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Turkey- Restriction on Imports of Textiles and Clothing Products: Case Summary and Analysis

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Abstract: *The Regional Trading Agreements have undoubtedly risen akin to sphinx in the recent years, with most of the member states of WTO ardently lapping for it. Post the Mongolia and Japan in 2016, every member states in WTO now have a Regional Trade Agreement, in place.*

However the point comes when there the concept of RTA is marred by the notion of Nondiscrimination, among the trading partners or when the same becomes out rightly discriminatory for developing countries like India, a point that would be highlighted better by the case study so being undertaken by the researcher. In such a scenario does RTAs being an exception to the non- discrimination agreement, prove a point in reference to the International trade scenario.

The researcher in this regard would try to dissect the case of Turkey Cotton Export Case, which highlights how the Regional Trade Agreements of EC have actually, have affected or rather have influenced the various developing countries, namely India in this case.

Thereafter the researcher has tried to analyze the concept of regional trade agreements so prevailing in the international trade scenario, how far the concept has actually proved worthy and whether it actually did any help by mooted out of such an exception in the form of RTAs. The researcher has in this scenario tried to underline the justifications of the RTAs, though in a partly skeptical perspective.

Lastly the researcher has highlighted about the limitation of RTAs especially in light of the Turkey case, and what is the ramification of the same in the light of country like India.

RESEARCH METHODOLOGY

A. Research Methodology

The researcher has undertaken a descriptive and comparative study of the topic. He has tried to analyze the various latent concepts wherever involved.

B. Aims and objective.

The researcher will try to analyze the various perception of Regional Trade Agreements, especially in light of Turkey Textile case and thereby would endeavor to highlight the ramification of the Regional Trade Agreements in Global Trade Scenario.

C. Scope And Limitations

Though the researcher has referred mainly to WTO and GATT provisions and has also taken into account the various other International Agreements and opinion of jurists. However an attempt was made on the part of researcher thereafter to understand the dynamics of the entire case with respect to India in particular.

D. Research Questions

- 1) Whether the decision in Turkey Textiles has any ramifications on the trade prospects of developing countries?
- 2) Whether the concept of Regional Trading Agreement under Article XXIV of the GATT has any significance with regard to promotion of fair trade across the globe?

E. Sources of Data.

The researcher has relied on secondary source of data, which includes books, articles, case laws and online database.

F. Mode Of Citation

The researcher has adhered to uniform mode of citation.

I. TURKEY- RESTRICTION ON IMPORTS OF TEXTILES AND CLOTHING PRODUCTS: CASE SUMMARY AND ANALYSIS

A. Facts

India requested consultations with Turkey, for the imposition of restrictions which were quantitative in nature, so imposed upon wide range of textiles and clothing products. India claimed that the measures were not at all in conformity with Article XI and XIII of GATT 1994, as well as ATC Article 2. India had earlier requested to be joined, as consultative between Turkey and Honk Kong on the same subject matter (WT/DS29).

The request was made by India on 21st March, 1996. However even after that on 2 February 1998, India did go with the request for establishing of panel, which was deferred by DSB.

B. Issues

- 1) Whether the quantitative restrictions were inconsistent with Article XI (prohibition on quantitative restrictions) and XIII (nondiscriminatory administration of quantitative restriction) of GATT.
- 2) Whether the Quantitative Restriction was prohibited under Article 2.4 of ATC.
- 3) Whether the Customs Union in this case is compatible with the provisions of Article XXIV of GATT.

C. Panel and Appellate Body Proceedings

The DSB established a panel, in furtherance to a second request so made by India. The Panel was established on 13 March 1998, whereby third party rights were reserved by Japan, Thailand, Philippines, US, China and Honk Kong. In pursuant to the above on 11 June 1998, the panel was composed. Thereafter it was found by the panel that, Articles XI and XIII of GATT 1994 and Article 2.4 of the ATC, were violated by the Turkey's measures and their acts are therefore inconsistent with the same. Though Turkey asserted and argued that the measures are justified by Article XXIV of GATT 1994, i.e. Regional Trade Agreements; however the same was rejected by the panel.

The Panel held that restrictions so imposed was violative, especially because Turkey could not cite its custom union with the EC and GATT provisions in Art XXIV to justify its conduct.

"According to Indian data, India's exports to Turkey of the 19 categories in 1995 were valued at \$42.236 million, and fell to \$21.8 million in 1996 (when restrictions were imposed) and \$19.867 million in 1997."¹ "The panel on the Turkey textiles had taken the view that intended by the negotiators namely, that the overall issues of concern to all members should be judged by the entire membership through the relevant WTO bodies, while the WTO rights of individual members, impaired by the application of any measure could be adjudicated before a panel."²

In the initial consultative stage, EC had wanted to be chipped along with Turkey, but the panel held that the custom union between EC-Turkey did not reflect WTO personality as such, and hence they were not subjected to DSU procedures. Moreover the basis of Turkey's defense based on Custom Union did not fall within the ambit of Textile Monitoring Body (TMB).

The measures; were quantitative restrictions which was adopted by Turkey thereof. It was said that even if the same were implemented and monitored were mandatory Turkish measures which India could challenge through Dispute Settlement Unit.

D. Appeal

Unhappy with the decision, Turkey decided to notify its intention as to appeal specific issues of law so developed by the panel. On 21st October 1999, the same was circulated whereby the Appellate Body did uphold the Panel's conclusion regarding Article XXIV of GATT, 1994. It was found out by the board that, Article XXIV of GATT 1994, does not allow Turkey to form a custom union and thereby adopt quantitative restrictions which were adopted by the Turkey in the first place.

It was laid down that the quantitative restrictions so imposed were actually against Article XXIV, Article XI, Article XIII and Article 2.4 of the GATT 1994, which thereby proscribes such restrictions. Though the Appellate Board concurred with the findings of the panel, they dissented on the legal reasoning so adopted by the panel; while interpreting Article XXIV of GATT 1994. Therefore on 19 November 1999, the Dispute Settlement Board adopted both the reports, which included the now modified Panel report.

¹Raghavan, C. (1999). Turkey's textile/clothing QRs held illegal. Retrieved April 19, 2017, from <http://www.twm.my/title/qrs-cn.htm>

² *ibid*

E. Implementation of Adopted Reports

On 19 November 1999, Turkey did state at the Dispute Settlement Body meet, about its intention to comply with the recommendation of said board and in pursuance of the same on 7th January 2000, the parties did inform that they had agreed to a reasonable period of time for Turkey to implement the DSB's recommendations and that the rulings would expire on 19 February 2001. Turkey agreed thereof that it would restrain itself from making any sort of restrictions that would affect textiles or clothing products from India, and would thereof increase the size of the quotas of India on the above said items. It also agreed not to treat India on any lesser footing than the other members, with regard to elimination of or modification of quantitative restrictions affecting any product covered by the agreement.

It was thereof that Turkey did agree to the following:

- 1) "Remove the quantitative restrictions it applies on textile categories 24 and 27 in respect of imports from India, by 30 June 2001 or the date of signature of the Agreement;
- 2) Carry out tariff reductions on the applied rate basis as described in annex to the Agreement, by 30 September 2001;
- 3) Strive towards early compliance with the recommendations and rulings of the DSB.

Pursuant to the Agreement, the compensation would remain effective until Turkey removes all quantitative restrictions applied as of 1 January 1996 in respect of imports from India for the 19 categories of textile and clothing products."³

The researcher believes that the findings of the appellate board, resonates with the sound principles of International Trade law. Since the RTAs under Article XXIV are essentially a tool to promote regional integration, and hence must not be allowed to be used as a façade to promote selfish interest of countries, at the cost of the development of other nations.

The fact that the customs union were discriminatory in practice, was asked by the WTO to be modified accordingly, because at the end of the day it must be remembered that RTAs are only an exception and not a rule of International Trade Law and hence must be subjected to the requisite treatment.

II. REGIONAL TRADE AGREEMENT: AN OVERVIEW

A. Definition

Regional Trade Agreements or RTAs are generally plurilateral trade agreements so reached under a negotiation. Originally the WTO proscribes from meting out any form of favorable treatment to any of its member states, and espouses the concept of Non-Discrimination otherwise. However RTAs form an exception to the above set of rules. Post Mongolia and Japan in 2016, almost all the WTO members have an RTA.⁴

"RTAs in the WTO are taken to mean any reciprocal trade agreement between two or more partners, not necessarily belonging to the same region. As of June 2016, all WTO members now have an RTA in force. Documents, including factual presentations, on the various regional trade agreements notified to the WTO are available in the RTA Database."⁵

B. Characteristics:⁶

- 1) The agreement which happens between the parties need not be the one amongst neighboring states only.
- 2) The agreements have the potential to cover large geographical areas.
- 3) They do not have a controlling administrative body as such and are generally virtual in nature.

³WORLD TRADE ORGANIZATION. (n.d.). Retrieved April 19, 2017, from https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds34_e.htm

⁴WORLD TRADE ORGANIZATION. (n.d.). Retrieved April 19, 2017, from https://www.wto.org/english/tratop_e/region_e/region_e.htm

⁵WORLD TRADE ORGANIZATION. (n.d.). Retrieved April 19, 2017, from https://www.wto.org/english/tratop_e/region_e/region_e.htm

⁶ Fray, B. (2013, August 14). Regional Trade Agreements Explained. Retrieved April 19, 2017, from <http://www.romeconomics.com/regional-trade-agreements-explained/>

C. WTO Rules

RTAs though happen to be an exception of the principle of Non-Discrimination and are aimed at promoting trade. It however is essentially discriminatory in nature because it promotes facilitating of trade amongst a group of WTO members, which essentially means the WTO members so involved would be accorded special privilege against others. It is in this regard that it was necessary for WTO to promulgate certain rules for regulating the RTAs otherwise it would cause *hara-kiri* to the trade regime.

The first and foremost condition was that the particular arrangement was not supposed to raise trade barrier *vis a vis* third parties, so that they can participate on equal footing. It is in this regard that WTO has spelled out three sets of rules for the same:

“These rules cover the formation and operation of customs unions and free-trade areas covering trade in goods (Article XXIV of the General Agreement on Tariffs and Trade 1994), regional or global arrangements for trade in goods between developing country members (Enabling Clause), as well as agreements covering trade in services (Article V of the General Agreement on Trade in Services). Generally speaking, RTAs must cover substantially all trade - unless they are under the Enabling Clause - and help trade flow more freely among the countries in the RTA without raising barriers to trade with the outside world.”⁷

It is in this regard that the World Trade Organization have put in a word of caution, whereby the members of the WTO gave declared that the RTAs should be allowed to remain complementary and not a substitute to the multilateral trading system so existing amongst the various national parties. “Director-General Roberto Azevêdo has said that many key issues — such as trade facilitation, services liberalization and farming and fisheries subsidies — can only be tackled broadly and efficiently when everyone has a seat at the negotiating table. Furthermore, a multilateral system ensures the participation of the smallest and most vulnerable countries and helps support the integration of developing countries into the world economy.”⁸ It is in this very regard that WTO has mooted out for the establishment of committee on RTAs in the year 1996, whereby they have coalesce all the information regarding the existing Regional Trade Agreements, and have also mooted out the need to have a forum for addressing the issues regarding the same. There was also establishment of Transparency Mechanism for regional trade agreements, established through a General Council Decision in the year 2006. The whole mechanism is about providing an impetus so as to a specific set of guidelines are laid down, so when there is an introduction of a new RTA; it must be notified to the WTO.

D. Justifications

The concept of RTAs undoubtedly promotes regionalism at some point of time in the realm of International Trade. However one must understand the justifications of the same. As pointed out by *Paul Krugman*⁹, following are the reasons of the same:-

- 1) With the burgeoning of so many participants, the costs of non cooperation is reduced as a result if there are formation of trade blocs, following a common policy. This would lead to greater co operation.
- 2) The negotiations between smaller participants in a trade bloc are better and more efficient, concerning the otherwise complicated nature of agreements.
- 3) With the reduction of US influence, the multilateral agreement, the agreements are not been able to be steered in the right direction, as a result smaller trade bloc agreements can work more efficiently.
- 4) The concept of regionalism is considered as a positive development in the case of EU.

As per *Jacob Viner*, the trade creating effects of regional integration should prevail over the trade diverting effects of such initiatives.¹⁰

E. Effects of RTA

The RTAs have a wide range of effects across the global economy. Some of them being:

- 1) It leads to trade creation and diversion of trade across the countries or member states.
- 2) It diverts the flow of capital and labor.
- 3) It influences the exchange rates and the prices of the commodities.

⁷ WORLD TRADE ORGANIZATION. (n.d.). Retrieved April 19, 2017, from https://www.wto.org/english/tratop_e/region_e/region_e.htm

⁸ *ibid*

⁹ Hilpod, P. (2003). Regional Integration According to Article XXIV:GATT. Max Planck Yearbook of United Nation's Law, 7, 219-260.

¹⁰ *ibid*

III. RTA: A CRITICAL ANALYSIS

As to how far have the RTAs been helpful in the realm of International Trade Law, considering that there mixed review regarding the RTA's ramification on the global trade liberalization. The RTAs are undoubtedly used for mutual benefiting the countries out there; however one must weigh the benefits that may be suffered if the resource allocation distribution as well as trade and investment diversion is not depreciated.

However the point to be understood is that RTAs also promote overlapping of memberships, which means that countries or the members many a times have to fulfill multiple set of rules, which not only becomes confusing but also unnecessary burdensome too. This also puts the risk of inconsistencies among the various agreements so existing, since a deeper chasm is then created between the older rules and the newer rules on RTAs, with regard to service rules, investment, competition, IPR etc.

"Given the political pressures, it may seem counterintuitive that governments would voluntarily lower their external tariffs. But it makes sense. Suppose for political reasons the government sets relatively high tariffs, which benefit the domestic import-competing industry. If subsequently the country enters in an RTA, export-oriented firms benefit because of the better access to foreign markets, whereas purely domestic firms suffer from the tougher competition from the RTA partners. This weakens the import-competing firms' stance on protection against non-members. The reason is that the free access to the domestic market enjoyed by the partners' exporters lowers the market share of the domestic industry. As a result, the RTA makes any price increase generated by a higher external tariff less valuable for the domestic industry. Now whenever the government attempts to help domestic producers through higher external tariffs, the partners' producers absorb part of that surplus."¹¹

One must also take into consideration that RTA varies across nations and places and circumstances. So initially even if there has been loss or spurt of revenue, in the long run the countries might either recover the initial losses, or might lose out owing to constriction of market. Moreover when the same gets marred by various complicated matrix of political and international transactions the assessment becomes all the more tough as there is hardly any economic consensus over regional trade agreements. Since it has been rightly stated that the regional trade agreements have more often than not is a brainchild of political sentiments. So many a times when there is overlapping of agreements, it is more of a cross border sentiment that comes into play rather than economy; which means the efficiency of RTAs depends on the sentiments and relations amongst the statesmen and not on the agreement *per se*, which makes the whole process largely subjective.

Even the European Commission, has been vociferously promoting the Regional Trading Agreement for the purpose of regional integration, especially between North and South parts of Europe. However the same actually resulted in discriminatory practices against the developing nations, like India as seen from the above case.¹² Not only that EC was found to have influenced the role of developing countries in the GATT forum, and was found to have largely influenced the law thereof. Initially GATT, 1947 did not have special concerns for developing countries, however with the inclusion of Part IV in 1965, the developing countries were absolved of any reciprocity obligations in RTA. Though this provision was meant to be temporal in nature, it was soon incorporated as permanent provision under the multilateral agreements, whereby a permanent privilege was made out to the developing countries. In the long run though most of such trade agreements were found to be unsuccessful mainly because the same led to trade distortion.¹³

IV. CONCLUSION

Whether one acknowledges it or not the concept of regional integration has gained immense popularity, and is one of the most happening international strategic affairs. Whether it has been beneficial or not, is a matter of profane debate and discussion. So on one hand we have the EC proving that the concept of RTA may be commercially viable on international podium, at the same time the developing countries on the other hand have not been able to replicate the success to that extent. As already stated the whole concept of RTA can be assessed only from various different perspectives namely political, economic social, international. So developing countries like India have been indulging in various kinds of RTAs, though the reason might be either political or purely economical. The problem however is, that absence of either of the factors cannot be determinative test to gauge the efficiency of RTAs.

¹¹ RTA: A CRITICAL ANALYSIS Regional trade agreements: Blessing or burden? Caroline Freund, Emanuel Ornelas 02 June 2010

¹² Hilpod, P. (2003). Regional Integration According to Article XXIV:GATT. Max Planck Yearbook of United Nation's Law, 7, 219-260. Retrieved April 19, 2017

¹³ *ibid*

So say if a particular agreement is not economically fruitful does not necessarily mean that RTA have failed since there might be political justifications for the same or that it might simply be a strategic conduct on the part of the countries. So overall it becomes very difficult to assess at this stage, the viability of the Regional Trading Agreements. For Example in case of India, which has been an ardent supporter of the multilateral agreements at the end of the day has too joined the RTA bandwagon. However “The latest Economic Survey (2010-11) expressed concern about the trade diverting effects of RTAs on India’s trade. It says that though these FTAs benefit India’s exports, in some cases the benefits of the partner countries are much greater, with net gains of incremental exports from India being small or negative.”¹⁴

However after a perusal of the above case, one can surely say that EC is certainly training to polarize the RTAs in such a manner so as to be beneficial to itself at the cost of other countries. And in this regard the WTO acting as a bulwark of Fair International Trade has certainly been noteworthy, because one must understand the conduct of EC would not be an isolated one, because soon there would be a high probability of chain reaction taking place amongst other member states, which might prove fatal for the soul of International Trade as a whole. The researcher feels that it is precisely here that *Immanuel Kant’s* concept of *Categorical Imperative* underlining the universal human action comes into picture.

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¹⁴ Regional trading agreements: Good or bad for India? (2011, March 22). Retrieved April 19, 2017, from <http://www.eastasiaforum.org/2011/03/22/regional-trading-agreements-good-or-bad-for-india/>



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