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[AS PASSED BY THE MAJLIS-E-SHOORA (PARLIAMENT)]

A

Bill

to provide for the establishment of a comprehensive regime in Pakistan for the swift and effective resolution of disputes relating to the export and import of goods and services including import and export through e-commerce

WHEREAS, it is essential, for the promotion of trade in Pakistan, protection of all trading interests and improvement of Pakistan's standing internationally, that there shall be established an effective dispute resolution regime for the swift, efficient and effective resolution of international trade disputes through negotiations, determinations, alternative dispute resolution mechanisms and referral of disputes to commercial benches;

WHEREAS, it is necessary that such dispute resolution regime should be comprehensive and flexible encompassing a full range of dispute resolution methods, cooperation and assistance from the relevant government bodies as well as consistent with internationally accepted standards; and that such a regime should be equipped with an exclusive supervisory and enforcement jurisdiction and a streamlined procedure to carry out the purposes of this Act;

AND WHEREAS, it is necessary to constitute a trade dispute resolution commission to perform and execute the functions outlined in this Act with the possibility of performing the same functions with regard to domestic trade disputes in the future, as may be prescribed at a later time.

It is hereby enacted as follows:-

PART I

Introduction and Scope

1. Short title, extent and commencement- (1) This Act shall be called the Trade Dispute Resolution Act, 2022.

(2) It shall extend to the whole of Pakistan.

- (3) This Act shall come into force at once.

2. **Definitions.** - In this Act, unless there is anything repugnant in the subject or context,—

- (1) **"arbitration"** means any arbitration pursuant to section 48;
- (2) **"arbitration agreement"** means an agreement made by parties to submit to arbitration pursuant to section 48 in all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship whether contractual or not;
- (3) **"arbitrator"** means a sole arbitrator or a panel of arbitrators;
- (4) **"black-listed party"** means a party which does not comply with the findings of TDRC given in its Final Determination and being declared black-listed by the Commission through an order;
- (5) **"commercial bench"** means a commercial bench of the High Court as constituted pursuant to section 51 or otherwise in existence;
- (6) **"Commission" or "TDRC"** means the Trade Dispute Resolution Commission constituted under this Act;
- (7) **"complaint"** means an application filed by a party with the Commission for the resolution of a trade dispute;
- (8) **"conciliation"** means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute;
- (9) **"conciliator"** means a sole conciliator or two or more conciliators as the case may be;
- (10) **"costs of arbitration"** means the cost of arbitration including, but not limited to, the fees and expenses of the arbitrator, the legal and other expenses of parties and any other expenses related to the arbitration;
- (11) **"Chairman"** means the Chairman of the Commission;

- (05)
- (12) **"dispute"** includes any trade dispute as defined under section 3(2) of the Act;
 - (13) **"division concerned"** means the division to which business of this Act stands allocated;
 - (14) **"e-commerce"** means electronic commerce and is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means;
 - (15) **"export"** is as defined in the Imports and Exports (Control) Act, 1950 (Act No. XXXIX of 1950)
 - (16) **"expert"** means a person appointed by the Commission under section 18(2) of the Act;
 - (17) **"final determination"** has the meaning set out in section 35 of the Act;
 - (18) **"freeze"** includes any attachment, sealing, prohibiting, holding, controlling or managing of any property either through a receiver or otherwise and in case it is deemed necessary the disposal thereof by sale or through auction;
 - (19) **"goods"** includes without limitation any tradable item, raw material, product or byproduct which is sold for consideration and has an actual or potential customs classification;
 - (20) **"guidelines"** mean the Guidelines as may be prescribed by the Commission from time to time;
 - (21) **"ICC"** means the International Chamber of Commerce;
 - (22) **"interim determination"** means the interim determination issued under section 36;
 - (23) **"import"** shall have the same meaning as assigned thereto in the Imports and Exports (Control) Act, 1950 (Act No. XXXIX of 1950)
 - (24) **"judge"** unless otherwise provided, means a judicial member of a commercial bench;
 - (25) **"judgment"** means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court, and including interim measures of protection;

- (26) **"list of black-listed parties"** means a list of black-listed parties maintained by TDRC as provided in section 53;
- (27) **"member"** means a member of the Commission and includes the Chairman;
- (28) **"New York Convention"** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed at New York on 10 June 1958 as implemented into the law of Pakistan by the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (Act No. XVII of 2011), and any amendment, modification or re-enactment of the same;
- (29) **"party" or "parties"** includes any person directly related to a trade dispute;
- (30) **"person"** includes, in case of a company or body corporate, the sponsors, chairman, chief executive, managing director by whatever name called and guarantors of the company or body corporate and in the case of any firm, partnership or sole proprietorship the partners, proprietor or any person having any interest in the said firm, partnership or proprietorship concern or direction or control thereof;
- (31) **"prescribed"** means prescribed by rules or regulations made under this Act;
- (32) **"property"** means any or all movable and immovable properties situated within or outside Pakistan;
- (33) **"regional conciliation committee"** means a committee constituted under section 43;
- (34) **"regulations"** means the regulations made under this Act;
- (35) **"rules"** means the rules made under this Act;
- (36) **"secretary"** means the secretary appointed under section 27;
- (37) **"services"** means, without limitation, a service of whatever type or any description whether industrial, trade, professional or otherwise;
- (38) **"trade body"** means any entity registered for the purpose of managing trading matters or registered under the Trade Organizations Act, 2013 (II of 2013);

(07)

(39) "trade dispute" has the meaning set out in sub-section 2 of section 3;

(40) "UNCITRAL" means the United Nations Commission on International Trade Law;

(41) "UNCITRAL Conciliation Rules" means the Conciliation Rules adopted by the General Assembly of the United Nations through Resolution 35/52 on the 4th December, 1980, as amended from time to time;

(42) "UNCTAD" means the United Nations Conference on Trade and Development;

(43) "website" means the website officially maintained by TDRC;

(44) "WIPO" means the World Intellectual Property Organization; and

(45) "WTO" means the World Trade Organization.

3. **Scope of application.** – (1) The powers conferred by this Act may be exercised in relation to any trade dispute as defined in sub-section (2).

(2) For the purposes of this Act, a trade dispute means any dispute or complaint concerning, relating to or arising out of the export and import of goods and services, including disputes arising with the carrier of the goods, export and import through e-commerce, conducted wholly or partially in or otherwise connected with the territory of Pakistan.

(3) Any of the provisions in this Act may also be applied by agreement of all parties to any existing or future trade dispute without any restriction as to territory.

(4) The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

4. **Non-intervention.** - Notwithstanding anything contained in any other law for the time being in force in matters governed by this Act, no court or tribunal may intervene except in the manner as provided by this Act.

PART II

The Trade Dispute Resolution Commission (TDRC)

5. **Constitution of the Commission.** – (1) The Federal Government shall, by notification in the official Gazette, establish a Commission to be called the Trade Dispute Resolution Commission.

(2) The Commission shall be a body corporate with perpetual succession and common seal, and may sue and be sued in its own name and, subject to and for the purpose of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy moveable and immoveable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of or deal with any moveable or immoveable property or any interest vested in it, upon such terms as it deems fit.

6. **Head office.** – The head office of the Commission shall be at Islamabad and the Commission may establish and close down offices at such other places in Pakistan as it considers necessary, subject to the approval of the division concerned.

7. **Exclusive jurisdiction of the Commission.** – (1) Within Pakistan, the Commission as constituted under this Act shall have exclusive jurisdiction over all matters with respect to this Act, including all issues concerning its interpretation and application.

(2) Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to the Commission under this Act, then such disputes shall be settled in accordance with the provisions of this Act.

8. **Composition of the Commission.** – (1) The Commission, constituted under subsection (1) of section 5, shall consist of five members to be appointed by the Federal Government.

(2) Federal Government may, by notification in the official Gazette, increase or decrease the number of members, from time to time, as it may consider appropriate.

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(3) The division concerned shall, from amongst the Members of the Commission, appoint the Chairman.

(4) No act or proceeding of the Commission shall be invalid by reason of absence of a Member or existence of any vacancy among its members or defect in constitution thereof.

9. Qualification and eligibility of the Commission. - (1) No person shall be appointed as member unless he -

- (a) is a citizen of Pakistan;
- (b) is holder of master's degree or sixteen years of education in international trade, economics, accountancy, tariffs and trade, international commerce, business law and commercial law or any trade related field;
- (c) have at least twenty years of professional work experience in international trade, economics, accountancy, tariffs and trade, international commerce, business law and commercial law or any trade related field; and
- (d) is not less than forty-five years of age and not exceeding sixty-two years of age at the time of employment.

(2) Members be chosen from both the public and private sectors, whereby a minimum of two members shall be selected from the private sector and a minimum of three members shall be selected from the public sector including retired Government servants or in-service officers.

(3) Every member shall be employed with the Commission on full time basis.

10. Disqualification. - (1) No person shall be appointed or continue as member or an employee of the Commission, if such person -

- (a) has been convicted of an offence involving moral turpitude; or
- (b) has been or is adjudged insolvent; or

- (c) is incapable of discharging his duties by reason of physical, psychological or mental unfitness and has been declared so by a registered medical practitioner appointed by the division concerned; or
- (d) fails to disclose any conflict of interest or fails to do so within the due time reasonable provided for such disclosure by or under this Act or any rules, regulations or guidelines prescribed from time to time; or
- (e) is guilty of misconduct; or
- (f) ceases to be citizen of Pakistan.

11. Chairman. - (1) The Chairman shall be the chief executive of the Commission and shall be responsible, along with the members of the Commission, for the swift execution of all functions and affairs of the Commission.

(2) The Chairman may, by general or special order in writing, subject to such limitations, restrictions or conditions as may be specified therein, delegate all or any of his powers and functions to any member or the secretary, including the powers delegated to him under section 26.

12. Acting Chairman. - At any time when the position of the Chairman is vacant, or the Chairman is unable to perform his functions due to any cause, the division concerned shall appoint any member of the Commission to be acting Chairman of the Commission until the appointment or return of a Chairman on regular basis.

13. Term of office. - (1) The Chairman and members of the Commission shall be appointed for a term of three years on such salary, terms and conditions of service as may be prescribed by rules but not be less than the MP-I scale of the Government. The tenure of employment will be extendable for another three years on satisfactory performance or if necessary—subject to the approval of the division concerned.

(2) The Chairman and members shall be eligible for re-appointment for such term or terms but shall cease to hold office on attaining the age of sixty-five years or the expiry of the term, whichever is earlier.

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14. Removal of members. - (1) Subject to sub-section (2), the appointment of any member or the Chairman may, at any time, be revoked and he may be removed from his office in prescribed manner if it is found that such person has become disqualified under sub-section (1) of section 10.

(2) Unless a disqualification referred to in sub-section (1) arises from the judgment or order of a court or tribunal of competent jurisdiction under any relevant provision of applicable law, a member or the Chairman shall not be removed or his appointment shall not be revoked without an enquiry by an impartial person or body of persons constituted in accordance with such procedure as may be prescribed by rules and after providing a reasonable opportunity to the member or the Chairman to be heard in defense.

(3) A member or the Chairman may resign from his office at any time by notice in writing addressed to the division concerned.

(4) A vacancy in the Commission caused by the death, resignation or removal of any member or the Chairman shall be filled within thirty days of the occurrence of such vacancy.

15. Trade Dispute Resolution Fund. - (1) There shall be established a non-lapsable fund to be known as the Trade Dispute Resolution Fund which shall vest in the Commission, and shall be utilized by the Commission, as may be necessary, for the purpose of carrying out its functions under this Act and for the welfare of the employees of the Commission.

(2) The Fund shall consist of -

- (a) five hundred million Rupees as initial seed money by division concerned;
- (b) yearly budgetary allocations or grants by the division concerned;
- (c) aid and donations from national or international agencies with the approval of the division concerned;
- (d) revenue earned from the levy of charges, fees, penalties, etc;
- (e) income and profits derived from investments;
- (f) all other sums which may in any manner become payable to or vested in the Commission; and
- (g) any fees or charges that the Commission may charge from other regulatory

agencies for expertise rendered in a particular field.

(3) The Commission may levy such charges or fees for services and facilities as may be prescribed from time to time.

(4) The Commission may subject to the Public Finance Management Act, 2019 open and maintain accounts, in local and foreign currency, in any scheduled bank in Pakistan.

16. Accounts and audit. - (1) The Commission shall cause proper accounts to be kept and as soon as practicable after the end of each financial year, shall cause to be prepared for that financial year a statement of accounts which shall include a balance sheet and an account of income and expenditure.

(2) Within sixty days after the end of each financial year, the Commission's annual financial statements shall be audited by the Auditor-General of Pakistan or by a firm of chartered accountants nominated by the Auditor-General of Pakistan.

(3) The auditors shall make a report to the Commission upon the balance sheet and accounts and in such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the affairs of the Commission and, in case they have called for any explanation or information from the Commission, whether it has been given and whether it is satisfactory.

17. Annual report. - Within ninety days from the end of each financial year, the Commission shall submit to the division concerned an annual report of its work and activities including all reports on negotiations, referrals, determinations, advocacies conducted, training and policy recommendations.

18. Appointments by Commission. - (1) The Commission may appoint such officers, officials, advisers and consultants, etc. as it considers necessary to exercise such powers and perform such functions as may be prescribed by the Commission.

(2) The Commission may from time to time, by notification in the official Gazette on such eligibility criteria, method of appointment and on such terms and conditions as may be

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...scribed by regulations, appoint two experts for the purposes of resolving any dispute which requires the appointment of such experts, if so required by the Commission.

(3) The Commission may, by notification in the official Gazette, make regulations in respect of the terms and conditions of service of its employees, officers, officials, advisers and consultants.

19. Meetings of Commission. – (1) Subject to this section, the Chairman may convene such meetings of the Commission at such times and places as he considers necessary for the efficient performance of the functions of the Commission.

(2) The Chairman shall preside at every meeting of the Commission and in the absence of Chairman, members present may elect among themselves a member to preside at the meeting.

(3) At any meeting of the Commission, the quorum shall be fifty percent of the members present and a fraction shall be rounded as one.

(4) All questions arising at any meeting of the Commission shall be determined by a majority of votes of the members present and voting.

(5) In the event of an equality of votes, the Chairman or member presiding shall have a casting vote.

(6) Subject to the provisions of this Act, the Chairman may give directions regarding the procedure to be followed at or in connection with any meeting of the Commission.

20. Disclosure of interest by members. – (1) For the purpose of this and the next following section, a person shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions under this Act and such interest, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(2) A member having any interest in any matter to be discussed or decided by the Commission shall, prior to any discussion of the matter, disclose in writing to the Commission the fact of his interest and the nature thereof.

(3) A disclosure of interest under sub-section (2) shall be recorded in the minutes of the Commission, prior to any discussion of, or decision on, the matter and, after the disclosure, the member ---

(a) shall not, save in the cases provided in sub-sections (4) to (6), take part nor be present in any deliberation or decision of the Commission; and

(b) shall be disregarded for the purpose of constitution of a quorum of the Commission.

(4) If a member is not the Chairman and the Chairman becomes aware that a member has a conflict of interest, the Chairman shall,---

(a) if he considers that the member should not take part, or continue to take part, as the case may require, in determining the matter, direct the member accordingly; or

(b) in any other case, cause the member's interest to be disclosed to the persons concerned in the matter including any person whose application is pending decision or adjudication by the Commission, the member in respect of whom a direction has been given under clause (a) shall comply with the direction.

(5) If the member is the Chairman, he shall disclose his interest to the persons concerned in the matter including any person whose application is pending decision or adjudication by the Commission.

(6) Subject to sub-section (4), the Chairman or the member who has any interest in any matter referred to in this section shall not take part, or continue to take part, as the case may require, in determining the matter unless everyone concerned consents to the Chairman or, as the case may be, the member so taking part.

21. Conflict of interest by staff of Commission. - (1) Where a person who, in the course of ---

(a) performing a function, or exercising a power, as an officer of the Commission;

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(b) performing functions or service as an employee; or

(c) performing a function or services in any capacity by way to assisting or advising the Commission, or any officer of the Commission, is required to consider a matter in which he has an interest,

such person shall forthwith give to the Commission a written notice stating that he is required to consider the matter and has an interest in it and setting out particulars of the interest.

(2) The person referred to in sub-section (1) shall also declare his interest in accordance with the said sub-section whenever it is necessary to avoid the conflict of interest.

22. Officers and employees, etc., to be public servants. - The Chairman, members and employees of the Commission authorized to perform any function or exercise any power under this Act shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

PART III

Functions and powers of the Commission

23. Functions of the Commission. - (1) Subject to this Act, the Commission shall be responsible for performance of following functions, namely:-

(a) initiation of proceedings in relation to trade disputes that may arise between parties and make orders and determinations in such manner and form as may be prescribed;

(b) provision of a comprehensive regime for the swift and effective resolution of disputes relating to the international trade in goods and services, including ---

(i) provision and facilitation of a forum for negotiations, referral and allocation system, as provided in this Act, to allow and facilitate local and foreign importers and exporters access to a range of mechanisms;

(ii) the issuance of final determination by the Commission itself;

- (iii) conciliation in accordance with UNCITRAL Conciliation Rules;
 - (iv) arbitration in accordance with the Arbitration Act, 1940, (Act No.X of 1940) as amended from time to time;
 - (v) resolution of a trade dispute by a commercial bench of the High Court in accordance with Part VIII of this Act; and
 - (vi) other co-operation and assistance by the Commission or representative offices, embassies and missions abroad or otherwise.
- (c) rendering advice to parties in relation to any proposed action to be taken by such parties and ensuring that such actions are coherent and consistent with the provisions of this Act, rules, regulations or guidelines made hereunder;
- (d) monitoring of the conduct of dispute resolution mechanisms and intervention in the event of delay;
- (e) maintaining the highest standards of integrity amongst all mediators, conciliators and arbitrators;
- (f) establishing and promoting arbitration and alternative dispute resolution institutions within Pakistan; and
- (g) maintaining a collated database of all the chambers of commerce in the country as well as of the trade bodies and registering any disputes that have been filed with these trade bodies.

(2) The Commission shall promote fair trade through advocacy which, among others, shall include ---

- (a) reviewing existing trade policy framework in relation to strategic policies that are being implemented at a state level and making such beneficial recommendations to the division concerned;
- (b) to engage in capacity-building, training and consultation services for the development and promotion of international standards and best practices in international trade, dispute resolution and all matters incidental thereto.

(17)

The Commission shall endeavor to train commercial counselors and community welfare attaches deputed abroad so that they are equipped to handle disputes or any matters related thereto whose performance shall be monitored and evaluated from time to time;

(c) holding seminars and workshops addressing the trade dispute issues in Pakistan and harvesting an environment of open debate on regulating commercial behavior of stakeholders, which will improve the trade relationships with other countries; and

(d) ensuring that the Commission's website shall post information pertaining to all sessions and workshops, rules, regulations and any guidelines that the Commission may issue for the benefit of the public at large.

(3) Subject to this Act, the Commission shall take all measures necessary---

(a) to facilitate and enhance international trade involving local and foreign entities;

(b) to bridge the trust deficit between local and foreign businessmen through providing parties a forum for an effective and efficient dispute resolution mechanism;

(c) to improve the international standing and reputation of Pakistan in matters of trade, as a reliable trading destination;

(d) to further develop and harness a mutually beneficial trade relationship between TDRC and its counterparts and in other countries; and

(e) to ensure that any disputes that may arise between parties are resolved in such manner and form as may be prescribed from time to time.

24. Power to acquire information. – (1) The Commission shall have the power, on its own motion, to solicit or call upon any information in relation to any proceedings at hand, for the purposes of executing its functions, from any ministry, division, Federal or Provincial department, trade body, private or public entity, etc.

(2) Notwithstanding anything contained in this Act or any other law for the time being in force, any confidential information obtained or received, directly or indirectly, by the

Commission pursuant to or in connection with any proceedings before it, shall not be subject to disclosure to any ministry, department, division, agency or on direction of the division concerned, without the prior consent of the party submitting such information.

(3) Except as otherwise provided by this Act, or any law in force, or order of the court, the Commission shall give access to information to parties, in such manner and form as may be prescribed.

25. Power of the Commission as civil court. - (1) For the purpose of performing its functions under this Act and the rules made there-under, the Commission shall have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), with respect to the following matters, namely: -

- (a) summoning and enforcing the attendance of any witness and examining him on oath;
- (b) enforcing the supply of any document or instrument, either in hard copy or electronic format;
- (c) requisitioning any document or instrument which is available in the public record from any court or office; and
- (d) accepting evidence on affidavits.

(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860) and the Commission shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898).

26. Delegation of powers. - The Commission may, by general or special order in writing subject to such limitations, restrictions or conditions as may be specified therein, delegate all or any of its powers and functions to one or more of its members or one or more of the officers, employees, experts, consultants or agents of the Commission and the Commission may at any time revoke such authority at its own discretion:

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Provided that powers conferred under sections 60, 61, and 62 shall not be delegated under this section.

27. Administration and secretariat of the Commission. - (1) The trade dispute resolution organization (TDRO) shall be the secretariat of the Commission and the executive director general TDRO shall be ex-officio secretary of the Commission.

(2) The secretary to the Commission shall ---

- (a) hold in custody, at all material time, the records and seal of the Commission;
- (b) ensure the timely payment of salaries and allowances of officers, experts, consultants and employees of the Commission;
- (c) propose budget estimates to the Commission and take such actions to ensure that the Commission is satisfied with the same;
- (d) receive applications filed by parties and ensure that the same are presented to the Commission for review, in a timely manner; and
- (e) perform all other functions and duties as may be prescribed from time to time.

PART IV

Referral, Allocation and Proceedings for Dispute Resolution

28. Referral of trade disputes to the Commission. - (1) Any trade dispute -

- (a) within the scope of application of this Act as set out in section 3; and
- (b) involving claims of not less than the minimum value, in cash or kind, as prescribed from time to time in the rules,

may be referred to the Commission by any party or parties, to the dispute, in accordance with section 29, for resolution under this Act.

(2) Where a party to the dispute is located outside Pakistan, it may make a referral pursuant to sub-section (1) to the Pakistan embassy or mission abroad, which shall be

empowered to collect all relevant documentation and facilitate the party in filing the dispute with the Commission.

(3) The Commission shall be entitled to refuse any referral, if -

- (a) any requirements of this Act have not been satisfied;
- (b) the existence of competing proceedings elsewhere, or the availability of a competent forum elsewhere, renders acceptance of a referral inappropriate; or
- (c) the claim is manifestly frivolous or abusive, or involves any fraud, illegality or other wrongdoing.

29. Requirement of a written application. - (1) A trade dispute complaint shall only be accepted under section 28, if it is made through a written application by one or more parties to the dispute.

(2) An application under sub-section (1) shall -

- (a) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed by regulations;
- (b) include supporting evidence for the claim made by the party, as is reasonably available to the applicant; and
- (c) contain such further information as may be prescribed.

30. Review of the complaint. - (1) The Commission shall examine the application to determine whether it is compliant with the requirements of section 28 read with section 29 and the evidence provided with the application is sufficient to establish a prima facie case to justify the initiation of dispute resolution proceedings as provided under this Act.

(2) An application shall be rejected as soon as the Commission is satisfied that sufficient evidence is not available to initiate dispute resolution mechanism. The Commission shall, for rejection of the application, provide detailed written reasons to the applicant.

31. Notice to appear. - (1) Upon acceptance of the application, the Commission shall give prompt notice to the party, against whom the complaint has been filed in respect of the trade dispute, to appear before the Commission so that an allocation may be made in accordance with section 33.

(2) The Commission shall also inform the relevant government of the country to which the party or parties belong, with a request that the copy of the complaint be also forwarded to the party to the dispute.

(3) Any person duly authorized by a party shall be entitled to appear, plead and act on behalf of such party before the Commission.

32. Withdrawal of application. - (1) An application made under section 29 may be withdrawn at any time before an allocation has been made pursuant to section 33 and section 34, in which case it shall be considered not to have been made:

Provided that upon the withdrawal of an application any fee paid along with the application pursuant to clause (a) of sub-section (2) of section 29, shall stand forfeited in favour of the Commission.

33. Allocation by the Commission. - (1) When the parties to the trade dispute appear before the Commission, the Commission ---

- (a) Shall seek to resolve the trade dispute by assisting the parties in conducting negotiations between themselves in order to arrive at an amicable settlement, within thirty days of the first appearance of the parties before the Commission; or
- (b) in the event where, according to clause (a), efforts to resolve the trade dispute through negotiations fail, shall assess the quantum of the claim and if it satisfies the minimum threshold, as may be prescribed by rules, for the suit to be filed in the commercial bench of the High Court, the Commission shall refer the matter to a commercial bench of a High Court pursuant to section 52; or
- (c) in the event that the quantum of the claim does not meet the minimum threshold required for the suit to be filed in the commercial bench of the

High Court, shall seek consent of the parties to do any one or more of the following, in any order, namely:-

- (i) refer the dispute to conciliation in accordance with section 42; or
 - (ii) refer the dispute to arbitration in accordance with section 48; or
 - (iii) Initiate proceedings to reach a final determination.
- (d) in the case of any reference made under clause (c), direct at any stage that the matter be finally resolved within a specified time period. or

(2) If any time limit imposed under clause (d) of sub-section (1) is not complied with, and unless otherwise agreed by all parties to the dispute at any time, the conciliation or arbitration proceedings shall be terminated and the matter shall then revert to the Commission, pending any further direction by the Commission; or

(3) Any time limit imposed under clause (d) of sub-section (1) may be extended at any stage by direction of the Commission, or by agreement of all Parties, which shall be notified to the Commission in writing.

(4) In exercising its discretion under sub-sections (1), (2) and (3), the Commission shall take into account ---

- (a) the amount in dispute;
- (b) the nature and legal or factual complexity of the dispute;
- (c) the location of the parties; and
- (d) the commercial position as between the parties and any particular requirements they may have with respect to dispute resolution such as speed, cost effectiveness, confidentiality and enforceability.

34. **Self-allocation by the Commission.** - If the parties to the trade dispute are unable to agree on any of the resolution methods stated under sub-clauses (i) and (ii) of sub-section (1) of section 33, within thirty days of the suggested allocation by the Commission, or one more of the parties against whom complaint has been filed fails to appear at the date notified by the Commission in the notice to appear, the Commission may then initiate proceedings and reach a final determination in accordance with Part V.

PART V

Determinations of the Commission

35. **Final determination passed by the Commission.** - (1) The Commission shall reach a final determination in relation to any trade dispute within the scope of application of this Act as set out in section 3, where parties have opted for settlement of the trade dispute through a final determination by the Commission or the Commission has assumed allocation thereof.

2. The final determination shall be made after the Commission has ---

(a) provided ample opportunities to the parties to present their case through ---

(i) hearings, which may be conducted via video-conferencing or other audio-visual means, as may be determined by the Commission;

(ii) written submissions; and

(iii) filing of any other document that the parties may feel relevant;

(b) reviewed all relevant documents forming part of the documents submitted by the parties; and

(c) reviewed any other document that the Commission may prepare during the proceedings.

(3) Upon initiation of proceedings for final determination, the Commission shall immediately inform parties and their respective governments of the initiation of proceedings and invite them to participate and defend their interests.

(4) The Commission shall, except in special circumstances, reach its final determination within a period of four months and in no case more than six months after initiation of Proceedings.

(5) The Commission shall, while making a final determination, provide a time period to the parties to comply with the findings made in the final determination, failing which the Commission may include the name of the defaulting party in the list of black-listed parties as provided for in section 53 or take any other measure or action as deemed appropriate by the Commission, within the ambit of this Act.

36. Power to issue interim determination. -Where, during the course of any proceeding under this Act, the Commission is of the opinion that the passing of a final determination in the proceedings is likely to take time and that, in the situation that exists or is likely to emerge, serious or irreparable damage may occur and an interim determination is necessary in the interest of one or more of the parties to the trade dispute, it may, after hearing the party issue an interim determination directing any party to do or refrain from doing or continuing to do any act or thing specified in the interim determination.

37. Powers. - For the purposes of passing a final determination under this Part, the Commission shall have power to refer the matter to, and seek assistance from, -

- (a) any department or agency of the Government;
- (b) any regional or local body or regional or local chamber of commerce or other equivalent entity;
- (c) any court or tribunal;
- (d) any bank, financial institution, person, authority, institution or department in the public or private sector;
- (e) any trade officers aboard, Pakistan embassy or mission abroad; or
- (f) any other entity, institution or agency within or outside Pakistan.

38. Extent of powers. -The powers provided for in this part may be exercised within Pakistan and, in so far as permitted by local law, in any foreign jurisdiction, with or without the assistance of any Pakistan embassy or mission abroad.

39. **Failure of parties to respond.** - In the event that any one or more of the parties against whom a complaint has been filed under section 29, fails to appear at the date notified by the Commission in the notice to appear, the Commission may nevertheless proceed towards passing a binding and valid final determination.

40. **Declarations, directions and recommendations.** -The Commission may, in its final determination, ---

- (a) make a declaration as to any matter referred to the Commission, including but not limited to a declaration ---
 - (i) as to any party's misconduct or liability;
 - (ii) that the complaint is unfounded or that any allegation be dismissed; and
 - (iii) that, for any reason, no action is required to be taken in respect of the matter referred;
- (b) direct that the referral to Commission be terminated without imposing any terms;
- (c) direct that the referral to Commission be terminated or stayed on terms including, without limitation ---
 - (i) the conclusion of a consent order by any party to the dispute or complaint against whom adverse findings have or may be made;
 - (ii) the conclusion of a consent order by all relevant parties by which the matter be referred to conciliation, arbitration, adjudication or any other forum; or
 - (iii) the conclusion of a settlement agreement by all relevant Parties;
- (d) require a party to the dispute or complainant to do or refrain from doing any act or thing;
- (e) order such party to pay a fine as may be prescribed from time to time;
- (f) freeze or attach any property belonging to the party in question or any person controlling the party in question;

- (g) permanently or temporarily seize exports of exporter from Pakistan through Customs authorities;
- (h) request the relevant authorities of the country of exporter for immediate resolution of the dispute; and
- (i) any other measures that the Commission might deem fit.

41. Appeal against Commission's final determinations. - Any party aggrieved by final determination of the Commission may, within fifteen days of the receipt thereof prefer an appeal to the commercial bench of the High Court concerned against such order.

PART VI

Conciliation of trade disputes

42. Referral to conciliation. - (1) Any trade dispute within the scope of application of this Act shall be referred by the Commission under sub-clause (i) of clause (c) of sub-section (1) of section (33) to conciliation, with the consent of the party or parties to the dispute.

(2) The conciliators shall in the prescribed manner conduct the proceedings in respect of the trade dispute referred under sub-section (1).

43. Regional conciliation committees. - (1) The Commission may from time to time constitute and register regional conciliation committees.

(2) Each regional conciliation committee shall -

- (a) comprise conciliators as provided in the list pursuant to section 45;
- (b) provide conciliation for the amicable settlement of trade disputes;
- (c) be an entity for which the government shall have no liability whatsoever with regard to its composition, functioning, role or any act or omission; and

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- (d) be constituted and function in accordance with terms of reference which the Commission shall notify from time to time.

44. Detailed directions and guidelines. – The Commission may from time to time issue directions and guidelines detailing the procedure for the conduct of conciliations.

45. Approved conciliators. – (1) The Commission shall maintain, in consultation with the regional or local chamber of commerce, registers of approved and disapproved conciliators as amended from time to time at its offices as well as on its website and parties by consent may choose one or more conciliator for resolution of trade dispute. Any such list, of approved and disapproved conciliators if also maintained by trade bodies shall be shared with the Commission so that a collated list may be prepared and maintained by the Commission.

(2) In case, parties are unable to choose a conciliator, the Commission shall appoint the same as it may deem appropriate, keeping in view the nature, complexity and legal disposition of the dispute.

46. Completion of conciliation. – (1) Upon successful completion of conciliation, where parties have reached an amicable solution, parties shall execute an agreement to evidence the same and a copy thereof shall be filed with the Commission.

(2) If conciliation fails, parties shall have the option to refer the matter back to the Commission for another referral or initiation of proceedings by the Commission for making a final determination.

PART VII

Arbitration of trade disputes

47. References to arbitration. - Parties may agree at any time to refer existing or future disputes to arbitration pursuant to the procedures laid down under the Arbitration Act, 1940 (X of 1940), or such other law for the time being in force.

48. Approved arbitrators. - (1) The Commission shall maintain, in consultation with the regional or local chamber of commerce, registers of approved and disapproved arbitrators as amended from time to time at its offices as well as its website and parties by consent may choose one or more arbitrators for resolution of trade dispute. Any such list of approved and disapproved arbitrators if also maintained by trade bodies shall be shared with the Commission so that a collated list may be prepared and maintained by the Commission.

(2) In case, parties are unable to choose an arbitrator, the Commission shall appoint the same as it may deem appropriate, keeping in view the nature, complexity and legal disposition of the dispute.

PART VIII

Commercial Benches of the High Court

49. Constitution of commercial benches. - There shall be in each High Court, one or more benches, known as a commercial bench, to be constituted by the Chief Justice of the High Court concerned to exercise the jurisdiction vested in the High Court under this Act.

50. References to a commercial bench. - (1) Any trade dispute within the scope of this Act as set out in section 3 may be referred by Commission to the commercial bench based on the quantum of the dispute meeting the minimum threshold as provided for in section 33.

(2) The commercial bench shall decide the dispute within a period of four months from the date of referral of the dispute by the Commission.

(3) The High Court shall make rules for filing of suits, applications or appeals before commercial benches.

PART IX

Domestic and International Assistance by the Commission

51. **Powers in relation to assistance by the Commission.** - In addition to the powers conferred by other parts of this Act, the Commission may provide any other form of assistance in relation to the resolution of any trade dispute within the scope of application of this Act as set out in section 3. Such assistance may include, without limitation,-

- (a) maintaining and publishing a list of black-listed parties on its website, comprising those parties who have failed to comply with the findings made by the Commission pursuant to a final determination. The Commission shall remove the name of the Party upon redressal and compliance with the findings made in the final determination. Such black-list may be circulated amongst all relevant chambers of commerce locally as well as abroad and these foreign chambers may be requested to share their black-list, or its equivalent, if any, with the Commission so that the same may also be uploaded on the website;
- (b) maintaining a database of high-risk places, being international locations with a high prevalence of disputes, or fraud or other lack of security in their domestic or international markets along with unsatisfactory dispute resolution mechanisms;
- (c) intervention before other forums, whether as *amicus curiae* or otherwise, in any proceedings concerning a trade dispute to expedite the same or to provide expertise or for any other reason;
- (d) taking any available step before any forum or with any agency, including but not limited to the entering into bilateral agreements with other governments to secure the enforcement of any agreement, award, judgment, order, direction or adjudication;

- (e) assisting with the service of documents including in foreign jurisdictions through embassies, missions or other agencies abroad;
- (f) assisting with the taking of evidence abroad whether through embassies or missions or otherwise;
- (g) making representations to, seeking assistance from or liaising with any governmental department, division, institution or agency;
- (h) publishing any allegations, orders or findings in the official Gazette or any local newspapers and the website;
- (i) cooperating with any authority or international organization in Pakistan or abroad in any program or agreement for the resolution of trade disputes or related issues; and
- (j) ensuring that for the promulgation of better trade relations with other countries, the Commission shall conduct regular meetings with other WTO member countries to ensure that all forms of facilitation and assistance is provided, if so required.

52. **Extent of powers.** - The Commission may exercise its powers under section 51 within Pakistan and in any foreign jurisdiction with or without the assistance of any Pakistan embassy or mission abroad in so far as permitted by local law of foreign country.

PART X

Capacity Building, Training and Consultation Services

(3)

53. Promotion of alternative trade dispute resolution mechanisms. (1) - The Commission may, from time to time, provide capacity building, training and consultation services for the development and promotion of international standards and best practices in international trade, dispute resolution and all matters incidental thereto including without limitation to-

- (a) establishing and maintaining support desks and other facilities nationally, in major cities across Pakistan, and internationally in Pakistan embassies and missions abroad;
- (b) entering into arrangements with foreign agencies or international organizations for the exchange of information, technical know-how, expertise and capacity building;
- (c) maintaining databases and other publicly accessible information resources;
- (d) organizing and participating in international seminars, meetings, workshops, conferences and training, education and awareness programs;
- (e) participating in and liaising with international bodies and agencies concerned with the harmonization and reform of international trade laws and practices including UNCITRAL, UNCTAD, WTO, WIPO and the ICC;
- (f) designing and conducting programs for continuing professional development
- (g) provision of certifying programs, courses and trainings for mediators, conciliators and arbitrators;
- (h) conducting and publishing research;
- (i) developing and publishing model clauses and contracts, standard import and export documents and procedures, model dispute resolution clauses and other materials in accordance with this Act;
- (j) advising the Federal and Provincial Governments on trade and dispute resolution policies, the negotiation of international trade agreements, the

harmonization of trade laws, contract enforcement and quality assurance and all matters ancillary thereto; and

(k) advising any person with respect to compliance with the provisions of this Act.

(2) The Commission may, from time to time for their capacity building, undertake steps to establish and promote mediation, conciliation and arbitration institutions and other related services within Pakistan.

PART XI

Supplementary Provisions

54. Common seal. - (1) The Commission shall have a common seal which shall be kept in the custody of the Chairman or such other person as may be prescribed through regulations by the Commission.

(2) Documents required or permitted to be executed under the seal shall be specified and authenticated in such manner as may be prescribed through regulations by the Commission.

55. Service of notices and other documents. - For the purpose of this Act any notice, requisition, letter or order required to be served on an undertaking shall be treated as properly served on the undertaking, if such service is made in the manner prescribed for the service of a summons under the Code of Civil Procedure, 1908 (Act V of 1908) or, as may be prescribed by rules.

56. Fines and penalties. - (1) For the recovery of any amount from a party that has complied with an order of the Commission, the Commission may serve upon the concerned person a copy of the notice as may be prescribed by rules requiring such person to pay the said amount within the time specified in the notice.

(2) If the amount referred to in the notice under sub-section (1) is not paid within the specified time, the Commission may proceed to recover the said amount from the party in default, in any one or more of the following manners, namely:-

- (a) attachment of immovable or sale of any moveable property, including bank account of the party;
- (b) appointment of a receiver for the management of the moveable or immovable property of the party;
- (c) recovery of the amount as arrears of land revenue through the district revenue officer;
- (d) require any of the following, by notice in writing, the person to deduct and pay the sum specified in the notice on or before such date as may be so specified, namely:-
 - (i) from whom any money is due or may become due to the party;
 - (ii) who holds, or controls the receipt or disposal of or may subsequently hold, or control the receipt or disposal of, any money belonging to the party or on account of the party; or
 - (iii) who is responsible for the payment of any sum to the party.

(3) Any bank, receiver, district revenue officer or person who has paid any sum in compliance with a notice under sub-section (2) shall be deemed to have paid such a sum to the Commission in respect of the party and the receipt of the Commission shall constitute a good and sufficient discharge of the liability of such bank, receiver, district revenue officer or person to the extent of the sum referred to in such receipt.

(4) If any bank, receiver, district revenue officer or undertaking on whom a notice is served, fails to attach, receive, recover, deduct and pay, as the case may be, the amount specified in the said notice, such bank, receiver, district revenue officer or undertaking shall be treated as a

defaulter and the amount specified in the said notice shall be recoverable from them, as the case may be, by the Commission in accordance with the provisions of this Act.

(5) The Commission may, by order, direct any bank, receiver, district revenue officer or Person which is defaulter as referred to in sub-section (4), to pay by way of penalty, such sum as specified in the order, after giving to the bank, receiver, district revenue officer or person an opportunity of being heard, if it determines that such bank, receiver, District Revenue Officer or Person has willfully failed to comply with the order of the Commission.

(6) For the purposes of recovery of the amount under sub-section (2), the Commission shall have the same powers as a Civil Court conferred on it under the Code of Civil Procedure, 1908 (Act V of 1908).

(7) The Commission may seek the assistance of regulatory bodies, including the State Bank, to impose penalties as well as recover fines from defaulting parties.

(8) The Commission may issue guidelines regulating the procedure for the recovery of amounts under this section and any other matters connected with or incidental to the operation of this section.

(9) Subject to the Public Finance Management Act, 2019, all penalties and fines recovered under this Act shall be deposited in account maintained by the Commission.

57. Failure to disclose correct information. - Any Person who knowingly and willfully provides false, misleading or incorrect information to the Commission whether in an application received under this Act or otherwise in connection with any proceedings under this Act, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which may extend to three years, or a fine not exceeding five million rupees, or both.

58. Power to make rules and regulations. - (1) The Federal Government may, by notification in the official Gazette, make in respect of external matters rules for carrying out the purposes of this Act.

(2) The Commission shall, by notification in the official Gazette, make in respect of its internal matters regulations in consultation with the division concerned for carrying out the purposes of this Act.

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59. Powers to issue guidelines. - The Commission shall from time to time, without prejudice to the rules and regulations made under section 58, issue guidelines for the parties for carrying out the purposes of this Act.

60. Removal of difficulties. - If a difficulty arises in giving effect to any provisions of this Act, the Commission may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

61. Authorities to assist and aid Commission. - All law enforcement agencies and authorities in the Federation and the Provinces shall be under an obligation to provide and render full and complete assistance to the Commission as and when the secretariat thereof may require such assistance.

62. Immunity. - No suit, prosecution or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman, members or any other officer, expert, consultant of the Commission, or any other person, in relation to any act or omission in the exercise of powers and duties under this Act, rules, regulations or guidelines made hereunder, save for conscious and deliberate wrongdoing.

63. Repeal. - Sections 5A, 5B and 5C of the Imports and Exports (Control) Act, 1950 (Act No. XXXIX of 1950) are hereby repealed.

STATEMENT OF OBJECTS AND REASONS

As Pakistan embarks upon trade liberalization and expansion so does the probability of trade disputes arise between trading parties. If left unsupervised and unguided, such disputes could lead to serious conflicts between governments in addition to damaging private sector business interests.

2. Moreover, the absence of proper Trade Dispute Resolution Mechanism in Pakistan is adversely affecting its ranking in ease of doing business. In order to overcome this, a dedicated government body, legally mandated to resolve international trade disputes was approved by the Cabinet of Pakistan under the Strategic Trade Policy Framework (STPF). Trade Dispute Resolution Organization (TDRO) has been established as an attached department of Ministry of Commerce. It is a platform which helps to prevent the detrimental effects of unresolved international trade conflicts and to mitigate the imbalances between stronger and weaker players by having their disputes settled on the basis of rules.

3. In order to regulate the functions of TDRO, legal mechanism is necessary to put in place. Therefore, draft Trade Dispute Resolution Organization Act, 2022 is being placed before the Parliament for its consideration /approval.

Sd/-

(SYED NAVEED QAMAR)
MINISTER FOR COMMERCE