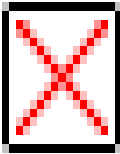


Trade with China - Tread Cautiously

SEPTEMBER 07, 2020

By S Murugappan, Advocate



MUCH

water has flowed down the river after Galwan Valley clashes. Hundreds of Chinese apps have been banned. Additional conditions have been imposed in respect of FDI from countries sharing the land borders. Participation by Chinese companies in government tenders has been peppered with security clearance conditions. Measures to prescribe quality standards for more than 350 products for their import into the country are in the offing. In respect of toys, quality standards have been implemented from 1st September, 2020.

How far will these attempts be able to yield fruitful results without adversely impacting our economy?

At present, India depends hugely on China for substantial portion of its imports. A meme is doing rounds in social media to the effect that when a householder removes all Chinese products from his living room, the room will be completely empty. Such is the penetration of Chinese goods into India. Of its total imports during 2018 - 19, 13.7% constitute imports from China. On the other hand exports to China from India forms 5.1% of its total exports. China is India's second largest trading partner. During the financial year 2019, imports from China were to the tune of \$ 70.31 billion and exports to China were only to the tune of \$ 16.75 billion and thus there was a trade deficit to the extent of \$ 53.56 billion. At present, it is lopsided in China's favour. From smartphones to shirt buttons and from solar panels to sewing needles, a large number of products of multifarious nature are procured from China. The Chinese influence is all pervasive in electronic sector, in automobile sector, in pharma industries, in garment industry, and in medical equipment and solar projects. In respect of imports of television sets, smart phones, watches and the laptops alone, China's share in the Indian market is, at present, around 71%.

China offers raw materials, intermediates, components as well as finished goods at comparatively cheaper prices and this is one of the reasons for a large number of anti-dumping duty investigations by India against Chinese suppliers. Even with regard to quality, while there are complaints about consumer goods' quality, the same cannot be said about supply of inputs or raw materials to industries. Procuring these from other sources in other countries can mean higher costs. Therefore any action to curtail Chinese imports has to be taken cautiously. Any knee-jerk response will only make procurement of necessary materials for the Indian industries difficult and will lead to delays in sourcing materials and in possible cost escalations, thus, ultimately having an adverse impact on the manufacturing sector. Of course, consumer goods imports will be on a different footing.

Various measures to curb imports from China are being considered by the Indian government. These include increasing the rate of duty for Chinese origin goods, fixing a single port of entry, imposing anti-dumping duty, restricting free trade agreement concessions, imposing quantity monitoring mechanisms, introducing licensing requirements and prescribing quality standards etc.

While a few of these measures, such as prescribing quality standards, can be sustained, the rest of them will run contrary to WTO rules. GATT agreements prescribe free trade, removal of quantitative restrictions, removal of licensing restrictions etc. There are also binding maximum duty rates. These rules can be relaxed in exceptional cases only, by enabling imposition of restrictions but a particular country cannot be singled out for restricting free trade. Additional duties cannot be levied over and above the bound rates of duties agreed upon. In one typical case, the US has complained to WTO and has asked for consultation with regard to the additional duties imposed by India on US origin goods in June 2018 and the issue is pending before the WTO panel for a decision. Recently, when India imposed 20% duties on certain information technology products including cellular phones, gateway equipment etc., Taiwan has dragged India to the WTO and has asked for constitution of a panel for dispute resolution holding that India cannot levy any duty on information and communication technology products as per the agreements among WTO members in this regard. The European Union, Singapore, Canada and Japan have joined as third parties in this dispute.

Levy of anti-dumping duty on Chinese goods should stand the scrutiny of anti-dumping duty legislations and any levy through fast track decisions, as proposed to be made, will lead to challenges regarding their validity in courts of law. Thus they can only create uncertainties among importers on the quantum of duties payable on their imports and their impact on the cost of manufacture. Increasing the rates of duties on intermediates, raw materials and components required by industries will ultimately, result only in increasing the cost of manufacture of the finished goods.

On 30th July 2020 a notification bearing No. [22/2015-2020](#)

was issued by DGFT amending the import policy for import of colour television sets of almost all sizes from 'free' to 'restricted'. This has made well-known brands of colour television sets to sit up and think of applying for licences to import them. The net effect will be that still the television sets from abroad will find their way into the Indian market, but with bottlenecks in between and most probably with a higher price tag. Ultimately, all this burden will descend on the consumers' heads.

Article XI of GATT agreement 1994 seeks to promote free trade among participating member countries. Sub-clause 1 of this Article reads as follows. "No provisions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party"

Thus the restrictions imposed on import of colour television sets run contrary to the above Article of GATT agreement. India being a signatory to the GATT agreement, is under obligation to honour the same. In the case of ***Commissioner of Customs vs GM Exports - 2015-TIOL-209-SC-CUS***,

the Supreme Court of India has referred to Article 51 (c) of the Constitution of India which postulates that the State shall endeavour to foster respect for international law and treaty obligations and has quoted with approval the decision of the House of Lords in the case of ***Garland vs British Rail Engineering Ltd ({1982} 2 All ER 402)***

to the effect that not only the local laws are required to carry out treaty obligations but they should also not be inconsistent with the terms of a treaty.

Free trade among countries seeks to promote fair competition and availability of goods at fair prices to any one in any corner of the world so that no human being is denied the fruits of scientific advancement and technological innovations taking place elsewhere in the world. The fact that one lives in a particular country with borders cannot constitute a cause for denying him or her access to goods made elsewhere, unless there are exceptional circumstances such as shortage, security threats and health hazards.

Already China has voiced concerns that India should not create artificial barriers which violate WTO rules and which ultimately hurt India's interests.

Apart from the maintainability of such measures, one should also think of possible retaliatory measures by China. Out of its total exports, only 3.1% is to India from China. Thus the proposed curbs by India on Chinese goods will not have any major and immediate impact on China. On the other hand if China chooses to retaliate with curbs on Indian exports to China, then, it may have a disastrous effect on India's export performance in these days of pandemic. During the years 2016 and 2017, China boycotted South Korean goods for the reason that South Korea allowed deployment of US missile system in South Korean soil. Similarly, in 2012, China placed curbs on banana imports from Philippines over a dispute on Scarborough Shoal in South China Sea. Therefore, without adopting sufficient precautionary measures, taking on China can only hurt Indian industries and Indian exporters.

Hence, in this context, any response by India to curb imports from China has to be measured as well as a staggered. They have to be taken after detailed study and analysis of the effect of such measures on the manufacturing sector as well as exporters. While localisation is to be encouraged and import substitution provided with incentives, they should form part of long-term measures. Achieving self-reliance takes a long time. It has to be a multi-pronged strategy to encourage industries to look for alternative sources of supply at competitive prices and also

encourage investment for local manufacturing of critical components, raw materials and finished goods. Safety and quality are serious concerns in respect of local manufacturing and these need to be addressed effectively. Recently, there were instances of hospitals returning locally made ventilators on account of sub-standard quality.

One should remember that when stringent quality standards for imported goods are welcome, the same yardstick needs to be followed for the locally manufactured goods. For example, there are thousands of toys manufacturers in unorganised sector in India producing sharp edged toys and many a times they are coloured with toxic dyes and are beyond the reach of BIS. Stoppage of the import of unsafe toys should be synchronised with increased production of quality toys locally at affordable prices. Otherwise, people will end up paying higher prices for sub-standard toys because of shortage in availability of sufficient number of toys. This equally applies to a broad spectrum of various other products.

All these calls for moving cautiously and avoiding a slippery path while taking on China which, for now, is the **big brother**.

[The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)