India’s Trade Policy Reform for a Competitive, Evolving Global Trade Regime

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I. Introduction

The coverage and content of international trade and trade policy have changed in major way over the last three decades, implying a need for more detailed and comprehensive approach to trade policy. International trade policy now includes goods, services, foreign direct investment (FDI), global value chains, and technologies. Consequently, trade related policies include border policies (tariffs and non-tariff policies) and inside-the-border policies (standards, regulatory mechanisms, investment policies, competition policies, IPRs, co-operation and coherence amongst interconnected sectors/standards, consistency of qualities, timeliness of policy and production response, and more). From the erstwhile focus on import protection and trade restrictive policies, the focus has increasingly shifted towards facilitation policies, e.g. the ease of doing business initiatives in India. Recognising the importance of competitiveness in international trade, and the link between both the domestic and external sectors, policies that enhance competitiveness of domestic enterprises and enable them to better connect with global value chains are a significant part of trade policy (for more detail, see Annex to this Note).

Two key parts of the framework: In this background, it is important to adopt a “supply chain approach” to policy-making and implementation, recognising both the positive or negative knock-on effects of actions at any point within the chain on other trade-related activities. This requires recognising the importance of facilitating operations so that the competitiveness of India’s traded products improves in a sustained manner.

An Integrated Approach: Greater market access abroad requires effective domestic policies, bilateral/plurilateral efforts relating to regulatory coherence or co-operation, seeking solutions to mutual trade related concerns with trade partners, participation in Free Trade Agreement and WTO, as well as monitoring it in a sustained manner to identify and address concerns that may arise when agreements are being implemented. Thus, mechanisms need to be developed to monitor the extent to which initial opportunities created are realised in practice, and strategies devised for improving co-ordination between our policy makers operating at home and abroad.

To give effect to such sustained co-ordination, we need to: Receive information from the Indian exporters on the key obstacles they face domestically and abroad; Address the obstacles on a priority basis in the domestic territory through our policy efforts; Address those abroad through discussions with our trading partners; Be ready to deal with similar requests from our trading partners to address the obstacles their exports face in accessing our markets.

Usually, ease of trading focuses on domestic policies, including in the area of facilitating the operation of domestic exporters and importers. Taking account of the overlap between trade and foreign policy, we see that four additional aspects need to be added or emphasised in comparison to conventional practice.

(a) Ease of trading must address conditions in both the domestic markets and foreign markets, which may be affected through our own trade and foreign policy, and by the trade policy adopted by governments abroad.

(b) Co-ordination is needed between the trade and foreign policy parts of our Government.

(c) In this background, the concept of "ease of trading" has to be seen in terms of creating additional trade opportunities through positive impact of our policy, or by limiting the likely adverse impact of policy on other nations (unless a strategic decision not to do so is taken).

The tools, involving considerable participation of diverse stakeholders, would include:

- Developing database on feedback of domestic exporters regarding the key obstacles faced by them in terms of domestic policy constraints, in addition to infrastructural or logistical problems. This tool would identify those issues which have the largest constraining impact on exports.
- Developing a basis for periodic discussions with major trade partners to address non-tariff barriers faced by Indian exporters in the foreign markets.
- Introducing due process, in terms of providing timely response to queries and documents submitted to conduct trade.
- Keeping track of steps taken by Indian policy makers to address concerns of foreign trade partners, and using that information in domestic and foreign policy initiatives to get more opportunities for India's exporters.

Some explanation of these aspects is provided below.

II. Current Policies and Reform in India, and Steps to Improve Trade Policy

The relevant policies suggested below would not need legislative changes. The effort would be more administrative in nature. It would involve some additional expenditure for the Government, but the amount is not likely to be large, as many initiatives require a change in focus and priority or an extension of ongoing efforts by the Government. The main focus would be on improving the effectiveness of processes and procedures through clarity of objectives and sequencing of priority tasks.

(a) **Trade Policy Should be Owned Not Only By Department Of Commerce But By Other Parts Of The Government As Well.** The large number of domestic and external policies that impact international trade show that all parts of the Government must own the policy initiatives, not just the Department of Commerce. Greater co-ordination of efforts is required for monitoring and implementing the actions needed to improve trade policy impact.

(b) **Due to the wide expanse of trade related policies, for best results an over-arching institution with high level or overarching oversight should be established, with access to the highest executive level.** Today, trade policy has become very complex and includes the areas covered by multiple Ministries and Departments. In addition, it's scope overlaps with foreign policy, industrial development and to some extent defense policy. This combined with its large significance in our economy (India’s ratio of trade in goods and services to GDP was 41% in 2017), shows that this is a strategic sector which requires participation of and oversight over several parts of the Government. The current model of Governance where Department of Commerce primarily or even alone has to conceptualize, analyze, and take forward key ideas and initiatives with others, is no longer an efficient or effective way or deal with large number of inter-related trade policy issues.

A Body which has oversight and co-ordination role for the issues involved, and the backing of the executive authority to monitor, discuss and implement initiatives, would be more effective. Such a Body could be headed by a Minister level person in the Prime Minister’s office, with the Prime Minister being periodically briefed on the issues and progress made.

(c) **Improvement in domestic policy to facilitate operations, improve cost-effectiveness of domestic producers, and enhance their competitiveness**. The focus on ease of doing business and the emphasis on facilitation and simplification of policy procedures and processes are aimed at this objective. Such domestic policy reforms help reduce operational costs, meet timelines for delivery, and create better conditions for domestic producers to connect with global value chains.

Indian policy makers have initiated a number of commendable projects or programmes to achieve these objectives. However, much more needs to be done to assess and improve the reforms carried out, and those that need to be implemented. In this regard, the policy steps may focus on clearly specified objectives, for example:

1. To enhance the impact of the National Trade Facilitation Action Plan, focus on areas with largest gaps in comparison to best performing nations (and not only what the WTO Agreement requires, as is the main effort in general).
2. Establish a trade facilitation index specific to exports in addition to the overall index, to provide a targeted basis for improving key policy areas affecting Indian exporters.
3. Develop operational collaborative links with relevant agencies abroad (both border-related agencies or those implementing inside-the-border policies) in countries that are India’s important export markets and have comparatively better performance in facilitating trade. Establish with them, targeted training programmes similar to the process in APEC where member countries learn from each other’s experience.
4. Establish a Common Data Base for Information Provided Electronically to Different Government Agencies Regulating Trade. This helps avoid duplication of information submitted to these different regulatory agencies and helps identify inconsistent policies.
5. Implement Due Process Procedures and Timelines for transparent and timely response (both notice period and for policy implementation) for Trade Policy Actions on Exports and Imports.

(d) **Establish a process to get feedback from Indian exporters to address major domestic policy-related obstacles faced by them**. Indian policy-makers have focused on an index of “ease of doing business” to improve governance. Another comprehensive and relevant information set could be developed by taking feedback from domestic exporters on specific obstacles that reduce their efficiency or competitiveness in exporting their products. Two separate categories of obstacles could be identified. One arising due to policy and another due to logistical or infrastructural shortcomings. The former would be relatively easier to address for the Government.

The feedback could focus on two categories of policy related steps. One would cover those areas where reform has already been implemented or is in the process of being implemented. The other would be those areas where reform is yet to be initiated. It is necessary to develop a digital feedback to monitor the actual experience of exporters with the domestic policies implemented to ease their operational conditions. This will help identify and address the reform that is implemented but subsequently new obstacles arise due to the manner in which reform is implemented. The data would also provide a basis to identify the most pressing areas which need policy attention. This feedback could be taken every six months.

(e) **Policy measures at the border.** Indian policy during 2014 to 2017 has focused on reducing tariffs for products which are considered as inputs, especially in the context of the "Make in India" programme.However, from 2018-19 Budget onwards, there is a greater focus on increasing tariffs. It is worth noting that such tariff increases tend to have an adverse effect on competitiveness, and also reverse the incentives provided earlier through reduced tariffs on inputs within a supply chain.

Reform of the basic customs duty (or tariff) regime should focus on simplified, rationalised and more predictable tariff system. This would include steps such as:

(i) Number of basic customs duty rates for industrial products to be reduced, i.e. 0, 5, 10, 15, 20 or 30 per cent.

(ii) Nuisance tariffs to be removed, e.g., tariffs below 5 % to be converted to zero duty.

(iii) Reduce the range of existing basic customs duties (from 0 to 30 % for industrial items).

(iv) This should be done in a phased manner, within a maximum period of up to five years.

(v) A process should begin to convert existing specific or complex tariffs into ad valorem tariffs. The tariff rates selected for them should in general be one of the non-zero customs duty rates being specified after the transition period mentioned above,

(vi) Further improve and enhance the institution that looks at contingent protection (anti-dumping, countervailing duties, safeguards measures). Give adequate staff, time for comments and address each point which diverges from the conclusion reached.

(vii) In certain very limited number of cases, particularly new technology products, basic customs duties may need to be increased to provide the domestic industry with time to improve from its nascent state and become better established and competitive. In such cases, the process should involve:

- An analysis of the need for such relief, including an assessment of the potential for growth and maturity, and a consideration of the views of user industries and other stakeholders (domestic and foreign).
- If customs duties are increased they should not be inconsistent with India's obligations under the WTO and other agreements.

- Within a maximum pre-specified period of up to ten years, the basic customs duty should be reduced to be brought back at least to the original level from which the increase has taken place; a lower level of duty than the original may also be considered after ten years.
- During this maximum pre-specified period, there should be a linear reduction of the duty each year.

Reform of the non-tariff regime should focus on making the policy transparent, stable and predictable. For this, due process procedures should be strictly emphasised with public notice, time for comments, and considered policy responses taking account of the comments received.

(f) **Improve effective implementation of contingent measures: anti-dumping, countervailing measures and safeguard measures**

India is among the largest users of anti-dumping measures in the world, imposing the highest number of duties in some years compared to any other nation in the world (see Table below).

Table 1. Major Countries Using Anti-Dumping Measures, period ending June 2017

Country	Anti-dumping Measures in Force, 30th June 2017 (definitive duties and price undertakings)	Initiations of new investigations, 1st July 2016 to 30th June 2017	Definitive (Provisional) Measures Against India, 1st July 2016 to 30th June 2017
United States	315	47	4 (2)
India	276	55	N. A.
EU	115	12	0 (0)
Brazil	176	12	1 (0)
Turkey	156	19	0 (0)
China	95	12	0 (0)
Mexico	66	6	1 (0)

Source: WTO (Annex C of file:///G:/MY%20DATA/Downloads/1193%20(1).pdf)

These investigations "are inherently complex, involving resource-intensive, information gathering exercises and massive calculations. Collecting and analysing the required data necessitates a large staff, with economic, legal, competition, financial analysis and language expertise."[1]They require both an assessment of dumping (subsidization) and injury investigation, which need different skills. In addition, the investigation has to follow certain

[1]Text quoted from Page 3 of: House of Commons International Trade Committee, 2018,"UK Trade Remedies Authority. Third Report of Session 2017–19",published on 10 May 2018, https://publications.parliament.uk/pa/cm201719/cmselect/cmintrade/743/743.pdf

set time periods for different phases of the investigation and set procedures which require attention to detail and legal requirements.

This implies significant number of skilled persons working in the Body, especially for countries which are large users of anti-dumping measures. The number of cases per investigator in the Indian authority is usually higher compared to those in other countries. For example, "DG Trade at the European Commission … have about 500 staff across all functions, of which just over 100 work on trade remedies."[2]In comparison the total staff of India's Directorate General of Trade Remedies is 23 persons[3], while Table 1 above shows a much larger case load for the Indian Body.

More staff would be required, together with further training for the staff to introduce efficient and predictable mechanism. Otherwise, both the quality and reputation of our Decisions (and thus of India's trade policy Body) would be adversely affected.

When increasing the staff, special attention should also be given to the credibility of injury investigations as well, which requires a process very different from either dumping or subsidisation calculations. Much more economic input is required for injury analysis. The most efficient step would be to establish a separate Body for injury analysis, similar to the United States International Trade Commission, with focused expertise relevant to the analysis. One option could be to use the Tariff Commission staff for this purpose, converting the Body into an India International Trade Commission.

(g) **Introduce good governance regulatory regime**: In addition to training and separation of dis-similar tasks, an essential aspect which introduces predictability and enhances the reputation with respect to India's trade policy work, would be to **introduce a system with good governance principles**, for example in terms of transparency, specified time lines which are respected, consultation with stakeholders, and addressing comments in a meaningful manner.[4] The objective would be to avoid ad-hoc decisions and make efforts to meet both the legal requirements as well as the operational practices similar to best managed remedy practices in the world.

(h) **Create better capabilities for producers to meet the standards related requirements for exports, and enable the Indian products to meet the conformity conditions in export markets**.

Indian policy-makers have put in considerable effort to streamline policies and establish roadmaps for improving quality and meeting relevant standards (including for connecting

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[2]Text quoted from Footnote 44 on Page 13 of: House of Commons International Trade Committee, 2018,"UK Trade Remedies Authority. Third Report of Session 2017–19",published on 10 May 2018, https://publications.parliament.uk/pa/cm201719/cmselect/cmintrade/743/743.pdf

[3]See http://www.dgtr.gov.in/about-us/whos-who

[4] For some more detail, see for instance, pages 17 and 19 of Harsha Vardhana Singh, 2017, "TPP and India. Lessons for Future Gain", Brookings India Working Paper 03, June 2017.

with global value chains). Much more coherent and dedicated effort however is needed to make substantive progress in this context including strategically to:

- establish links with other countries that could provide training and guidance,
- activate the domestic training institutions that are already established but not in active use,
- establish a common and combined programme to develop greater synergy between ongoing initiatives of the Industry Organisations, and
- have MOUs with standards and conformity organisations of other economies which are main markets for India.

(i) **Connect with "lead firms" in global value chains to help develop export hubs**: Global value chains are co-ordinated by "lead firms". They ensure consistency, quality and timeliness of response for different parts of the value chain. **It would be useful to establish discussion platforms as a hub for "lead firms" to interact with domestic firms, in particular SMEs, to catalyse and help develop capabilities and linkages with global value chains.** This process needs to be supported with relevant analytical and information base to help facilitate the interaction, so that lead firms can help identify possible opportunities and address any gaps.

A beginning in this context could be made by using large firms with FDI in India as part of the strategy to enable discussion between lead firms and domestic producers. The focus of FDI within India is at present usually on the domestic market. A discussion on what may be required to establish a global export hub should be initiated and the policy suggestions kept in mind within the context of the overall trade policy. A couple of projects could be initiated for selected sectors, to both guide the overall policy set as well as gain experience with the development of global value chains.

(j) **EstablishRegular Periodic Meetings With Our Major Trading Partners to Address Non-Tariff Barriers andto make Progress in Regulatory Co-operation/Coherence**. Usually non-tariff measures can be best addressed only after discussions with the trading partner. The process established may be ad hoc in nature[5], or one which involves regular periodic interaction to address existing and emerging NTBs.[6] Regular periodic discussions with major trade partners should be conducted using information that identifies specific list of products and information on existing non-tariff barriers affecting them. The relevant information should be based on feedback from domestic exporters and data available with international institutions that focus on these issues.

Normally, these interactions would be a two-way dialogue where the foreign Government too would seek similar action from us to address the concerns of its exporters. Such exchange could be planned and strategized, and solutions be developed taking account of the overlap between trade and foreign policy.

[5] Like Article 2.9.2 of the CPTPP signed recently between 11 countries.

[6] This could be similar to the understanding in Article 8.9 in CPTPP's chapter on Technical Barriers to Trade.

This process could be supplemented by Track 2 channels to conduct discussions between industry from India and another nation.

(k) **Use existing bilateral and multilateral (WTO) mechanisms to address trade policy barriers faced by our exporters.** Examples of this are processes in the WTO, particularly in the Committees on Technical Barriers to Trade (TBT), and on Sanitary and Phytosanitary Measures (SPS). India has notified a number of SPS measures considered specific trade concerns faced by its exporters but relatively few TBT measures. In contrast, the US and EU have notified many more of their own trade concerns to these Committees,[7] including a relatively large number of Indian TBT measures which they consider as specific trade concerns.

India needs to **become more active in using the existing system of WTO and its Committees**, especially those parts of the system where India could raise additional concerns regarding the policies of others.

Likewise, in the past ten years, India has been a special focus of the US in terms of identifying the areas where it has not notified India's policies the US considers to be in violation of WTO. To counter this, India should try and complete its notification in a timely manner. Also, it would be useful to find out which parts of the WTO Agreement the US or other major WTO Members have not yet complied with.

(l) **In a world where international trade regime is changing due to free trade agreements (FTAs), it is important for India to develop methods to participate in negotiations while discussing options of flexibilities that allow us to address India's sensitivities**. It is interesting to note that even a large economy like the United States has relied on flexibilities to have comfort with regard to its sensitive areas.[8] The methods include exceptionally long transition periods, and various types of safeguards. In addition, the WTO Agreement includes a number of other types of flexibilities. A list of these so-called flexibilities or exceptions should be compiled from new FTAs and WTO, to use options from the list or to develop new ideas based on those options. The basic idea is to recognise that over time, India would have to move its trade policy in a direction of the ongoing general change in the global trade regime, and some time period as well as pre-specified conditions for relief should be used as tools to more actively participate in trade negotiations.

(m) **Issues which could be addressed bilaterally should be identified and initiatives should begin even without an FTA.** We need not always focus on negotiating an FTA as a whole. We can identify parts of the FTA, such as regulatory co-operation, or discussion platforms to raise concerns about non-tariff barriers, which could be addressed

[7] See for example, sections 3.3.2 and 3.3.2 of the WTO Document G/TBT/40, dated 12 March 2018.

[8] See for example, pages 7, 15 to 18 and 25 to 26 of Harsha Vardhana Singh, 2017, "TPP and India. Lessons for Future Gain", Brookings India Working Paper 03, June 2017.

independently, instead of achieving them only within an FTA.[9] Supplementary efforts of this type should also be considered.

(n) **Engage more effectively in WTO, with constructive ideas to move the process ahead.** Instead of a defensive approach, India needs to be more pro-active. For instance, India could decide what openings in foreign markets are required to achieve the objectives of the Five-Year Foreign Trade Policy and develop strategies to achieve that aim. With proposals that combine both ambition and flexibilities, India could take a more active, solution-oriented approach in WTO. This approach could help develop forward looking ideas for each area, e.g. agriculture, non-agriculture market access (NAMA), and services negotiations. India could for instance propose a major vision for change which encompasses a significant advance in creating trade opportunities together with strengthening WTO disciplines.

One example of a major forward-looking idea would be a vision that there should be tariff free global trade. This could be backed by a proposal that trade should be duty free among the top 30 trading economies of the world, by sequentially reducing their tariffs to zero. Any other country willing to join negotiations would be allowed to do so.

The effort to reach tariff free world could be divided into four sequential parts. A list of all tariffs not bound at zero in WTO could be taken as a starting point. In the first instance, 25% of these tariff lines could be selected for negotiations to reduce their tariffs to zero. This movement to zero tariff should be phased in, with a period such as ten years for developed countries and 20 years for developing countries. The tariffs could be reduced annually in a linear manner. Within these 25% tariff lines selected, some lines may be allowed a transition period of 5 additional years. This negotiated result would include some flexibilities which would be available in times of difficulty as a safeguard mechanism when tariffs would not be reduced and under agreed conditions may be even allowed to be temporarily increased. Some pre-specified conditions may determine the limits of the flexibility negotiated. The agreement may include the possibility that the period of time when flexibilities are implemented may not be counted as part of the period for phasing out the tariffs.

Five years after the first set of tariff decreases are agreed, another set of 25% of original list of tariffs should be taken up for negotiations, to be similarly reduced to zero in a phased manner. When the second set of tariff reductions are agreed, the third set of 25% of the tariffs be similarly negotiated for tariff reduction to zero after five years. This process could mean that over about half a century we may have covered all tariffs which would be reduced to zero, giving a tariff-free world among the top 30 trading economies.

(o) **Improve credibility both as a negotiating partner and as a policy maker with predictable, reliable and simplified system of policies based on due process and good governance.** India is not the only country in WTO that has blocked negotiations to assert its

[9] For further details on this point, please see Harsha Vardhana Singh, 2017, op. cit.

position. Others such as the US, EU, China and even LDCs have at times blocked discussions in negotiations. However, India is the country which has been given the reputation of being a nation which blocks progress or is unwilling to participate in negotiations. Important reasons for this include a specific focus on India in this context and absence of effective engagement with a solution-oriented approach in negotiations by India. This affects the credibility of India as a forward-looking policy maker and willing to engage with others based on possible ways of seeking some common ground. This does not mean that there would not be issues which are sacrosanct for India, i.e. the so-called red-lines in any negotiations. The point is a willingness to seek approaches that do not cross the red-lines and yet could result in some progress in discussions and negotiations. The solutions could range from soft law (e.g. Guidelines, agreed principles) to hard law (legally binding agreements).

A forward-looking negotiating approach combined with flexibilities, as discussed above, would be a reasonable framework to improve credibility. Likewise, initiating bilateral discussions to address trade related concerns, and creating due process in trade policy so that ad hoc decisions are avoided, would also contribute to improving credibility and reliability of India's policy approach. Particularly important parts of due process are:

- A timely response to queries and timely processing of documents submitted for decision or further action;
- Providing reasonable time for comments to all stakeholders affected by a policy change, and then taking the policy decision after consideration of those comments.
- Careful evaluation of options before changing or terminating an existing medium or long-term international contract based on a foreign policy initiative by our senior leadership
  - Some foreign policy initiatives, including medium or long- term trade contracts are a consequence of a visit of our senior leaders. If such contracts are to be terminated or significantly changed, then action should be taken only after careful evaluation of alternative options. An example is to apply such a criteria for the contract with certain African suppliers to grow food items to be exported to India, an initiative that resulted from the visit of our PM to some African countries.
  - Similarly, if our senior leaders have publicly stated a position abroad that relates to an overlap between trade and foreign policy, and if domestic action is taken contrary to that statement, such actions must be introduced with due explanation and usually as a temporary deviation from the stated position by our leaders.