stronger than the WTO membership obligations provided in Article XXIV:5 GATT (Devuyst and Serdarevic, 2007). Also, the "approval and control" mechanism of Article XXIV:10 GATT has been continuously losing its practical importance so that conclusion of RTAs with non-GATT contracting parties (non-WTO members) would no longer be an exception, and GATT working parties would apply to such RTAs the normal review procedure under Article XXIV:7 rather than Article XXIV:10 GATT (Choi, 2005). Under this logic, there should not be any prohibition regarding signing any RTA between a WTO and a non-WTO member state.

Similarly, it was already noted that Iran and Serbia were not WTO members at the timing of the signing their PTA with Turkey. However, an alternative view is that examination should be pursued because transparency requirements apply to RTAs with non-WTO members as well and "deferral might send a negative message about transparency, in particular regarding the notification of such type of RTAs."<sup>2</sup> Eventually, in 2009, it was agreed that RTAs involving non-WTO members would fall under the provisions of the WTO Transparency Mechanism.<sup>3</sup> Therefore, it can be held that there should not be any question of the unlawfulness of this preferential trade agreement between Bangladesh and Bhutan and it should be considered valid.

### **Ensuring Non-Discriminatory Treatment between a WTO and non-WTO member**

The principle of National Treatment (NT) is undeniably significant and has been considered a cornerstone of GATT/WTO. In this context, to ensure non-discriminatory treatment of other nationals that are the same as one's own, the actions of the contracting nations shall have to comply with the NT principle. If two countries are members of WTO, there should not be any questions about the compatibility of the GATT/WTO rules. However, if one of the countries is not a WTO member, the applicability of the GATT/WTO rules become a concern. It is noted that not being WTO member, Bhutan will not be able to make any claims to the WTO concerning the violation of NT. So, how will Bhutan enjoy non-discriminatory treatment? The NT principle provides that once a product is imported, the importing country may not subject that product to regulations less favorable than those that apply to like products produced domestically (Aaronson, 2011). Simultaneously, in terms of the importance of National Treatment, it should be noted that there might be some function of NT even after the reduction of tariffs. Hence, it would not be sensible to assume that NT has no role to play once tariffs have been eliminated (Mavroidis, 2015). Similarly, national

treatment continues to bind WTO members even after tariffs have been eliminated. Thus, as a WTO member, Bangladesh shall have an obligation to ensure non-discriminatory treatment to Bhutan. However, Bhutan is a non-WTO member and therefore the question arises as to whether the GATT/WTO rules would be binding upon Bangladesh regarding Bhutan or not. To answer this question, Article III of the General Agreement on Tariffs and Trade 1994 (GATT) provides that:

*“In terms of the domestically produced goods and imported goods, there should not be any discrimination with regard to internal taxation and regulations.”*

Hence, it can be said that the rules of article III of GATT were designed to safeguard tariff concessions and to prevent hidden discrimination. Despite not being a WTO member, Bhutan would nonetheless be protected to enjoy non-discriminatory treatment from Bangladesh.

In addition, regarding non-discrimination, GATT/WTO provides some important provisions. Article I:1 of GATT bars “WTO members from discriminating amongst like products originating in or destined for different countries.” In this regard, it is noted that even RTAs entered between WTO members and non-WTO-member states may qualify to receive a benefit of justification for GATT Article I violation if the non-WTO-member parties are least developed countries.<sup>4</sup> Thus, this would provide a safeguard for Bhutan as it is both an LDC and non-WTO country in case of the violation of this article I of GATT/WTO.

Furthermore, ensuring non-discriminatory treatment is equally important for both contracting parties. It is worth noting that imported goods that have “paid their ticket to enter a market” (that is, the tariff duty) cannot be subjected to a burden, of whatever nature, that is higher than that imposed on domestic products with which they are competing in any given market (Mavroidis, 2015). In this regard, article V of the PTA between Bangladesh and Bhutan states that:

*“The Parties agree to accord each other's products imported into their territory, treatment no less favorable than that accorded to like domestic products in respect of internal taxation and in respect of all other domestic laws and regulations affecting their sale, purchase, transportation, distribution or use.”*

To comply with this legal provision, both countries shall not treat the imported products less favorably than their like domestic products. Thus, the law-abiding practice of ensuring equal treatment by Bangladesh and Bhutan will be favorable for each party and they would be barred from practicing discriminatory treatment against each other.

### **Exercising Anti-Dumping Duty between a Less and a More Developed Country**

Article VI of GATT provides the foundation for the legal infrastructure for the WTO Antidumping Agreement. The implementation of this antidumping agreement might also be problematic since one of the parties are non-WTO member. So, it is uncertain whether Bangladesh and Bhutan are legally liable to comply with their duties on anti-dumping or not. However, article XIV of Bangladesh-Bhutan PTA states that:

*“The Parties may impose anti-dumping duties and countervailing duties to prevent dumping and unauthorized subsidies by notifying each other if any such situation arises.”*

To comply with this provision, both countries may place antidumping duties. However, to some extent, the written provision cannot guarantee the compliance of mandatory obligations. Similarly, a breach of antidumping duty arrangement was found between Bangladesh and India in their trade agreement. In the lead battery case<sup>5</sup>, being a developed trade partner of a trade agreement, India wanted to take advantage by not complying with anti-dumping rules. This incidence shows how a strong economic trade partner may take advantage of their position in applying arbitrary enactment of unfair, unlawful, and unilateral trade measures. In this regard, it is carefully noted that Bangladesh's bilateral trade with Bhutan is a minuscule part of Bangladesh's overall trade in goods (only about USD 45.7 million out of USD 93160.0 million or 0.05 per cent of the total trade of Bangladesh). Therefore, Bangladesh will likely be the stronger trading partner in this PTA.

### **Compliance of SPS Measures under the Umbrella of Joint Trade Committee**

The contracting governments shall have to act consistently in terms of Sanitary and Phytosanitary measures (SPS) measures. The Uruguay Round Agreement has played an important role in ensuring SPS measures. In this regard, it should be noted that:

*“Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members [ . . . ]”<sup>6</sup>*

Therefore, it is evident that sanitary and phytosanitary measures shall not be subject to discrimination and restriction in international trade. In a similar vein, an essential issue of trade measures needs to be considered here. Article 5 of the SPS Agreement further provides that:

*“[m]embers shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.”<sup>7</sup>*

In this regard, it should be noted that the “contracting members” shall not exclusively have to be WTO members. One of the members might be a non-WTO member like Bhutan. So, Bhutan will be given an opportunity to exercise this provision in its favor. Simultaneously, regardless of WTO membership, and in keeping with the essence of the provision, both members shall have to apply the legal obligation to apply SPS measures among them.

To ensure SPS obligations are met in trade agreements, a committee on SPS plays an imperative role. In this regard, it has also been suggested that the Committee on Sanitary and Phytosanitary is working to develop a procedure for monitoring the process of international harmonization and coordination of such efforts.<sup>8</sup> Besides, it is important to note that most PTAs provide for some sort of joint committee or commission to deal with administration of the agreement.<sup>9</sup> Alongside, the PTAs contemplate the creation of a joint administrative body provide for decision making to be achieved through consensus or mutual agreement (Lester, S., et. al., 2009). Similarly, the agreement between Bangladesh and Bhutan is not an exception. In this regard, Article XVII in the Bangladesh-Bhutan PTA describes that:

*“The Committee shall adopt appropriate measures for settling any matter arising from such representations within six months of the representation being made.”*

In the evaluation of this provision within the Bangladesh-Bhutan PTA, it is evident that there is no committee on Sanitary and Phytosanitary measures. However, since the Joint Committee, mentioned in Article XVII of between Bangladesh-Bhutan PTA, shall be conducting a meeting once a year regarding the review, progress, and implementation of this agreement. Technically, it may play a role in ensuring the SPS measure and its monitoring process. Thus, in the agreement between Bangladesh and Bhutan, the lack of an SPS committee might be shielded by the suitable implementation of article XVII of this Preferential Trade Agreement between Bangladesh and Bhutan. As a result, both parties shall be able to comply with any SPS measures.

It cannot be denied that the legal provisions of this treaty agreement are meant to be compliant with the legal rules of GATT/WTO as well as the legal provisions Bangladesh-Bhutan PTA. However, being a less developed country and a non-WTO member, it will not be easy for Bhutan to protect these treaty provisions and enjoy non-discriminatory treatment due to their disadvantageous position. Therefore, it can be alleged that Bhutan would face more challenges than Bangladesh when complying with these legal provisions.

### **Reviewing the Dispute Settlement Mechanism of Bangladesh-Bhutan PTA**

The Dispute Settlement Mechanism (DSM) of a trade agreement has always been significant. In this PTA between Bangladesh and Bhutan, article XVIII states that:

*“Any dispute that may arise in connection with the interpretation, application or non-compliance with the provisions of this Agreement shall be settled through mutual consultation.”*

In other words, this provision prescribes mutual discussion in the case of a trade dispute. Since Bhutan's access to WTO for dispute settlement is not possible (until they become the WTO member), they must decide through mutual settlement when disputes occur. And, if Bhutan is aggrieved due to an arbitrary decision, they will not have the opportunity to exercise any protection under WTO. It is not hard to imagine that this gives Bangladesh an advantage if a circumstance of dispute arises. An absence of legally enforceable rules regarding this in the Bangladesh-Bhutan PTA might be burdensome for Bhutan in case the mutual solution does not end satisfactorily. We may consider this dispute settlement mechanism of the Bangladesh and Bhutan PTA to be somewhat weak.

In addition, it is important to note that the DSM under PTAs is crucial in ensuring adequate implementation and enforcement of commitments among contracting parties (Yan, 2006). Given the circumstances, the implementation and enforcement of this preferential trade agreement between Bangladesh-Bhutan, the DSM would be challenging due to a lack of choice of the form of dispute settlement mechanisms. Hence, along with article XVIII of Bangladesh-Bhutan PTA, the following provisions regarding dispute settlement would have played a crucial role in Bangladesh-Bhutan PTA.

### **The Loopholes of the DSM of Bangladesh-Bhutan PTA**

It is evident that the dispute settlement mechanism of this PTA has not set up any legal procedures. Instead, it illustrates a political or diplomatic-oriented dispute settlement mechanism titled "mutual consultation", as discussed above. It is worth mentioning that if third party adjudication is not provided in the RTA, the level of legalism is described as "none" (Chase et. al., 2016). Since this PTA does not have the provision of third-party adjudication, this may lead to a hindrance of implementation and enforcement. Similarly, it is noted that there is an ambiguity as to whether the decision of the Bangladesh-Bhutan PTA committee on DSM is binding or not; hence, the presence of an adjudication body would have been a catalyst to ensure the implementation and enforcement of the decision of any disputes in this Bangladesh-Bhutan PTA.

Along with a primary option within a PTA, the secondary option regarding DSM within the WTO plays a supportive role to move to the next step for getting the resolution. Similarly, a contracting party could request this procedure if it believed that other contracting parties had failed to carry out GATT obligations or, if there was "non-violation nullification or impairment of the benefits of GATT".<sup>10</sup> However, since Bhutan does not have accession to WTO; hence, none of the parties can claim their request to WTO. Similarly, pursuant to Article 3.3 of the Dispute Settlement Understanding, the speedy settlement of such disputes is "essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members". Thus, it is a disadvantage of the contracting parties in exercising such a safeguard under WTO. However, even if Bhutan had accession to the WTO, they would not go to the WTO DSM because as a least developed country, it will be a burden for their economy to bear the litigation costs involved.

We note, according to article XVIII in this PTA between Bangladesh and Bhutan, that there is no option of an alternative dispute mechanism such as mediation and arbitration, the only recourse being mutual consultation. However, it is worth noting that the availability of several alternative dispute mechanism options carries a good value. For example, in the preferential trade agreement between Iran-Turkey, there is a choice of a dispute settlement forum. The parties can choose from different dispute settlement mechanisms such as consultation, mediation, arbitration, and creation of a standing body<sup>11</sup>. In this regard, it should be carefully noted that despite being a non-WTO member, Iran had the option to exercise multiple DSM options at the time of signing the PTA. Similarly, in this Bangladesh-Bhutan PTA, Bhutan is also non-WTO member. Hence, it can be argued that the decision makers in this context would also have made the availability about such provisions in this PTA to get satisfactory results for both countries.

Most trade agreements have adopted those two styles – political vs. adjudicatory, with the domination of one style over another (Munin, 2010). Hence, a power-oriented approach will follow if the political style is dominant, while a procedure where the adjudicative styles are dominant will be shaped as rule-oriented. Thus, the adoption of this mechanism could play a significant role if one of the countries were to dominate the other, based on political strength. Therefore, this is another crucial weakness in this PTA.

If a dispute cannot be settled through mutual consultation under article of XVIII of the PTA between Bangladesh and Bhutan, both will experience loss through higher litigation costs; consequently, they will experience substantial economic loss. A small country like Bhutan may have its economy paralyzed if any remedial measures to be taken must wait for a long time (Wangdi, 2010). Similarly, being an LDC country, if Bangladesh must disburse a considerable amount of money to settle the dispute outside the scope of this provision, it will be burdensome for their

economy. Therefore, resolving the dispute within the PTA framework, such as through mutual settlement, should be given utmost priority. Nevertheless, if the dispute cannot be settled in a satisfactory manner due to diplomatic influences or any other reasons, the suggested provisions might be a crucial option to reach a peaceful resolution of a dispute between the two states.

### **Cooperation for a Successful Trade Operation**

Challenges in the implementation of a preferential trade agreement have been a widespread phenomenon in the world trading arena. Tariffs, non-tariff and technical barriers, and infrastructure development are common trade barriers. In this PTA between Bangladesh and Bhutan, such challenges are likely to be present and trade facilitation between these governments can play a vital role in a successful trade operation.

### ***Trade Prohibition or Trade Restriction by a WTO Member against a Non-WTO Member***

Article IX of the preferential trade agreement between Bangladesh and Bhutan describes the issue of “Import and Export Restrictions.” Pertinent to this, GATT holds:

*“Neither Party may adopt or maintain any prohibition or restriction on the importation of any goods of the other Party or on the exportation or sale for export of any goods destined for the territory of the other Party.”<sup>12</sup>*

Nevertheless, a complexity may arise if Bangladesh takes any measure and claims based on the reasoning that Bhutan has not been a WTO member. However, if Bangladesh does so, that will be invalid based on the interpretation of this Article XI of GATT/WTO, since the wording “neither party” does not necessarily have to be the GATT/WTO member. If Bangladesh restricts some products of Bhutan, the significance and the lawful implementation of Article XI of GATT/WTO should be a safeguard for Bhutan. Hence, along with mitigating this hindrance, as mentioned earlier, both countries shall have to focus on the following essential subject matters.

### ***The Significance of Eliminating Trade Barriers***

For any small open economy, the lowering of trade barriers generates benefits to the country overall. Although the welfare implications of PTAs may be ambiguous, one general result is that small countries (for which world prices are given) are likely to lose from a PTA between themselves unless they lower trade barriers with respect to excluded countries (Winters, 2011). Along with this, it is worth noting that the parties should prioritize the matter of eliminating trade restrictions between themselves first before they consider effects associated with other trading partners. So, in the spirit of GATT/WTO, both countries should eliminate the trade restrictions among them,<sup>13</sup> and the burden of lowering trade barriers is reliant on Bangladesh and Bhutan by default. The key characteristic of RTAs is that it allows the parties to offer each other more favorable treatment in trade matters than the parties offer to their other trading partners (Bossche, 2008). Therefore, to ensure welfare gain from the trade, both RTA partners shall have to cooperate with each other. Otherwise, the goal to eliminate the trade barriers will not be attained.

### ***Mutual Agreement about Reducing Tariff***

Article II(c) of the PTA between Bangladesh and Bhutan states that:

*“Preferential treatment means any concession or privilege granted under this Agreement by a Party through the progressive reduction and/or elimination of tariffs and para-tariff measures on the cross-border movement of goods.”*

Generally, this appears to be very promising; however, the practical setting articulates another story. LDCs that are not members of the WTO have no schedule of concessions with commitments on bound tariff rates (WTO, 2020). Thus, being a non-WTO and an LDC country, Bhutan does not fall under the commitment on bound tariffs.

On the other hand, it is noted that the LDCs that acceded to the WTO during the Uruguay Round have a lower level of commitments, reflected by higher bound rates and lower binding coverage compared to LDCs that acceded to the WTO more recently under the Article XII process. In this regard, it would not be wise to assume that, since Bangladesh acceded to WTO membership in the post-Uruguay Round period in 1996, they have a higher binding

coverage. Statistics indicate that Bangladesh has a binding coverage of only 17%, which implies that the remaining 83% of its tariffs are unbound (WTO, 2020). Hence, it is to be noted for Bhutan that Bangladesh might not be bound to reduce its overall tariffs. In fact, both Bangladesh and Bhutan may not be bound to reduce their overall tariffs, since their products will get preferential market access in each other's territories.

However, the central (or at least ostensible) purpose of trade agreements is to eliminate trade barriers, in particular tariffs and duties, but also non-tariff barriers such as arbitrary or complex standards and regulations. In a similar vein, despite reducing tariffs on ample products, non-tariff barriers may prevent trade growth.

The interpretation of Article II(c) of Bangladesh-Bhutan PTA suggests that both countries agree to reduce their tariffs. As mentioned above, a lion's portion of the tariffs might be unbound and can be reduced, according to the statistics mentioned above. Hence, the two countries must mutually determine for which products they would partially reduce tariffs. Both countries need to focus on the issues of reducing both tariff and non-tariff barriers, positively impacting their businesses and consumers.

### **Enhancing Trade Facilitation**

Article XVI of the Bangladesh-Bhutan Preferential Trade Agreement envisages "Trade Facilitation." According to Asia-Pacific Economic Cooperation (APEC), trade facilitation is defined as the simplification, harmonization, use of new technologies, and other measures to address procedural and administrative impediments to trade (Manger, 2015).

Both countries must share their technology and maintain their harmony to ensure trade facilitation. Usually the trade facilitation agenda in PTAs remains largely driven by the most developed partners, which tend to set the agenda and to propose terms of agreement that may not necessarily reflect the needs and capacity of their less developed partners (Maur, 2011). Since Bangladesh is more developed than Bhutan, it should extend a helping hand to ensure trade facilitation.

It should be called to notice that when tackling trade facilitation issues, it is not sufficient to agree on items that should be prohibited or on simple positive obligations such as transparency; countries must also agree on standards for procedures such as use of risk management screening at borders, and must monitor agency conduct (Chauffour and Maur, 2011). It can be said that if both countries are to enjoy trade benefits, to some extent they need to work fairly and positively beyond their commitment as laid out in the PTA.

Moreover, it is essential to note that trade facilitation lowers trade costs and benefits the consumers of imported goods because larger and more affordable quantities of goods are available. Besides, the countries mutually agree to liberalize their markets, and in most cases, the result is welfare enhancing trade liberalization. Similarly, mutual agreement in trade dealings has been a key for trade development between trading partners. Therefore, to ensure trade facilitation, there is no alternative to cooperation. Such cooperation with each other enhances the possibility of deep integration.

### **The effectiveness of this PTA when exiting the LDC league**

In recent times, Bangladesh and Bhutan have qualified for graduation from LDC status. The term "graduation" is applied when an industrialized country withdraws non-reciprocal trade preferences to a sector or a country that was previously given because of LDC status (Lidberg, 2012). A country becomes eligible for graduation if it meets the threshold levels for graduation for at least two of the three criteria during two triennial reviews. The thresholds for the three criteria for graduation are a GNI per capita of USD 1,242 or more, based on a three-year average; a human asset index (HAI) score of 66 or more; and an economic vulnerability index (EVI) score of 32 or below (Dorji, 2018). For Bangladesh, the most recent triennial review by the Committee for Development Policy of the WTO has confirmed that Bangladesh is eligible to exit from the LDC category having crossed the threshold of the three definitions.<sup>14</sup> On the other hand, in a similar manner, Bhutan had also met the graduation criteria for the first time at the triennial review in 2015 and again in March 2018 (Dorji, 2018). Hence, being newly graduated countries, they will have to face some challenges.

On the one hand, the conclusion of this PTA between Bangladesh and Bhutan can make progress in their economy through successful trade operation. On the other, at the time of exiting the LDC league, they will be deprived of special treatment from WTO and developed countries. Hence, some obvious question arises: how can Bangladesh and Bhutan minimize their feasible losses? Will this PTA be able to completely minimize market losses for them? In my opinion, a single PTA will not be sufficient to minimize the entire potential losses for the following reasons.

### **Challenges of Post-graduation for Bangladesh**

Generally, LDC countries are given special treatment within trade regimes. Being a less developed country, Bangladesh receives many preferential treatments such as special and differential treatment (SDT), Generalized System of Preferences (GSP) schemes, and preferential market access initiatives that are part of various regional trade agreements including the South Asian Free Trade Area (SAFTA), the Asia and Pacific Trade Area (APTA) and Bay of Bengal Initiative for Multi-sectorial Technical and Economic Cooperation (BIMSTEC) Free Trade Area.<sup>15</sup>

In the European Union (EU), there are quotas on non-LDC exporters, but Bangladesh's apparel items are allowed quota-free access. Bangladesh also enjoys preferential treatment in the EU under the "Everything but Arms" initiative, and, in Canada, Japan and the US, under their respective GSP schemes (Rahman, 2014). In the US market, Bangladesh enjoyed quota-free treatment for a number of apparel items in the non-quota market and was allowed significant annual quota enhancement in the quota market based on growth performance in the preceding year. This gave Bangladesh's apparels exporters a secure market in the US and allowed them to gain quota rents (Rahman, 2014). Since these schemes are non-reciprocal, there is no guarantee that Bangladesh will enjoy all of these treatments upon graduation from LDC to non-LDC.

Eventually such graduation will result in the loss of this special treatment, although the degree to which this will impact individual graduating LDCs differs. Although Bangladesh stands out among all graduating LDCs as the largest economy and exporter, it is also likely to confront more graduation challenges than others. The greatest impact is potentially on its exports, which are estimated to decline by 14% (WTO, 2015). It can therefore be alleged that despite having the largest LDC economy, they might experience an economic contraction in the immediate period following LDC graduation.

Furthermore, upon graduation, LDCs would normally be required to align their participation as for other developing country members (WTO, 2015). This would mean increasing its administrative and institutional capacity as well as adjustments in other trade related agreements such as the agreement on Trade-Related Aspects of Intellectual Property Rights. Bangladesh has not progressed sufficiently in this area and therefore graduation may have a negative impact on the economic growth of Bangladesh.

### **Enjoying SDT and GSP after the Graduation from LDC**

Since SDT and GSP are the most necessary preferential treatments that Bangladesh enjoys, these have been given special attention separately in section. The enjoyment of Special and differential treatment (SDT) issues may become complicated for LDCs when they graduate from LDC to Non-LDC. Bangladesh has also been enjoying Generalized System of Preferences (GSP) facilities provided by the European Union 28 countries. It is worth mentioning that after LDC graduation, Bangladesh will not be allowed duty-free and quota-free access (DFQF) in EU markets and would likely experience an average of 8.7 per cent duty.<sup>16</sup> This is a likely challenge for Bangladesh upon graduation from LDC to non-LDC by 2024 or 2026. Given the COVID-19 pandemic and a request by the Bangladesh government, the graduation year was deferred by two years (Bhattacharya, 2021).

### **The Feasible Economic Loss for Bangladesh upon Exiting the LDC Category**

The likely losses after LDC graduation have been a growing source of tension for Bangladesh. In January 2018, a paper from the Economic Relations Division (one of the four divisions of the Ministry of Finance in Bangladesh) estimated that after graduating from LDC status, Bangladesh could annually lose about US\$2.7bn in export earnings, given additional tariffs of 6.7%.<sup>17</sup> The UN Conference on Trade and Development estimates that Bangladesh's exports may decline by 5.5-7.5% after graduating from LDC status.

In addition, the largest reductions in exports, both in dollars and in percentage of initial exports, are projected to take place in Bangladesh for two reasons: Bangladesh is the largest exporter among the graduating countries, and it is expected to face the largest increase in applied tariffs as a result of graduation. Consequently, Bangladesh is projected to lose 14.28% of its exports, caused by a 5.73 percentage point increase in the effective tariff (WTO, 2018).

Furthermore, as the deadline for graduation from LDC to non-LDC category is approaching in 2024, existing benefits for this category and the era of 'non-reciprocal' trade benefit will be over by 2027<sup>18</sup>. In this regard, the example of Vietnam is relevant and alarming for Bangladesh. Currently Vietnam is paying a 12.0 per cent duty to export its apparel into the EU market and Bangladesh may have to pay similar duties upon graduation (WTO, 2013).

### **The Challenges of Bhutan after Graduation from LDC**

Bhutan may also shortly graduate from LDC status and cannot have preferential treatments offered to LDCs once it does (Wangdi, 2010). Upon graduation, Bhutan will lose access to many privileges and International Support Measures (ISMs) exclusively available for LDCs, and face the withdrawal of unilateral and non-reciprocal trade preferences granted under Duty-Free Quota-Free (DFQF) schemes (Subba, 2021). At the same time, the enjoyment of the significant preferential treatments such as the Generalized System of Preferences (GSP) and the Global System of Trade Preferences (GSTP) will also adversely affect its exports. After the graduation of Bhutan from LDC status, they will be required to lower their tariffs and subsidies. As tariffs are reduced, imports will become cheaper, and the import volume will increase. Consequently, this will pose a serious threat to Bhutanese domestic products, which are low in competitiveness due to the absence of competitive technology and a lack of economies of scale (Subba, 2021; Wangdi, 2010). It is evident that Bhutan will face some domestic trade challenges along with preferential treatment challenges. Similarly, to facilitate LDC graduation and ensure its longer-term sustainability, greater attention will need to be paid to address many of the structural and other challenges that Bhutan continues to face despite its strong growth performance and progress in its social indicators.<sup>19</sup>

Upon noting the possibility of losing preferential special treatments that each country enjoyed as an LDC, and according to the above data on potential economic losses, it can be claimed that a single PTA will not be adequate for Bangladesh and Bhutan to minimize their projected economic losses. Despite the probable forthcoming complexities of LDC graduation, the conclusion of this PTA could provide opportunity for both countries. Both these countries could cope with the potential challenge from losing special treatments upon graduation if they had many RTAs with developing and developed countries. Unfortunately, they do not. But because both countries face an LDC graduation threat, this PTA could be important for them to turn this opportunity into a fruitful one as they begin to cope with the losses in their economy. It is worth mentioning that this single PTA will not change the economies of the two countries dramatically. However, through the productive implementation of this PTA they can marginally minimize their losses by boosting export earnings in the next few years. In contrast, it is not hard to imagine that the failure of a successful implementation could result in an adverse scenario as well. Therefore, both governments must be cautious to get growth efficiency in their economy through the proper execution of this PTA.

### **Conclusion**

Based on the discussion in this paper, it is evident that Bangladesh-Bhutan PTA generates complications regarding compliance with GATT/WTO rules together with trade development challenges and opportunities. Hence, along with overcoming the legal and trade complexities mentioned above, the following are the essential subject matters to uphold trade benefits without any trade interruptions once this PTA is enforced.

Bringing the success of a trade agreement is a goal for each contracting party. It is important to note that preferential trade agreements are one of the main vehicles that may help a country overcome its isolated position and enter a reasonable and productive relationship with its neighbors and trading partners. PTAs are useful instruments for countries to engage in regional integration to achieve goals related to trade, labor, foreign investment, or environment.<sup>20</sup> Thus, it can be expected that this regional integration between these contracting parties will motivate them to improve their country's economic performance.

It is also evident that both these trading partners have been experiencing outstanding bilateral trade relations. Bangladesh is the second largest trading partner for Bhutan; therefore, it is probable that both contracting parties will cooperatively ease existing trade barriers and pave the trail to achieve the success of this PTA. Therefore, despite the impending LDC graduation threat, this opportunity should not be missed.

Moreover, for many low-income countries, PTAs are increasingly the core of a credible development strategy for accelerating economic growth and reducing poverty. In this case, since both signatories are low-income countries, trade integration will be helpful for the economic development of the two contracting countries. To ensure successful

trade, the agreement must avoid any implementation gaps. Also, any operational gaps must be eased in the smoothest and earliest possible manner.

To conclude, it must be stated that the economic growth of these partners is noticeable. Trade volume is gradually expanding for Bangladesh, reaching \$57.90 million in 2018-19, while it was only \$26.52 million and \$11.58 million in the FY 2012-13 and FY 2007-08 respectively. On the other hand, in FY2021 Bangladesh's exports to Bhutan was worth USD 6.90 million and imports from Bhutan was USD 38.8 million. Considering the growth of the economy and trade development, this historic PTA between Bangladesh and Bhutan will likely be an excellent potential for each party for their economic growth. Therefore, Bangladesh and Bhutan shall have to ensure the compliance of legal obligations and be committed to perform their duties and obligations regarding trade to experience steady and uninterrupted trade benefits from this preferential trade agreement.

## Endnotes

<sup>1</sup> Preferential trade agreements are meant to liberalize trade among the participating countries by allowing preferential access to certain products in the form of reducing tariffs.

<sup>2</sup> WTO, Committee on Regional Trade Agreements, Note on the Meeting of 7-8 October 2004, WT/REG/M/37 (20 October 2004), para 5.

<sup>3</sup> WT/REG/M/52 (10 March 2009), paras 3-5.

<sup>4</sup> Paragraph 2(d) of the Enabling Clause

<sup>5</sup> WT/DS306/3 G/L/669/Add.1 G/ADP/D52/2

<sup>6</sup> WTO SPS Agreement, Article 2(3).

<sup>7</sup> The SPS Agreement explains that this latter provision means that a measure is illegal if “there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.”

<sup>8</sup> WTO SPS Agreement, Article 12(1) (7)

<sup>9</sup> SICE-OAS: Chile -EFTA Article 85

<sup>10</sup> GATT, art. XXIII

<sup>11</sup> Behrooz A. & Associates (2015, January 7).

<sup>12</sup> Article XI, GATT 1994

<sup>13</sup> Article XXIV:8, GATT 1994

<sup>14</sup> Bhattacharya, D. (2021, March 11). Bangladesh qualifies for LDC graduation: What next? *The Financial Express*.

<sup>15</sup> Rahman, M. (2014).

<sup>16</sup> Hoque, M. (2021).

<sup>17</sup> Editorial in the Economist (2018, March 29).

<sup>18</sup> In general, ‘non-reciprocal’ tariff concessions appear to be characteristic of RTAs between developed and developing countries.

<sup>19</sup> Marshall, R. (2013)

<sup>20</sup> Raihan, S., and Ashraf, F. (2017)

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