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The Centre for WTO Studies was set up by the Department of Commerce, Government of India in 1999. The intent was to create an independent think tank with interest in trade in general and the WTO in particular. The Centre has been a part of the Indian Institute of Foreign Trade since November 2002. The Centre provides research and analytical support, and allied inputs to the Government for WTO and other trade negotiations. The Centre also has its own body of publications, and conducts outreach and capacity building programmes by organizing seminars, workshops, and subject specific meetings to disseminate its work, create awareness on recent trade topics and build consensus between stakeholders and policy makers.

Trump's new threat: Will pull US out of WTO if it doesn't 'shape up'

John Micklethwait, Margaret Talev and Jennifer Jacobs, Bloomberg, Live Mint

August 31, 2018: President Donald Trump said he would pull out of the World Trade Organization (WTO) if it doesn't treat the US better, targeting a cornerstone of the international trading system.

"If they don't shape up, I would withdraw from the WTO," Trump said Thursday in an Oval Office interview with Bloomberg News. Trump said the agreement establishing the body "was the single worst trade deal ever made."

A US withdrawal from the WTO potentially would be far more significant for the global economy than even Trump's growing trade war with China, undermining the post-World War II system that the US helped build.

Trump said last month that the US is at a big disadvantage from being treated "very badly" by the WTO for many years and that the Geneva-based body needs to "change their ways."

US Trade Representative Robert Lighthizer has said allowing China into the WTO in 2001 was a mistake. He has long called for the US to take a more aggressive approach to the WTO, arguing that it was incapable of dealing with a non-market economy such as China.

Lighthizer has accused the WTO dispute-settlement system of interfering with US sovereignty, particularly on anti-dumping cases. The US has been blocking the appointment of judges to the WTO's appeals body, raising the possibility that it could cease to function in the coming years.

In the Oval Office interview, Trump said at the WTO "we rarely won a lawsuit except for last year."

"In the last year, we're starting to win a lot," he added. "You know why? Because they know if we don't, I'm out of there."

For all of his complaints about the WTO, Trump's administration has continued to file cases against other members. Earlier this week it launched a case against Russian duties on US products that it argues are illegal.

Countries that bring complaints to the WTO tend to prevail and defendants in trade disputes lose.

But WTO data also shows that the US does slightly better than the WTO average in both cases it brings and that are brought against it, said Simon Lester, a trade analyst at the Cato Institute, a Washington policy group that favours more open international trade.

Of the 54 cases brought by the US over the life of the WTO, Washington won at least one finding in its favour in 49, or 91%, Lester said. Of the 80 cases brought against it, a WTO panel had ruled against it in at least one aspect in 69 cases, or 86% of the time.

The Trump administration has taken his complaints a step further by arguing that the WTO's dispute settlement system is broken and in need of a major overhaul.

The EU has been leading an effort to propose reforms to try and defuse the conflict. Officials from the EU and Japan visited Washington last week to discuss potential changes as well as joint efforts to take on China at the WTO.

Since World War II, successive US presidents have led efforts to establish and strengthen global trading rules, arguing that they would bring stability to the world economy.

The WTO was created in 1994 as part of a US-led effort by major economies to create a forum for resolving trade disputes.

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US blocks WTO judge reappointment amid looming trade crisis

Jan Dahinten, Bloomberg, Live Mint

Zurich, August 27, 2018: Donald Trump's administration will block the reappointment of a World Trade Organization appellate member, thus reducing the number of sitting judges to three, the minimum needed for the appeals body to function.

The US has been blocking appointments to the institution in protest of what it sees as abuses of its trade-dispute settlement authority. The expected rejection of the reappointment of Shree Baboo Chekitan Servansing of Mauritius comes as his first four-year term expires at the end of next month.

"The United States has determined that it is not prepared to support the reappointment of Mr. Servansing to the appellate body," Dennis Shea, the Deputy US Trade Representative and permanent US Representative to the WTO, said in a statement to the Geneva-based organization. "This position is no reflection on any one individual but reflects our principled concerns."

Since August 2017, the US has blocked all new nominees to the WTO appellate body, which has the final say in upholding, modifying or reversing WTO rulings that often affect some of the world's biggest companies and billions of dollars in commerce. The seven-member body is operating with four active members, which is just one more than the three-member minimum required to sign off on WTO appellate rulings.

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WTO ruling on safeguard duty a shot in arm for US

D. Ravi Kant, Live Mint

August 20, 2018: A controversial ruling by the highest court for global trade disputes on 15 August is going to come in handy for the US to justify its unilateral crowbar trade measures slapped on India, China, Canada, the European Union, Mexico and Norway, among others, legal analysts said.

In a ruling by the World Trade Organization's highest court for trade disputes, the appellate body (AB), on Thursday, a three-member bench affirmed that claims against Indonesia under the WTO agreement on safeguards should be dismissed on grounds that the duty was not a safeguard measure.

The three parties involved in the dispute—the complainants, Taipei and Vietnam, and the defendant Indonesia—had argued that the duty imposed by Jakarta on iron and steel was a safeguard measure. "But the appellate body rejected this consensus position," according to Brenden McGivern, a former Canadian dispute settlement official and now an attorney on trade disputes for White and Case LLP, in Geneva.

The ruling was "unusual", given that the appellate body rejected the concurring views of the complaining parties (Taipei and Vietnam) and the defending party, on the critical threshold issue of whether the measure was a safeguard, he said.

WTO members are entitled to impose safeguard measures to curb sudden and unforeseen surges in imports that cause "serious injury to a member's domestic industry". Members subjected to safeguard duties can challenge them if the safeguard-imposing country fails to follow the conditions set out in the WTO's agreement on safeguards.

In the ruling, three members of the appellate body, Hong Zhao, Shree Baboo Chekitan Servansing, and Peter Van den Bossche, concurred with the findings of an earlier panel. “Having reviewed the design, structure, and expected operation of the measure (the duties imposed by Indonesia on steel items from Taipei and Vietnam), together with all the relevant facts and arguments on record, we find that this measure does not present the constituent features of a safeguard measure for purposes of applicability of the WTO safeguard disciplines,” the three judges observed.

In the proceedings before the judges, India along with China, the EU, Japan, Korea, Australia, Russia, the US, and Ukraine had participated as third parties. India, China, the EU, Korea, and Japan said the measures imposed by Indonesia must be treated as safeguard measures.

“The ruling has come as a huge surprise for us because the appellate body’s reasoning is flawed and was aimed at helping the US to argue that Section 232 duties on steel and aluminium were acceptable,” argued a trade diplomat who participated in the proceedings. “Clearly, the WTO’s AB has changed its stance to satisfy the US and this has serious repercussions for the trade law and jurisprudence.”

The US has justified the punitive duties of 20% on steel and 10% on aluminium under Section 232, which deals with national security provisions as “sovereign determinations” that fall under Article 21 of the GATT (General Agreement on Tariffs and Trade) 1994.

The US repeatedly dismissed complaints by India, China, Canada, the EU, Mexico, and Norway that the punitive duties imposed by the Trump administration constituted a “disguised safeguard” measure.

Consequently, the six countries maintained before a dispute settlement panel proceedings last month that they were justified to impose retaliatory measures. The US, however, disagreed with the arguments by the six countries. US trade representative, ambassador Robert Lighthizer, had argued that “the US has not taken a safeguard measure”.

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Malaysia takes India to WTO's safeguard committee on solar duty

The Economic Times

August 30, 2018: Malaysia has sought consultations with India under the WTO's safeguard agreement against New Delhi's decision to impose import duty on solar cells, the World Trade Organisation (WTO) said today.

The consultations, however, don't fall under the WTO's dispute settlement system.

Earlier this month, India had imposed safeguard duty of up to 25 per cent on solar cells imports from China and Malaysia for two years to protect domestic players from steep rise in inbound shipments.

However, on August 13, the finance ministry stated that safeguard duty will not be insisted upon on import of solar cells for the "time being" in deference to interim directions passed by the High Court of Orissa.

Malaysia has stated that it has a substantial interest as an exporter of the product.

"The aim of the consultations is to views and seek clarification regarding the proposed measures and reaching an understanding on ways to achieve the objectives" set out in an article of the WTO Agreement on Safeguards, the WTO said in a communication.

"Malaysia seeks to hold consultations as soon as possible with the participation of representatives from India investigating authorities. Malaysia looks forward to receiving India's response to this request," it added.

According to an expert, seeking consultations to the safeguard committee is a way to inform other countries that they are not fulfilling their commitments under the WTO rules.

Solar cells, electrical devices that convert sunlight directly into electricity, are imported primarily from China, Malaysia, Singapore and Taiwan.

Imports of the cells from these countries account for more than 90 per cent of the total inbound shipments in the country.

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EU, 11 others back US complaint against India's export subsidies at WTO

Kirtika Suneja, The Economic Times

August 20, 2018: US has pegged the subsidies provided by India to its exporters at $7 billion.

The European Union, Russia, China, Japan and eight other countries have backed the US complaint against India’s export promotion schemes at the World Trade Organisation (WTO).

These countries have joined the dispute as third parties. The US has challenged almost all of India’s export programmes at the WTO saying they will harm its workers, citing the Agreement on Subsidies and Countervailing Measures (ASCM). It pegged the subsidies at $7 bn.

“The number of third parties in the issue is a matter of concern and has serious implications. They are backing the complainant,” said a person aware of the development.

Negotiators had expected other countries to join the dispute when it began in March. Former commerce secretary Rita Teaotia has said there was a “real” possibility that India could lose the trade dispute.

“It is a much larger issue now with the number of countries targeting India,” the person added. Brazil, Canada, China, Egypt, the EU, Japan, Kazakhstan, Korea, Russia, Sri Lanka, Taiwan and Thailand have become third parties in the dispute.

“All these are interested parties because some countries have market access issues with us while others have problems related to RCEP,” said a Delhi-based trade expert.

China, Korea, Japan and Thailand are members of the Regional Comprehensive Economic Partnership (RCEP) trade agreement along with India and have been pressuring it for deep duty cuts on at least 90 per cent of the traded goods. “Sri Lanka wants to benefit from us losing our export incentives because it competes with us in many exports,” the expert explained.

The WTO has set up a panel under the Philippines’ Jose Antonio S Buencamino as the two sides have failed to find a mutually agreed solution through consultations. The panel’s other members are South Africa’s Leora Blumberg and Switzerland’s Serge Pannatier.

“There is pressure on India to prepare its defence because the setting up of the panel is an important step forward,” said a negotiator. The panel has to circulate its report to all WTO members within 90 days of the date of its composition and the establishment of its terms of reference.

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Why do India and US disagree on farm subsidies?

Live Mint, Dipti Jain

Bengaluru, August 16, 2018: Farm subsidies seem to have become a major flashpoint in the escalating global trade war. In May, India came under attack from the US for its minimum support price (MSP) policy for foodgrain. India hit back, along with China, to demand that developed nations give up the bulk of their farm subsidies from 2019 onwards, escalating a demand that both countries had made in 2017.

The roots of the disagreement between India and the US lie in the way farm support is calculated and classified under WTO (World Trade Organization) rules, a *Mint* analysis shows. The US has alleged that India had been grossly under-reporting the subsidy it provides for wheat and rice production.

In its filings, India claimed that the market price support (MPS) it provided to rice was 5.45% of its value of production in 2013-14, well below the prescribed limit of 10%. MPS is the gap between MSP, at which the government procures rice and some other crops, and the "external reference price" (ERP), set by WTO at 1986-89 prices.

The US has alleged that India's MPS to rice in 2013-14 was much higher at 77% of production value. Similarly, the US alleged that India has been reporting a negative MPS for wheat, whereas the actual MPS is around 65% of production value. There are two main reasons behind the discrepancy between the calculations by India and the US: The choice of the dollar-rupee exchange rates and the choice of quantity considered. Adjusting for these two parameters, we find that there was not much difference between the filings of the two countries.

One big problem with the US calculation is that it uses total production of rice and wheat rather than the quantity procured. Adjusting for that alone, brings down its claims substantially, since less than half of rice and wheat produced is procured by the government.

The other issue is the use of exchange rates. India reports its subsidy numbers in dollar terms.

To illustrate, MSP of around ₹20,000 per tonne for rice for the marketing year 2013-14 is reported as $325 per tonne, using an average exchange rate of ₹60.50 per dollar. The ERP set by WTO for rice is $262.51 per tonne. Thus, the subsidy provided to its rice growers is around $62 per tonne or ₹3,751 per tonne.

The US converts the external price to rupees rather than converting MSP to dollars. The US converted the ERP ($262.51 per tonne) to ₹2,346.67 per tonne, using the 1986-89 exchange rate (the period when the ERP was set) of ₹13.4 per dollar.

Subtracting this number from India's MSP, the per-tonne subsidy for rice amounts to about ₹17,300 for 2013-14—much higher than India' figure.

The obvious flaw with the US calculations is that it was using the 1986-89 exchange rate to determine the ERP in rupee terms. The rupee has consistently depreciated since then, and an outdated exchange rate leads to suppression of the ERP and over-estimation of the amount of India's subsidy. "India notifies its domestic support to the WTO in US dollars," India said in a response at the WTO.

"The AoA (agreement on agriculture) does not place a binding obligation on India to notify in a particular currency. It only requires taking into account the constituent data and methodology as in Part IV of a Member's Schedule, which India has done. In order to provide comparable estimates, India has been notifying its domestic support in US dollars since 1995-1996. India has followed a consistent approach in currency used while notifying its domestic support notifications."

The attack on India's MSP policy also appears unwarranted given that India's support prices for rice and wheat have been lower than the global prices in recent years.

"India is a huge market and an influential WTO member and, hence, its MSP policy is being targeted," said Sachin Sharma, associate professor at the Centre for WTO studies at the Indian Institute of Foreign Trade (IIFT).

The attack on India may also serve to deflect attention from the enormous subsidy packages that developed markets such as the US and EU offer. India's total farm support is far lower than that offered by the EU and the US.

While current WTO rules frown upon product-specific support to producers, they do not discourage 'green box' subsidies, which provide unconditional benefits to farmers. India's green box subsidies constituted around 40% of the its total farm subsidies in 2016-17 as opposed to the US's 88% (2015) and the EU's 85% (2014-15).

Developing countries such as India have long opposed this distinction between green box subsidies and uncapped subsidies since green box subsidies also distort global trade by making agricultural production cheaper in developed markets.

It remains to be seen whether Asia's rising powers can win this fight at the WTO at a time when the relevance of the multilateral body is being questioned.

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India makes final plea to avail GSP benefits

Asit Ranjan Mishra, Live Mint

Geneva, August 6, 2018: India has made a final plea for continuation of the generalized system of preferences (GSP) benefits currently under review before the US Trade Representative (USTR), arguing that the cheaper imports of intermediary products from India enable availability of cost-effective and price-competitive inputs to the US downstream industries and helps the US firms remain domestically and internationally competitive.

The GSP programme allows duty-free entry of 1,937 products worth $5.6 billion from India into the US, benefitting exporters of textiles, engineering, gems and jewellery and chemical products.

In its initial submission during the hearing, India had threatened to drag the US to the dispute settlement mechanism of the WTO, claiming withdrawal of the GSP benefits would be "discriminatory, arbitrary and detrimental" to its developmental needs.

In its post-hearing submission, while answering the queries raised by the USTR GSP sub-committee and other US industry lobbies, India has maintained that GSP benefits are integral and catalytic in promoting the pace and sequence of domestic and external economic reforms in India. "It needs hardly be over-emphasized that the products on which India receive GSP benefits belong to sectors which employ several thousands of men and women, especially in rural areas through micro, small and medium enterprises. Furthermore, India's GSP exports represent a minuscule part of the total imports of the United States and do not pose any threat or disruption to the US industry," it said. *Mint* has reviewed a copy of India's final submission before the USTR.

While the US has been trying to leverage the GSP review to gain more market access in India, India has at least through the written submission, made it clear that the benefits should be "unconditional and not contingent upon reciprocal market access for goods, services or other emerging areas of trade."

However, India on Saturday deferred till 18 September tit-for-tat retaliatory tariffs against the 29 US products worth $235 million intended to counter a US move to unilaterally raise import duties on Indian steel and aluminium products. India's move is seen as a conciliatory measure pending the GSP review and the upcoming "2+2" dialogue among their foreign and defence ministers on 6 September of the two countries.

US supermarket major Walmart in its submission to the USTR has come out in support of continuation of GSP programme for India, holding that it provides significant benefits to Walmart customers and US suppliers by reducing costs. "We support the administration's efforts to work with GSP countries to concretely address market access and other GSP eligibility concerns but caution against undermining or weakening the significant policy and development benefits embodied in the GSP programme. Revoking GSP-eligibility from GSP countries risks undermining US interests and benefits from GSP while jeopardizing the significant development opportunities GSP has created for poorer countries and workers around the world," it added.

The USTR in April announced that it is reviewing the GSP eligibility of India, along with Indonesia and Kazakhstan, after the US dairy industry and the US medical device industry requested a review of India's GSP benefits, given India's alleged trade barriers affecting US exports in these sectors. Total US imports under GSP in 2017 was $21.2 billion, of which India was the biggest beneficiary with $5.6 billion, followed by Thailand ($4.2 billion) and Brazil ($2.5 billion).

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As US-China trade war grows, Europe tries to avoid crisis

Bryce Baschuk, Bloomberg, Live Mint

Geneva, August 2, 2018: In the shadow of an escalating trade war, momentum is picking up to protect the World Trade Organization from turning irrelevant.

The European Union will host trade ministers from the US and Japan next month in Brussels, according to two officials with knowledge of the meeting. The gathering will be part of an effort to address China's trade practices in a way that does not marginalise the WTO, said the officials, who asked not to be identified because preparations are private. The meeting will precede about 10 high-level confabs around the globe over the next year aimed at calming trade tensions.

The push to reform the Geneva-based WTO has gained urgency since Donald Trump became president, with his administration showing open disdain for the multilateral trade body and Trump himself saying "The WTO is unfair to US". The EU is working on a proposal to amend the composition of the WTO as well as address about a half dozen American complaints.

"The situation is serious," WTO Director-General Roberto Azevedo told reporters last month in Geneva. "There are many leaders in the world that already understand that we need to have negotiations, that we need to sit down and talk, that we need to find solutions."

The Trump administration, arguing that the WTO is incapable of addressing the problems created by China's rapid economic ascent, has resorted to unilateral tariffs on $50 billion worth of Chinese goods. Beijing has retaliated in kind with duties on $50 billion worth of US goods and pledged to respond if Trump follows through with his threat of levies on an additional $200 billion of Chinese products. Washington's decision to side-step the WTO has raised concern that the trade body could slide into obsolescence if steps aren't taken to shore it up.

In May, a day after President Emmanuel Macron proposed negotiations to reform the WTO, the US, the EU and Japan met in Paris and reiterated their concern with some non-market-oriented measure of some partners. The trilateral group issued a joint statement citing the need to address "the trade-distorting policies of third countries."

In addition to the Brussels meeting next month, the EU will soon unveil a plan to reform the WTO, seeking to make negotiations more flexible, reduce trade costs, make the dispute-settlement system more transparent, and to strengthen the trade body itself, according to a draft proposal seen by Bloomberg.

Reforming the WTO as well as addressing Chinese trade abuses will be discussed at a host of meetings around the world over the next year, including an October gathering in Ottawa of about a dozen trade ministers. The topics will also be raised at a high-level Asia-Pacific Economic Cooperation meeting in Papua New Guinea in November; in December, leaders from the Group of 20 economies will bring up reform in Buenos Aires; French President Emmanuel Macron proposed discussions this fall in Paris; and there will be a ministerial meeting on the sidelines of the World Economic Forum in Davos.

"The United States is gratified that an increasing number of WTO members appear to be heeding our call on the urgent need to make the WTO work better," Dennis Shea, the U.S. Ambassador and Permanent Representative to the WTO, said in an emailed statement.

The push comes as Trump announced on Monday that the US would terminate the North American Free Trade Agreement and sign a new trade accord with Mexico. The move could potentially leave Canada out of the trading bloc. As tensions between the US and China escalate, threats to the WTO are growing larger, making it difficult for its members to delay reforms any longer.

Since August 2017, the U.S. has blocked nominees to the WTO's appellate body saying it has overstepped its mandate. In October, the seven-member panel will operate with only three remaining members, which is the minimum number of panelists required to sign off on appeals cases. If the US continues its hold, the body will be paralysed in late 2019 because it won't have the three panelists required to sign off on rulings.

"We don't necessarily have a due date but we all know that we need to get the process right," Mexico's Undersecretary of Foreign Trade Juan Carlos Baker told Bloomberg Law during a press briefing in Geneva. "And for that the sooner we start the better."

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India defers tit-for-tat retaliatory tariffs against US goods by 45 days

Asit Ranjan Mishra, Live Mint

Geneva, August 2, 2018: India has decided to defer by 45 days the tit-for-tat retaliatory tariffs against 29 American products worth $235 million which were supposed to come into effect on Saturday to counter a US move to unilaterally raise import duties on Indian steel and aluminium products.

"We are extending the implementation of the retaliatory tariffs by 45 days as both sides are currently engaged in resolving the matter," an Indian trade ministry official said under condition of anonymity.

The move comes at a time when the US on Monday elevated India's status by placing it in the Strategic Trade Authorization (STA) Tier 1 list—comparable to North Atlantic Treaty Organization (Nato) allies—that eases export of high-tech defence items to it without individual licenses.

On Wednesday, the US Congress amended an Act that will provide waiver to India and other allies from sanctions if they conduct strategic defence purchases from Russia.

India and the US will also hold the much delayed first “2+2” dialogue among their foreign and defence ministers on 6 September when US secretary of state Mike Pompeo and defence secretary James Mattis are scheduled to visit India for the talks.

India had asked the US government to exempt it from the 25% steel tariff and 10% aluminium tariff imposed by US President Donald Trump on grounds of national security. It claimed that steel and aluminium exports worth $1.2 billion to the US have been impacted after the tariff hike, with the US collecting additional tariffs worth $241 million. The US rejected India’s request after which India dragged the US to the dispute settlement mechanism in the World Trade Organization (WTO) over the matter. Other countries that have raised the issue at the WTO include China, European Union, Canada, Switzerland, Russia, Norway and Mexico.

India on 20 June notified that it will hike tariffs on 29 US products, including almonds, apples and phosphoric acid worth $10.6 billion imports in retaliation to the steel and aluminium tariff hikes by the US. India did not impose the tariffs immediately, unlike other major trading parters of the US as the two countries were engaged in bilateral negotiations to finalize a trade package to douse tensions. However, after two rounds of talks, both sides have not been able to make much headway.

Trump has often pointed to the bilateral trade surplus India enjoys, claiming that it prohibits US exports through higher tariffs. He has often raised the issue of higher tariffs imposed by India on Harley-Davidson motorcycles and has threatened to slap reciprocal taxes on Indian bikes. The US has challenged almost all of India’s export subsidies at WTO. It is also reviewing the generalized system of preferences programme, under which India exports goods worth $5.6 billion to the US at preferential rates.

Deputy US trade representative Jeffrey Gerrish on 13 July said India’s announcement of retaliatory tariff measures against the US was “not appropriate”.

The US on 16 July challenged tariff retaliation moves by China, the European Union, Canada, Mexico and Turkey at WTO. However, it avoided dragging India into the dispute at the global trade body as the country’s retaliatory tariffs have not yet come into force.

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China warns US over additional tariffs on $200 billion of goods

D. Ravi Kanth, Live Mint

Geneva, August 2, 2018: China said on Thursday it will hit back with “counter-measures” if US President Donald Trump imposes additional tariffs of 25% on $200 billion worth of Chinese goods, a clear indication of worsening global trade war between the world’s two largest economies, according to people familiar with the development.

US trade representative Robert Lighthizer had said on Wednesday that he had secured the green signal from Trump to consider raising the tariffs from the earlier planned 10% to 25% under an ongoing Section 301 targeting Chinese goods on grounds of alleged theft and forced transfer of technologies from US companies.

“The president directed that I consider increasing the proposed level of the additional duty from 10% to 25%,” Lighthizer had said.

The US is upset that China chose to adopt a retaliatory strategy in a tit-for-tat response. “Regrettably, instead of changing its harmful behaviour, China has illegally retaliated against US workers, farmers, ranchers and business,” Lighthizer argued.

“What Washington ultimately wants is for China to come back to the negotiating table,” according to an article in *Washington Trade Daily* of 2 August.

“Discussions are underway now with Beijing to see whether conditions are right to hold fruitful negotiations,” the report said.

China upped the ante on Thursday in response to the Trump administration’s latest move.

“As regards the threat by the US to upgrade the trade war, China is fully prepared and will introduce counter-measures to defend the country’s dignity and the interests of the Chinese people, and defend free trade and the multilateral system,” China’s commerce ministry said on 2 August.

In measured and balanced responses, China made two points. “First, we advise the US side to correct its attitude and not to try to engage in blackmail,” China’s foreign ministry spokesperson Geng Shuang said on Thursday.

“Second, we advise the US to return to reason and not to act in anger, which will ultimately hurt themselves,” the Chinese spokesperson maintained, leaving the door open for fresh discussions.

China’s vice-trade minister Wang Shouwen said last month in Geneva that “for any talks to be successful, no party should point a gun at the other party.”

“For any talks to be useful every party needs to keep its word,” he said on 8 July.

The US is also simultaneously stepping up the heat against China on a separate front by forming a coalition of the US, the European Union, Japan, and several other countries of the global north at the World Trade Organization (WTO).

Lighthizer claimed that Washington has joined forces with like-minded partners around the world “to address unfair trade practices such as forced technology transfer and intellectual property theft, and we remain ready to engage with China in negotiations that could resolve these and other problems detailed in our Section 301 report”.

China has adopted a twin-track strategy to the US’s threats.

While raising the bar on countermeasures at each point, China has also knocked the doors of the WTO dispute settlement body with trade disputes against the US’s illegal and unilateral crowbar trade measures.

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View: Copying Trump's tariff policy will hit India hard

Ritesh Singh, The Economic Times

August 27, 2018: With President Trump dominating the political discourse on trade, there is increasing pressure on the government from India Inc to erect import barriers and support domestic manufacturing, which has been struggling to compete with cheaper imports from countries such as China. If the US – traditionally the staunchest advocate of free trade – thinks that restricting imports will help its economy then India must go the same way, or so goes the argument.

Due to upcoming elections the ruling political dispensation led by Prime Minister Narendra Modi is under serious pressure to revive private investment, ramp up economic growth and create jobs. There is no shortage of people – both in government and the private sector – who think that by checking imports, India can push indigenous manufacturing and create enough jobs for its rapidly growing army of young and restless job seekers.

In the pre-1991 era, many business tycoons got used to enjoying virtually no competition from cheaper and better quality imported merchandise. They fancy a return to the good old days of protected markets and monopolistic rent. For them, Trump's recent tariff actions followed by Chinese counter measures provide the much-needed context for India to justify its own version of protectionism.

Thus, India has been raising import duties starting with items such as steel followed by automobile parts and components, footwear and toys. Given the cosy nexus of big businesses with top bureaucrats and politicians irrespective of party affiliations, more such hikes in import duties are likely to creep in.

But if any country should know about the perils of protectionism, it is India. We can't really discount the economic damage caused by decades of import restrictions that former Prime Minister PV Narasimha Rao's government tried to dismantle with limited success. Even that limited success in dismantling the control raj has given a big boost to India's economic growth prospects.

Despite increasing support among Indians for copying Trump's trade tactics, duty hikes will create an inefficient industrial structure that will backfire on India. It will raise the cost for downstream industries, penalise exports, limit consumers' choices and worse, it may trigger retaliation from trade partners who expect to lose from tariff hikes.

In today's world, industrial production is a multi-location phenomenon. Thus, any increase in tariffs will further drive India out of regional and global production networks, which require seamless movement of components and parts across borders several times during the production process.

India learnt the hard way, during its licence-quota raj, that raising import barriers penalises exports. Protected markets make domestic businesses focus inward, making them complacent about cutting cost or upgrading quality. As a result, exporting domestically produced goods becomes increasingly difficult in an intensely competitive global market place.

Domestic consumers too lose in the process, from a lack of choice and poor product quality that often comes at relatively higher prices – the characteristics of a typical captive market. This has been India's major lesson from pursuing socialist economic policy for over four decades.

The evidence from abroad, including the US, is also not supportive of mercantilism. An earlier import duty hike on steel products in March 2002, by former US President Bush didn't work and had to be withdrawn by December 2003. India's own experience is not much different. Last year, increase in duties and imposition of minimum import prices (MIP) led to a surge in domestic steel prices and the government had to warn steel companies not to keep prices above Rs 40,000 rupees a tonne, which adversely affected consuming downstream industries.

Besides, retaliatory trade action could harm India's growth prospects by shrinking the size of overseas markets, as its domestic market is not large enough to let Indian businesses realise economies of scale or be able to absorb a million a month new job seekers who're joining the country's workforce. As for the US, it's worth remembering that even industries Trump says he is supporting are now opposing him, for instance, automobile manufacturer General Motors.

This is not to argue that Indian businesses are not disadvantaged. They are – but that's mostly because of internal factors such as inefficient logistics, business unfriendly border and customs procedures and a series of poor sectoral regulations ranging from healthcare to textiles that jack up the cost of doing business, discourage value added production and drive away entrepreneurs. India should focus its attention on addressing the internal constraints that have been keeping its manufacturing sector inefficient.

There is no denying that an increase in import duties may provide some temporary respite, but in the end it will do more harm than good. The presence of a consensus based multilateral trade body like WTO has served India and other developing countries well both in seeking better market access or fighting unfair trade competition from countries such as China or the US. India should rather work with the EU and Japan to reform a WTO that is ineffective in tackling China's unfair trade practices.

India must also expedite crucial trade pacts, in particular, those with the Eurasian Economic Union, the EU and Latin American trade bloc Mercosur to find alternative export destinations and somewhat compensate for likely losses in traditional export markets. This is also the time to persuade a China targeted by Trump's trade war to be more willing to allow Indian merchandise, especially farm produce and pharmaceuticals, into its large domestic markets.

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Cheap imports entering via Asean trade pact may hit Make in India

Deepshikha Sikarwar, The Economic Times

New Delhi, August 13, 2018: India's big plan to boost 'Make in India' through higher import duties has encountered turbulence, with cheap products from overseas being routed into the country by misusing the freetrade agreement with the Association of South East Asian Nations.

The Directorate of Revenue Intelligence, or DRI, is enquiring into imports of mobile phones and other telecom and IT equipment under the FTA route after allegations of abuse. "The agency has been asked to look into the issue," said a government official privy to the development. India imposed customs duty on smartphones in July 2017 and subsequently increased the levy in the budget this year. Customs duties were also increased for automobile components, television LED/LCD and OLED panels, fruits juices, smart watches and sunglasses in the budget.

The idea was to encourage 'Make in India' by disincentivising imports. However, some exporters are said to have started using Asean countries to route their exports to India to evade higher duties. What has rung alarm bells in the government is the entry of goods such as mobiles from China via an Asean member country without any substantial value addition, in violation of rules of origin, another government official said. The Ministry of Electronics & Information Technology has written to the finance ministry pointing at the sudden influx of mobile phones from Malaysia.

Imports from Malaysia climbed 49% to $2 billion in April-May from $1.36 billion in the same period last year. Total imports from Asean nations have risen to $47.1 billion in FY18 from $41.3 billion in FY14. Over the same period, India's exports have grown to $34.2 billion from $33.1billion. The government has tried to incentivise the making of mobile phones in India through the phased manufacturing plan and does not want its nascent success to be hurt by such instances and is keen on rectifying the situation promptly.

About 120 mobile phone manufacturing units have stated operations in India. The free trade pact between India and Asean allows import of goods at zero or concessional customs duty from a member-country if reasonable value addition has been carried out there. The rule requires a 35% value addition, without which India can deny duty benefits. This is not the first time that abuse of the rule of origin has come to the fore. The DRI has investigated abuse under India-Thailand, India-South Korea and India-Asean FTAs.

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India can't afford to turn its back on free trade

Saikat Das, The Economic Times

August 14, 2018: India’s state is a mirror of its noisy, messy democracy. It’s often hard to achieve even a modest internal consensus between government departments in New Delhi. Right now, the heads of several ministries are scrambling to find a common position on the Regional Comprehensive Economic Partnership, or RCEP -- a giant trade deal that stitches together India, the Association of Southeast Asian Nations, Oceania, China, Japan and Korea. At the end of August, ministers from the 16 RCEP countries will meet in Singapore; India needs to work out a constructive stand by then. There’s a very real chance that, if New Delhi’s negotiators continue to be obstructionist, the other 15 countries will move ahead without India.

For many here, that wouldn’t be a tragedy. And, frankly, even free-traders like myself see their point. India’s goods trade deficit with China appears unsustainable: It was $63 billion in 2017-18, up from $51 billion in the previous financial year and $16 billion ten years ago. That’s 60 percent of India’s overall trade deficit. As far as Indian policymakers are concerned, much of what’s being imported is sub-standard or otherwise fair game for anti-dumping legislation. China’s the main target of Indian anti-dumping action, with 214 separate investigations opened -- and, even so, Indian legislators are worried that the measures are ineffective.

India can also justly complain that the RCEP’s focus on reducing goods tariffs misses the point. First of all, services trade should be opened up simultaneously; greater freedom of movement for professionals -- a major source of foreign currency for India, through remittances -- must be part of that. Secondly, the real constraints on the growth of trade now are “behind the border” -- non-tariff barriers of one sort or another that, for example, make competing in the Chinese domestic market such a nightmare.

Less justly, specific Indian sectors are panicked about competition. Steel -- which is slowly recovering after years of pummeling thanks to Chinese overcapacity -- is one of them. Dairy producers obsess about Australia and New Zealand. Manufacturers worry about everyone.

But the validity (or otherwise) of Indian concerns is beside the point. The problem is that, at the moment, RCEP is the only game in town -- and New Delhi runs the risk of being left on the sidelines. If India doesn’t have a more positive, forward-looking approach ready by the end of the month, then it must also abandon its ambition to infiltrate global supply chains. And that would be a disaster for a country that will shortly have both the world’s largest workforce and a mere a two-percent share of world trade.

How can India move forward? Most importantly, it mustn’t let China run away with the initiative. India is hardly the only country concerned about China’s overcapacity and its ability to dump goods wherever it pleases. A regional trade agreement that prevents countries from bringing fair, transparent and temporary anti-dumping actions is in nobody’s interest -- a point India needs to make to countries like Japan.

China has cleverly used regional and bilateral trade agreements to short-cut the World Trade Organization -- just as the U.S. has in the past. RCEP shouldn’t be one of them. If and only if the deal begins to build a new and equitable architecture for trade in Asia and the Pacific does it deserve to succeed.

At the same time, India can’t afford to be the villain of the piece. The signalling would be awful; most observers would see such a move as the final culmination of a turn away from the world under the current government. India has raised tariffs on 400 products over the past two years, which officials concede is a major departure from a generation-long trend towards greater openness. It has unilaterally scrapped investor protection treaties with almost 60 countries. Even the government’s choice of economic policy advisers reflects a new distrust of the world. The American-educated economists who defined the Modi government’s initial years have been eased out, not entirely gracefully.

The government believes, perhaps, that India's fragile status as the only mildly bright spot amid collapsing emerging markets means that it doesn't need anything from the rest of the world. This is absurd. In fact, India needs more than ever. Investors are interested in India only because they think they can make money here. And they will make money only if Indians are more productive and have more to spend.

An India that retreats from the turnpike of world trade to the dirt road of autarky -- to borrow a metaphor from one of those American-educated economists who's been eased out of government -- is one that will be poorer in both the medium- and long-term. If the government wants to reassure the world that India isn't willing to put up with the dirt road, then it needs to find a way to be more positive about RCEP.

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US tariffs on steel, aluminium supplies: Government likely to defer retaliatory tariff plan

The Indian Express

August 3, 2018: India is set to defer its plan for retaliation against the American move to impose an extra 25 per cent tariff on steel and 10 per cent on aluminium supplies from this country by 45 days from August 4, upon a request by the US, sources said. New Delhi had proposed to slap retaliatory tariffs worth $235 million on 29 American goods, ranging from almonds to apples.

The move would substantially de-escalate a tariff war and indicates that New Delhi is willing to engage Washington further for a meaningful outcome to the ongoing bilateral trade negotiations. It also indicates that India is hopeful of getting a waiver from the extra tariff levied by the Trump administration on metal supplies from select countries, including India.

The commerce ministry has asked the revenue department to amend the latter's June notification on proposed extra duties on US products suitably, a senior official said. Analysts said since both the countries will hold the so-called 2+2 strategic and defence dialogue in September, it makes sense for India to wait until then.

Sources said Washington wanted India to defer the plan, at least until the talks between the two sides on a mutually-agreeable trade package are over. New Delhi has already asked for a waiver from the additional duty on the metals. The US has indicated that it will consider an exemption to India, provided New Delhi offers an acceptable proposal to lower the volume of its steel supplies. However, sources said the industry is unwilling to accede to such a demand, saying supplies are already limited by high counter-veiling and other duties imposed by the US. The steel ministry will likely endorse this view and recommend against any capping of supplies at a certain level to enjoy additional duty waiver.

According to Jayant Dasgupta, former Indian ambassador to the World Trade Organization, delaying retaliation is a move in the right direction, as it becomes very difficult to negotiate meaningfully once retaliatory steps take effect.

Commerce ministry data showed India exported 1.27 million tonnes of iron, steel and such products in the last fiscal, up over 30 per cent from a year before, although exports in recent months have come under pressure.

Senior officials of the two countries huddled in Washington last month to hammer out a "trade package", in which all the contentious issues – including the extra duties on steel and aluminium (10 per cent) from India — were discussed. As part of their plans to firm up the "trade package", both the countries have identified some key areas. India sees good prospects for its exporters in food, farm, engineering goods, auto and auto parts segments of the US in the long term (over five years). The US is interested in greater access to the Indian market in Indian civil aviation, oil and gas, education service and agriculture.

Earlier, the US had rejected India's proposal to offer it an exemption from the extra tariff, prompting New Delhi to submit its retaliatory plans with the WTO in June. New Delhi had estimated that the US could mop up $198.6 million in additional duty on steel and $42.4 million on aluminium, in its submission with the WTO. Accordingly, India had notified retaliatory plans — the duty on American apples will be raised by 25 per cent and almonds by 20 per cent. Among other items, India had notified an extra tariff of 10 per cent on diagnostic reagent and binders for foundry moulds, 15 per cent on certain steel products, 10 per cent on select pulses and 15 per cent on phosphoric acid. These duties were proposed to be made effective from August 4 unless both the countries work out a solution.

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Canada says NAFTA agreement possible by Friday, but hard work ahead

Indian Express

Washington, August 30, 2018: Canada said an agreement to salvage the trilateral North American Free Trade Agreement (NAFTA) is possible by a Friday deadline, but it will be hard work to resolve specific issues as talks with the United States entered a second day. After more than a year of talks, Mexico and the United States announced a bilateral deal on Monday, clearing the way for Canada to rejoin talks to update 24-year-old NAFTA which accounts for over $1 trillion in annual trade between the three nations.

US President Donald Trump set a Friday deadline for the three countries to reach an in-principle agreement and warned he could proceed with a deal with Mexico alone and levy tariffs on Canada if it does not come on board with revised trade terms. Canadian Prime Minister Justin Trudeau said meeting the Friday deadline is a possibility and Foreign Minister and lead negotiator Chrystia Freeland said she was encouraged by the talks and progress so far.

"We recognize that there is a possibility of getting there by Friday, but it is only a possibility, because it will hinge on whether or not there is ultimately a good deal for Canada," he said at a press conference in northern Ontario on Wednesday. "No NAFTA deal is better than a bad NAFTA deal."

Freeland said she was optimistic that progress can be made this week, but she added: "When it comes to specific issues, we have a huge amount of work to do." She declined to name the specific issues, but said on Tuesday that Mexico's concessions on auto rules of origin and labor rights was a breakthrough.

Ottawa is also ready to make concessions on Canada's protected dairy market in a bid to save a dispute-settlement system, The Globe and Mail reported late on Tuesday. After being sidelined from the talks for more than two months, Freeland will be under pressure to accept terms the United States and Mexico worked out. The US Congress also wants a deal that includes Canada.

The three countries are aiming to seal a trade pact by Friday to allow Mexican President Enrique Pena Nieto to sign it before he leaves office at the end of November. The timeline accommodates a 90-day waiting period under US trade law before Trump can sign the pact.

The political implications are big for the other two countries too. Republicans face mid-term elections in November and Trudeau a national one expected by October 2019. "The strategy is to get a better deal," White House spokeswoman Sarah Sanders said on Wednesday.

Sticking Points

One of the issues for Canada in the revised deal is the US effort to dump the Chapter 19 dispute resolution mechanism that hinders the United States from pursuing anti-dumping and anti-subsidy cases. Lighthizer said on Monday that Mexico had agreed to eliminate the mechanism.

To save that mechanism, Ottawa plans to change one rule that effectively blocked American farmers from exporting ultrafiltered milk, an ingredient in cheesemaking, to Canada, the Globe and Mail reported, citing sources. Trudeau repeated on Wednesday that he will defend Canada's dairy industry.

Other hurdles include intellectual property rights and extensions of copyright protections to 75 years from 50, a higher threshold than Canada has previously supported. "I think that what they probably need by Friday is some indication from Canada to the Americans that it's ready to play ball, that they're ready to negotiate in good faith," said Mark Warner, a trade lawyer with MAAW Law, which specialises in Canadian and US law. "If Chrystia Freeland goes down there and she starts going on and on about red lines again, then I think it's all over," he added.

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India committed to working with BIMSTEC member states to enhance connectivity: PM Modi

Indian Express

August 30, 2018: Prime Minister Narendra Modi on Thursday said India is committed to working with the BIMSTEC member states to enhance regional connectivity and combat the menace of terrorism and drug trafficking. Addressing the inaugural session of the 4th BIMSTEC summit here, PM Modi emphasised on India's "cooperation and coordination" among member states in humanitarian assistance and disaster relief efforts.

Highlighting the scourge of terrorism, PM Modi said there's no country in the region which has not suffered from terrorism and other trans-national crimes such as drug trafficking linked to networks of terrorism. He also added that India is ready to host a conference under BIMSTEC frame-work on narcotics-related topics.

The BIMSTEC is a regional grouping comprising India, Bangladesh, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal. The grouping accounts for 22 per cent of the global population, and has a combined gross domestic product of USD 2.8 trillion.

The Prime Minister also said that aside from diplomatic relations with all BIMSTEC countries, India is also strongly connected by civilisation, history, art, language, cuisine and shared culture.

Addressing the summit, Nepal Prime Minister Oli said BIMSTEC is not a substitute to the SAARC and the two organisations can complement each other. Oli underlined the need for implementing the BIMSTEC poverty plan as well as Millennium Development Goals for the common benefit of the member states. He stressed on the need for deeper economic integration and collaboration among the member states for speedy development of the region.

"An early conclusion of the agreements on trade in goods, trade in services, investment, mutual assistance in customs matters, dispute settlement and trade facilitation is the need of hour to enable BIMSTEC to effectively move forward," he added.

The summit was attended by Bangladesh Prime Minister Sheikh Hasina, Sri Lankan President Maithripala Sirisena and leaders from Thailand, Bhutan and Myanmar.

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Next wave of India-Korea bilateral investment to be driven by SMEs: Citi

Saikat Das, The Economic Times

August 19, 2018: Citing example of Kia Motars, Jin-Hei Park said, the company is investing around USD 1.2 billion, but the total FDI inflow will be around USD 2 billion when combined with the investment from its suppliers.

Acknowledging that the bilateral trade between India and South Korea is below its potential, Korea CEO Jin-Hei Park said the next wave of investment will be driven by small and medium enterprises.

Bilateral trade between India and South Korea in 2017 totalled USD 20 billion, and investments have shown an upward trend. Both sides have pledged to increase it to USD 50 billion by 2030.

"Large corporates have significant resources to invest quickly and penetrate any market. The challenge is to ensure that these large investments attract SMEs from both sides to also participate in the growth cycle. The ripple effect needs to cascade down where SMEs from Korea collaborate with medium size enterprises from India on a great idea," he told PTI.

Highlighting the importance, he said, half of the delegation that accompanied South Korean President Moon Jae-in last month to India were medium size enterprises from Korea looking to evaluate independent opportunities and not only just be a part of the supply-chain distribution for large companies.

"The key to a flourishing Korea-India trade corridor is to ensure greater people and resource connectivity amongst SME's. This will move the partnership to the next level. It's not limited to large corporations," he said.

To facilitate investment, Citi has already opened a Korea business desk. It provides services such as trade finance, corporate loans, cash management and investment banking.

"As our clients move their capital around the region, we have emerged as the banker of choice that enables greater Asia-to-Asia flows. We have been instrumental in driving the growth of six to seven such large corridors in Asia for our clients. India - Korea is one of the big trade corridors along with China-India-Korea-Vietnam," he said.

He expressed hope that the trade flows between Korea and India will be driven by large corporates setting up facilities across both markets primarily in the automotive and electronics sector.

"While Samsung and Hyundai will set up manufacturing facilities in India, Mahindra and Tata would do so in Korea. These large corporations will then bring their supply-chain partners to support their growth needs. So, Hyundai and Kia will ensure that their ancillary partners also set up facilities along with them as part of the supply-chain process," he said.

Citing example of Kia Motars, Park said, the company is investing around USD 1.2 billion, but the total FDI inflow will be around USD 2 billion when combined with the investment from its suppliers.

Kia alone will employ around 3,000 to 4,000 employees and when combined with their vendor partners and the R&D centre, the employee base is expected to be around 11,000 individuals, he said.

"Such investments have a significant impact on the local economy and we have seen this time and again in other markets too," he said.

The Korea - Vietnam trade corridor is another example of such economic activity. Samsung alone employs more than 1,50,000 people in Vietnam, he said.

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Can regional trade agreements boost India’s exports?

Nikita Kwatra, Tadit Kundu, Live Mint

Mumbai, August 14, 2018: As the World Trade Organization (WTO) comes under mounting attack from the Trump-led US administration, there is a clamour in India to negotiate regional trade agreements with peer countries to boost exports, and to insulate India’s trade from the uncertainties of the global trading system. However, a *Mint* analysis of trade agreements suggests that India has often failed to gain from such agreements. This could explain why Indian policymakers have become cautious about pursuing new trade agreements in recent years.

The rise of regional trade agreements (RTAs) globally coincided with the end of the Uruguay round of WTO talks in the mid-1990s and their growth has often been explained as a result of slow progress in multilateral negotiations.

RTAs here include both preferential trade agreements and free trade agreements (FTAs). The WTO defines RTAs as “reciprocal trade agreements between two or more partners”.

While some policymakers and economists see RTAs as building-blocks to a multilateral trading system, RTAs also face criticism for being detrimental to the spirit of multilateral free trade as countries that are not part of a regional agreement find themselves at a disadvantage.

This has often led countries to seek counter agreements to try and level the playing field.

In fact, such concerns have been a major driver of the proliferation of trade agreements over the past few decades, wrote Leonardo Baccini of the London School of Economics and Political Science and Andreas Dür of the University of Salzburg in a 2013 research paper.

To illustrate, India signing a free trade agreement with South Korea in 2009 spurred Japan to seek a similar agreement with India. This is because the FTA with South Korea would have endangered Japan’s Nippon Steel Corp. The FTA would have allowed South Korean makers of steel plates to export to India without tariffs while Nippon would have still had to pay a 5% tariff. Eventually, India’s FTA with South Korea came into effect in 2010, while that with Japan came into effect in 2011.

Thus, while trade agreements might not lead to any increase in trade, they might still be pursued by countries prompted by fears of being locked out of preferential agreements.

This is especially true in an era of rising protectionism and uncertainty.

It is of course possible to address such issues to some extent by creating mega-trading blocs.

One such bloc being negotiated is the Regional Comprehensive Economic Partnership (RCEP), consisting of China, India, Japan, south-east Asian nations, Australia and New Zealand.

There might be scope for India to increase its trade with the Asia-Pacific region, given that its level of integration with the region is relatively low.

However, India has remained ambivalent about the RCEP, with officials expressing concern that it might actually harm India.

India’s lack of enthusiasm seems to be driven by its past experience with RTAs. India’s existing agreements with South Korea, Japan and the Association of South East Asian Nations (Asean) are often deemed to have benefited the partner countries at India’s expense. The import-export ratio with these countries deteriorated in the years following the implementation of the trade agreements. Even as partner countries have benefited, Indian exports to these regions have remained lacklustre.

“India has not been able to sufficiently leverage these agreements to increase its presence in the markets of its partners,” wrote trade economist Biswajit Dhar in a 2014 article.

“In most cases, the shares of India’s merchandise exports to its partners have either stagnated or declined since the middle of last decade,” Dhar wrote.

India’s inability to gain market share in these regions may be partly explained by its lack of competitiveness in exports. Unless India removes the structural bottlenecks hurting its exports, it is unlikely to make big gains in the world market.

“At a practical level, India’s policymakers have not been strategic and forward looking in evaluating its free trade deals,” said Vivek Dehejia, a *Mint*columnist and a senior fellow at the Mumbai-based IDFC institute.

“The focus needs to be on where India can promote its exports; it does not necessarily mean entering into regional trade agreements. India needs to be careful in weighing each trade deal on its own merit. When it comes to free trade agreements, no deal may be better than a bad deal.”

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Globalization with Chinese characteristics

Barry Eichengreen, Live Mint

August 13, 2018: US President Donald Trump’s erratic unilateralism represents nothing less than abdication of global economic and political leadership. Trump’s withdrawal from the Paris climate agreement, his rejection of the Iran nuclear deal, his tariff war, and his frequent attacks on allies and embrace of adversaries have rapidly turned the US into an unreliable partner in upholding the international order.

But the administration’s “America First” policies have done more than disqualify the US from global leadership. They have also created space for other countries to re-shape the international system to their liking. The influence of China, in particular, is likely to be enhanced.

Consider, for example, that if the European Union perceives the US as an unreliable trade partner, it will have a correspondingly stronger incentive to negotiate a trade deal with China on terms acceptable to President Xi Jinping’s government. More generally, if the US turns its back on the global order, China will be well positioned to take the lead on reforming the rules of international trade and investment.

So the key question facing the world is this: what does China want? What kind of international economic order do its leaders have in mind?

To start, China is likely to remain a proponent of export-led growth. As Xi put it at Davos in 2017, China is committed “to growing an open global economy”. Xi and his circle obviously will not want to dismantle the global trading system.

But in other respects, globalization with Chinese characteristics will differ from globalization as we know it. Compared to standard post-World War II practice, China relies more on bilateral and regional trade agreements and less on multilateral negotiating rounds.

In 2002, China signed the Framework Agreement on Comprehensive Economic Cooperation with the Association of Southeast Asian Nations. It has subsequently negotiated bilateral free-trade agreements with 12 additional countries. Insofar as China continues to emphasize bilateral agreements over multilateral negotiations, its approach implies a diminished role for the World Trade Organization

(WTO). The Chinese State Council has called for a trade strategy that is "based in China's periphery, radiates along the Belt and Road, and faces the world". This suggests that Chinese leaders have in mind a hub-and-spoke system, with China the hub and countries on its periphery the spokes. Others foresee the emergence of hub-and-spoke trading systems centered on China and also possibly on Europe and the US—a scenario that becomes more likely as China begins to re-shape the global trading system.

The government may then elaborate other China-centered institutional arrangements to complement its trade strategy. That process has already begun. The authorities have established the Asian Infrastructure Investment Bank, headed by Jin Liqun, as a regional alternative to the World Bank. The People's Bank of China has made $500 billion of swap lines available to more than 30 central banks, challenging the role of the International Monetary Fund (IMF). Illustrating China's leverage, in 2016 the state-run China Development Bank and Industrial and Commercial Bank of China provided $900 million of emergency assistance to Pakistan, helping its government avoid, or at least delay, recourse to the IMF.

A China-shaped international system will also attach less weight to intellectual property rights. While one can imagine the Chinese government's attitude changing as the country becomes a developer of new technology, the sanctity of private property has always been limited in China's state socialist system. Hence intellectual property protections are likely to be weaker than in a US-led international regime.

China's government seeks to shape its economy through subsidies and directives to state-owned enterprises and others. Its Made in China 2025 plan to promote the country's high-tech capabilities is only the latest incarnation of this approach. The WTO has rules intended to limit subsidies. A China-shaped trading system would, at a minimum, loosen such constraints.

A China-led international regime would also be less open to inflows of foreign direct investment (FDI). In 2017, China ranked behind only the Philippines, Saudi Arabia, and Indonesia among the 60-plus countries rated by the OECD according to the restrictiveness of their inward FDI regimes.

These restrictions are yet another device designed to give Chinese companies space to develop their technological capabilities. The government would presumably favour a system that authorizes other countries to use such policies.

Finally, China continues to exercise tight control over its financial system, as well as maintaining restrictions on capital inflows and outflows. While the IMF has recently evinced more sympathy for such controls, a China-led international regime would be even more accommodating of their use. The result would be additional barriers to US financial institutions seeking to do business internationally.

In sum, while a China-led global economy will remain open to trade, it will be less respectful of US intellectual property, less receptive to US foreign investment, and less accommodating of US multinationals seeking a level playing field. This is the opposite of what the Trump administration says it wants. But it is the system that the administration's own policies are likely to beget.

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Is slash and burn the new norm in global trade?

D.Ravi Kanth, Live Mint

Geneva, August 8, 2018: Is slash and burn (S&B) becoming the new norm in global trade? Until now, S&B remained limited to clearing land, especially for temporary agriculture. Two unrelated developments on 27 August suggests that it is going to be replicated for striking new trade deals and for slashing existing legal arrangements, which encased international trade rules. In both cases, the principal protagonist for implementing the S&B method is the same country: the world's largest trading member, à la the US.

To start, the new trade deal reached between the US and Mexico on Monday paves the way for operationalizing the S&B mechanism. Embattled US President Donald Trump took to the airwaves to announce that a new bilateral trade agreement between the US and Mexico will replace the North American Free Trade Agreement (NAFTA).

NAFTA came into force on 1 January 1994 and continued for 24 years. But Trump, who made rewriting NAFTA one of his top priorities on the trade front, claimed success in striking what he called the "US-Mexico Trade Agreement". The NAFTA name is being erased because it had "bad connotations" for the US, he declared.

He issued a subtle threat to Canada: Fall in line with new concessions like Mexico or prepare for the removal from the bilateral free trade agreement. "It's a big day for trade, it's a big day for our country," he claimed. The President did not provide any figures for the concrete material gains from the proposed new deal to rewrite NAFTA.

It remains to be seen whether Canada and Mexico give their consent to replacing NAFTA with a new name. Canada, which is watching the latest development from outside, insisted that it "will sign a new NAFTA that is good for Canada and good for the middle class", according to a spokesperson for Canada's foreign minister Chrystia Freeland. But President Trump made it clear that "Washington 'is not going to stand' for a continuation of Canada's high tariffs on US dairy products", according to the Washington Trade Daily of 28 August.

That Mexico is ready for a revamp or rewrite of large portions of NAFTA, particularly in the controversial area of rules of origin in the auto and other sectors, is well known. Besides, several bilateral issues between the US and Mexico, which generated constant trade frictions in areas such as auto, agricultural products, labelling and health standards and energy policies (particularly for the leading US oil companies which have been angry with Mexico's policy framework for the energy sector), seems to be partially addressed.

The US is a strong votary for complex rules of origin, which imply the national source of a product. That poor countries suffer in global trade due to complex rules of origin is well-established. The harmonization work programme for non-preferential rules of origin ought to have been completed by July 1998. But the US, which continues to use rules of origin as a major weapon of non-trade barriers, has single-handedly blocked any agreement on the HWP.

Little wonder that in the latest US-Mexico trade agreement, Washington forced Mexico City to agree to stricter rules of origin for Mexican car exports to the US. The new framework requires Mexico to ensure that 75% of the content be made in North America, and that 40-45% of the content be made with a minimum wage for workers of $16 per hour. Effectively, such stringent measures will force car companies to relocate their manufacturing activities away from Mexico due to prevailing lower wages in Mexico.

In a similar vein, the US seems to have secured tariff-free access for its heavily subsidized farm products and labelling and health standards for tuna and other products. The US also succeeded in diluting the investor-state dispute settlement (ISDS) in the NAFTA, under which companies can bring claims to an international tribunal when they reckon that their investments in host countries were unfairly treated. Mexico managed to secure a sunset commitment from the US to ensure that the new agreement has a longevity of 16 years, as against five years.

The US also deployed the S&B method at the World Trade Organization (WTO) on Monday, blocking the reappointment of Shree Baboo Chekitan Servansing for a second term at the WTO's highest adjudicating body for trade disputes. Washington's decision will bring an end to the appellate body by December 2019. In short, the S&B strategy of the US marks an end to the neo-liberal trading system it had built since 1980s.

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What draft e-commerce policy means for India's retail sector

Asit Ranjan Mishra, Live Mint

Geneva, August 8, 2018: Just a day before her retirement on 31 July, commerce secretary Rita Teotia tabled the draft e-commerce policy before a panel headed by commerce and industry minister Suresh Prabhu. Little did she know that her last act will draw severe criticism. The draft e-commerce policy, which effectively seeks to regulate all aspects of online retail and recommends strict restrictions, including curbs on discounts, may impact not just e-commerce companies, but also countless sellers working on those platforms.

Amazon and Flipkart, which make the majority of the $18 billion online retail market but were not part of the deliberations, are now lobbying to get the government to scrap the draft and consider fresh regulations instead.

The background

In 2015, two brick-and-mortar retailer bodies, Retailers Association of India (RAI) and the All India Footwear Manufacturers and Retailers Association (AIFMRA), had approached the Delhi high court arguing that e-commerce companies had undue advantage as they were allowed to access foreign direct investment (FDI), through which they can provide deep discounts that traditional retailers cannot match.

In 2012, the then Congress-led United Progressive Alliance government had allowed 51% FDI in multi-brand retail in some cities. However, the current Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA) government announced that it will not implement the policy fearing job losses in *kirana* stores, although it has not formally rescinded the policy itself.

The two retail associations had also alleged that the government's existing retail policy does not allow e-commerce firms to directly sell to customers, but in the garb of the marketplace model they are directly selling to customers, thus violating rules.

To legitimize the existing businesses of e-commerce companies operating in India, which so far have grown in a policy vacuum, the government in March 2016 allowed 100% FDI in online retail of goods and services under the so-called "marketplace model" through the automatic route.

It also notified new rules through Press note 3 (of 2016 series) which could potentially end the discount wars, prohibiting e-commerce marketplaces from offering discounts and capping total sales originating from a group company or one vendor at 25%. However, this only remained in files while e-commerce companies continued to offer heavy discounts, much to the anger of offline retailers.

Eye on WTO

While domestically, the government was seeking to make India's retail business transition smoothly to the online space without much disruption, at multilateral fora such as the World Trade Organization (WTO), the government was facing pressure to negotiate rules facilitating cross-border e-commerce. It was virtually facing isolation at the WTO ministerial conference in Buenos Aires last December, with 71 members led by China, Japan and the US, in a joint statement, saying that they would initiate exploratory work towards future WTO negotiations on trade-related aspects of e-commerce.

While India maintained that it was not ready for any such multilateral rules, as the e-commerce space in the country was still evolving, difference on key issues within various wings of the government, such as data localization, and source code, were the key reasons for the reluctance.

The government has now tried to build consensus on such key issues within its various ministries. India has now proposed to mandate data localization with a two-year sunset period for the industry, while keeping the policy space to seek source code.

The return of Licence Raj?

With the government planning an e-commerce regulator, seeking the Competition Commission of India to look into mergers in the sector below the threshold limit and asking e-commerce companies to phase out discounts within two years, some have feared the return of the Licence Raj.

RAI chief executive officer Kumar Rajagopalan said he is unable to decipher the key objectives of the policy for e-commerce. He also thinks that the government is surreptitiously allowing multi-brand multichannel retail FDI. “It’s time the government understands that all business to consumer transactions are retail and we are in an omnichannel world,” he added.

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India can replace US exports to China amid trade war, finds study

Kirtika Suneja, The Economic Times

August 28, 2018: While China has imposed tariffs of 15-25% on these goods coming from the US, other countries are subject to only 5-10% duty (most favoured nation or MFN rate).

India can capture the Chinese commodity market vacated by

US exports following the trade war between the world’s two biggest economies, a commerce department study has found.

The study has analysed and identified at least a 100 products where India can replace US exports to China by benefiting from the higher import duty Beijing has imposed on products originating in the US.

India can, in particular, grab a bigger share of the Chinese market for cotton, corn, almonds, wheat and sorghum, according to the study.

“These retaliatory tariffs provide awindow of opportunity for enhancing India’s exports to China. The purpose of analysis is to identify such lines,” the commerce department said in the study, seen by ET.

Fresh grapes, cotton linters, fluecured tobacco, lubricants and certain chemicals, including benzene, are a few lines where the US’ exports to China are above $10 million. India too has been exporting these items to China.

“There is scope to increase our exports in these products because of the tariff differential and the substantial demand in China,” said an official in the know.

While China has imposed tariffs of 15-25% on these goods coming from the US, other countries are subject to only 5-10% duty (most favoured nation or MFN rate). Moreover, India has been granted an additional 6-35% duty concessions on the MFN under the Asia Pacific Trade Agreement, making its exports more competitive.

However, there are two categories of products that India is not exporting to China at present but to other countries and the government sees scope to enter.

Oranges, almonds, walnuts, durum wheat, corn and grain sorghum are some products that India exports to the rest of the world except China, and the US exports to the country are in excess of $10 million. India, as per the study, does not have access at present in the Chinese market.

Corn is of specific interest as India exported $143.6 million worth of the commodity to the world in 2017-18. China imported $600 million worth of corn during this period. While American corn is subject to 25% duty, APTA countries can get up to 100% concessions on corn exports to China.

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New rules will spoil India's e-commerce party

Business Line

Mumbai, August 3, 2018: Amazon and Walmart face an online shopping nightmare in India. The pair have committed more than $21 billion to the local scene, with most of that coming from the US supermarket giant, which in May agreed to buy leader Flipkart. Now an undated draft e-commerce policy seen by Reuters Breaking views lays out strict new rules on discounts, among other things, which could derail their plans.

The framework, which also proposes forcing companies to store customer data locally, is supposed to address anti-competitive practices, creating a level playing field for foreign and domestic entities. In practice, it strikes a nationalist tone as oil-to-telecoms tycoon MukeshAmbani, the country's richest man, prepares to enter the e-commerce fray. Other parts of the policy seem designed to protect mom-and-pop stores.

It allows for an inventory model, but only for Indian-led platforms selling goods 100 per cent made in India. Under existing rules, companies cannot own stock and must operate as marketplaces connecting buyers and merchants. To get around that, sales on Flipkart and Jeff Bezos Amazon were initially dominated by large vendors. The rules were tightened, now they use a network of controlled sellers, according to one legal complaint cited by a newspaper.

There's more. A ban on related-party sellers making bulk purchases of branded items like mobile phones would end the flash sales that helped companies rapidly acquire customers. Marketplaces would also be prohibited from directly or indirectly influencing prices. If strictly enforced, it would reduce the advantage of deep pockets and slow the adoption of e-commerce, still just 3 per cent of a retail market worth $860 billion in total, excluding travel and tourism, according to Praxis Global Alliance.

Its unclear how much of this will end up as law. For now, the plan plays well to the base of Prime Minister NarendraModi's BJP facing re-election within the year. But the risk is that instead of being celebrated for welcoming foreign capital, the South Asian nation could end up more hostile and difficult to crack for outsiders, like China. For the overseas giants betting billions on India, that would be a blow.

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Regulatory framework appears to be coming back

Priyanka Pani, Business Line

Mumbai, August 1, 2018: The proposed e-commerce policy is likely to make it difficult for foreign players to carry on business activities in India.

At present, the approximately $33-billion digital economy is dominated either by foreign players, such as Amazon and Google, or by home-grown companies controlled by foreign investors such as Flipkart, Paytm or Snapdeal.

The industry veterans and analysts *BusinessLine* spoke to feel the new draft policy is "flawed" in many aspects.

ArvindSinghal, founder and Chairman of retail consultancy firm Technopak said: "While the government's job is to be a facilitator for any industry to grow, it has no right to interfere in how companies sell their goods. There is no reason to differentiate between companies on basis of ownership."

He added that curbing discounts is "irrational" as these companies are not publicly-listed, and do not have public money at stake. Hence, it is up to the company on how much money it can spend on discounts."

Harish HV, former partner at Grant Thornton, said the sector, unlike the IT, has grown without any government support, and too many regulations can kill the sunrise segment. "High regulatory framework that stopped in 1991 is making a comeback, it seems," he said. Regulations will only make the companies look for loopholes to bypass the laws.

DevangshuDutta, founder of consultancy firm Third EyeSight, said there is nothing wrong in having policies skewed towards local players as that is the mandate of any elected government.

"I don't think, the policy is favouring any single company. It is definitely trying to encourage local companies by constituting a single regulator that will also look into anti-competition activities," said Llyod Mathias, former HP and Motorola executive and a telecom industry veteran.

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E-commerce policy will balance privacy, market principles: Govt

Business Line

Mumbai, July 30, 2018: The new e-commerce policy being drafted by the Centre will have a nuanced approach on data localisation so as to balance the free flow of business with privacy concerns, a senior government official said on Monday.

"The task force has given its recommendations. The government will continue to hold discussions based on it," said AnupWadhawan, Special Secretary, Department of Commerce, at a media interaction.

Wadhawan added that the draft policy on e-commerce would be finalised soon. "We don't want to continue with the vacuum in the e-commerce policy space."

The policy will seek to define e-commerce, strengthen foreign direct investment laws in the sector, address regulatory and competition issues, and take care of consumer interests, including data protection and privacy.

When asked if e-commerce companies will be asked to store consumer data locally, Wadhawan said the global policy on data was nuanced and India, too, has to tread carefully. "We have to balance the interest of free flow in business with security concerns and addressing privacy issues."

Data storage in India

As per the task force's recommendation, data generated by users in India from various sources, including e-commerce platforms, social media and search engines, should be stored exclusively in India, and a suitable framework needs to be developed for sharing the data within the country.

Wadhawan said the new policy would have adequate provisions to protect the interests of consumers and the State government's requirements would be kept in mind. "Like many other countries, we will consider an online grievance redressal mechanism. Of course we will keep in mind division of power between the Centre and States," he said.

The draft e-commerce policy also recommends tightening the scrutiny of mergers. Asked how the policy would address competition issues, Wadhawan said it would try to ensure fairness in the market place and prevent predatory pricing.

India's e-commerce market, currently valued at about $ 27 billion, is one of the fastest growing in the world.

A comprehensive e-commerce policy, apart from encouraging investments in the sector, would also help the country take a well-informed stand in the area at global forums, where pressure is growing on India to get into negotiations to liberalise the sector.

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E-comm policy 'work-in-progress, will incorporate more views'

Amiti Sen, Business Line

New Delhi, August 1, 2018:The final version of the e-commerce policy, which is likely to be circulated in a few weeks by the Commerce Ministry for comments by stakeholders, will incorporate not just the inputs of the task-force on e-commerce but also the views of members of the think-tank, which includes industry representatives, domain experts and members of various government departments.

"The report of the task-force on e-commerce is not the final draft. It is a discussion paper, which was scrutinised by the think-tank headed by Commerce and Industry Minister on Monday. All members of the think-tank, including the industry, domain experts and government officials, gave their comments on the proposals, and will form part of the final draft," the official said.

Prominent industry bodies like CII, Ficci, and Nasscom and e-commerce companies such as Ola, Snapdeal and MakeMyTrip are part of the think-tank.

The submissions by the task-force seem to be going against the interest of large foreign companies and in favour of smaller domestic firms.

Govt intervention

US-based companies such as Walmart and Amazon could be hurt if these recommendations are adopted, and these giants are reportedly considering asking the US government to intervene.

"All will get the opportunity to comment on the draft policy once it is finalised and put on the web-site. The draft policy may actually be different from the task- force's recommendations in some areas," the official said.

On regulating deep-discounts, the task-force has recommended a sunset clause, which will define the maximum duration of differential pricing strategies implemented by e-commerce companies. It has proposed that the restriction on e-commerce marketplace to not directly or indirectly influence the sale price of goods and services, be extended to group companies of the e-commerce marketplace.

The task-force has also suggested promoting sale of domestically-produced goods by allowing limited inventory-based B2C model, wherein 100 per cent Made in India products will be sold through platforms whose founder/promoter will be a resident Indian, the platform company will be controlled by Indian management and foreign equity will not exceed 49 per cent.

On data localisation, the task-force has proposed that the data generated by users in India from various sources including e-commerce platforms, social media and search engines should be stored exclusively in India and a framework must be developed for sharing the data within the country.

Once the final draft is put in public domain and comments of all stakeholders are received, the policy will be modified and then placed before the Cabinet for approval, the official added.

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E-commerce plan is badly conceived, best to scrap it

Business Line

2 August, 2018: Given how Flipkart has been around for more than 10 years now and Amazon for at least five, the government's e-commerce policy is almost an afterthought. And, since e-tailing seems to be coming along nicely—India now has some 30-35 million online shoppers—and the payments piece, too, is gaining momentum, there is no real need for a full-fledged policy except one to ensure the safeguards are all in place. Instead of doing this, however, the draft e-commerce policy introduces some ideas that are not only retrograde, but even run counter to established fair play and equity. Existing brick and mortar retailers, for instance, are right in saying FDI into e-commerce players has been given a back-door entry. The way to set this right is by allowing 100% FDI in multi-brand retail. Instead, the government is looking to tighten controls over the e-commerce space under the guise of accelerating the pace of the digital economy "by providing a facilitative eco-system for spurring digital innovation".

At the heart of the draft policy is an agenda that seeks to protect home-grown entrepreneurs. However, too much control will only put paid to whatever initiatives the local businessmen have taken; let's face it, without the capital, all of which is coming from overseas, no entrepreneur can build a business. So, if the Companies Act is amended to let Indian founders retain control even if they have a small shareholding, it won't work, apart from it being antithetical to corporate democracy—shareholder rights are proportionate to their equity share. Why would a Walmart pay top dollar and invest billions in Flipkart if it can't call the shots? The new policy smacks of hypocrisy because this has happened while the government looked the other way when e-commerce players blatantly breached the rules that disallow FDI in an enterprise that engages in B2C sales, pretending to be mere marketplaces when they are, in effect, the sellers. By this logic, even Walmart should be allowed to set up front-end stores in India because it is mostly selling brands made by third-party manufacturers. Multi-brand retail should be thrown open to 100% FDI; the paranoia that small stores will be killed is overdone with little evidence so far that this is happening even with organised retailing having taken off.

If the government is concerned about the steep discounts offered by foreign e-tailers and feels this is unfair price-distortion, it needs to prove this unfair discounting and then act upon it. Trying to fix this by asking related-party sellers like a Cloudtail or a WS Retail to not buy in bulk is unfair since bulk purchases are at the heart of any retail operation, whether offline or online. It is also more than a bit hypocritical for the government to argue that Flipkart/Amazon's deep discounting is predatory while RJio's massive discounts are kosher. In the absence of being able to prove that the discounts are unfair, the government has to accept that online shopping has taken off simply because the prices are so attractive, and what the government perceives as price distortions are actually a reflection of the effective demand for a product at a particular price. Price controls will only choke demand, hurt sales and manufacturing and create fewer employment opportunities. Retail is a sector that can generate thousands of jobs across levels. The government's role is only to ensure that data privacy and data storage rules are respected and that the e-tailers pay their taxes, among others. Critically, it must keep a very close watch on the payments space to make sure consumers are protected against frauds. Any other kind of interference will only backfire. The main reason why India's IT industry has flourished—and the local boys have become the big stars—is because the government left it alone. There is a lesson here for the government.

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Srikrishna panel proposals are a big push to privacy protection: Experts

KV Kurmanath, Business Line

30 July, 2018: As India inches towards adopting a comprehensive data protection framework, stakeholders feels it will herald a paradigm shift in that sphere. Experts in the IT industry and research bodies feel the Justice BN Srikrishna Committee report, submitted to the Centre on Friday, will go a long way in establishing a privacy protection mechanism.

"The report will be a key step towards building the important base of 'trusted' Digital India.

The proposed Digital Protection Authority (DPA) as an independent regulatory body will be beneficial in the enforcement of the data protection law," said Vidur Gupta, Partner (Government and Public Sector) at EY India. "The recommendation for bringing public entities under the ambit of law would not only strengthen the confidence of citizens but also define specific safety measures for their personal data while using e-governance services."

Shivangi Nadkarni, co-founder and CEO of Arrka Consulting, said the Bill puts the individual firmly in the driver's seat.

Data principal

"Calling her (individual) the 'data principal', clearly stating that she is the owner of her data, giving her certain important rights, putting obligations on entities collecting her data to ensure her privacy, giving her channels to complain and levying stiff penalties on entities for non-compliance" is a critical step, Nadkarni said.

Venkatesh Krishnamoorthy, Country Manager - India, BSA, the Software Alliance, said the proposed Personal Data Protection Bill must avoid imposing undue restrictions on the ability to securely transfer personal data outside India.

"Our member companies are at the forefront of data-driven innovation and recognise the importance of fostering trust and confidence in the online environment. We support the effort to create a comprehensive legislation to protect the personal information of citizens," he said. "However, including data localisation requirements in such legislation is contrary to the goals of promoting Digital India, as global data transfers are critical to cloud computing, data analytics, and other modern and emerging technologies and services that underpin global economic growth, he said."

Prashant Gupta, Partner with Grant Thornton India, said the committee's recommendations may have a significant impact on the functioning of businesses and government agencies such as UIDAI on the processing of personal data of individuals.

Data of foreign nationals

"Exemplary powers for the Centre on personal data of foreign nationals will also define future business growth for different sectors in the country. A paradigm shift will happen that will bolster India in the global economy as it promises privacy and protection of personal data," he said.

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Too nationalist about digital economy

Business Line

1 August, 2018**:** If you expect a healthy dose of nationalism in policy-making ahead of 2019, you won't be disappointed. Still trying to digest last week's Personal Data Protection Bill draft and 213-page report, I found in my inbox an undated 19-page 'E-Commerce Draft National Policy Framework', marked 'strictly confidential'.

Data is the oil of the digital economy, it said. And that data from e-commerce platforms, social media, search engines…should be stored exclusively in India. And be 'shared' with the government. And RuPay, the Indian government's alternative to Visa and Mastercard, should be promoted strongly.

Think about that. If this Commerce Ministry draft became law, Google, Facebook, Twitter, Amazon…they'd all need to isolate and store user data in India for all services.

But back to last week's highlight: the Friday release of the much-awaited report of the Justice Srikrishna Committee of Experts on Data Protection, along with the draft Personal Data Protection (PDP) Bill.

Not everyone had waited patiently for this draft.

TRAI had jumped the gun with its 'Recommendations on Privacy, Security and Ownership of Data in the Telecom Sector' released on July 16, with the Srikrishna Report weeks away. Side note: telecom is the biggest data player. The mobile (a billion of them) is the real on-ground identity. It's also central to Aadhaar, bank account, wallets, everything.

And the RBI had issued a terse circular in April, directing all payments providers to store their data only in India — with six months for compliance. This was a high-voltage shock to payment firms such as Visa and Mastercard, and a nice fillip for NPCI (and its RuPay) and Paytm, which discovered nationalist nirvana.

Despite global criticism and representations by payments firms and trade bodies such as USISPF and NASSCOM, the RBI dug in its heels. Its public response was to issue a letter demanding a compliance update.

And now, the draft PDP Bill of July 27 goes further than even the RBI in placing pre-Internet-era restrictions on cross-border flow of data.

First, the draft PDP Bill classifies all financial data, even passwords, as 'sensitive', something that should really be used for data that can harm people, such as by profiling and discrimination, as committee member Rama Vedashree wrote in her dissent note towards the end of the report.

Balkanizing the Internet

Second, the draft Bill restricts cross-border flow of sensitive data. Such data would have to be mirrored in India, for government access. If it's further classified as 'critical', then it would have to be stored only in India.

The RBI folks are jumping with joy. For not only does the draft PDP Bill back their stance, it extends it to all financial providers, including banks, and not just payments firms.

Wait. This is 2018. The Internet is a global network. Cloud-based systems are global. Your Gmail isn't stored in one box in California. If you balkanize the internet and isolate it into boxes separated by borders, you begin to destroy the foundation of the internet.

Payment providers use their own secure global networks. And global platforms, tools and data-sets for fraud mitigation, anti-money laundering, customer safety and service. Add AI and machine learning, and you have a system that depends on global tools and third-party service providers.

Example: three point-of-sale payments happen on one card in quick succession in three malls in Milan. It's borderline, but the third transaction is blocked and a message goes to the user. The user calls, says she is not in Milan. Her card is blocked. Machine learning kicks in: the system learns this was the right call for this pattern, and shares this learning globally. The next day a similar pattern is detected and blocked in Pune.

Machine learning algorithms also forage the internet for recent online activities: social media, payment patterns, IP location, device activity, billing address. The more data points algorithms gather for you, the better they can detect pattern violations — and lower risk for you.

Now, the RBI says: keep customer data only in India. Even if it allows live processing outside, that does not let AI or machine learning draw on global datasets. That reduces security. Apart from the cost of replicating those global platforms in India. There's also reciprocity. If the global networks aren't allowed access to Indian dataset archives, why should Indian networks be allowed global data access?

And then there's a world beyond financial data that harsh data localisation will impact.

The local password

What happens to email? While it hasn't been explicitly mentioned, the draft PDP Bill says passwords are sensitive personal data. They must thus be stored in India, at least as a mirror. Does that mean all passwords for all services — email, Facebook, Twitter, every online service in the world? Subscribe to NYT or Playboy and your password should be in India!

This is bizarre. It's a deal-breaker for every global online service. Let's start with Google, which does not segregate Gmail users by their home address, and so has no easy way of isolating 'Indian' users. Even if it did, there's no way it's going to move data, or passwords, of 'Indian' users of Gmail to India. The same applies for Facebook, or Yahoo, or any other global online service.

Let's talk reciprocity. If India goes extremist on data localisation, inspired by China (and Europe), why would the West not strike back? Starting with that fount of new-found nationalism, Trump's America? Our software and BPM services export revenue of $126 billion is predicated on free cross-border flow of data. India processes the Western world's financial data. Even if the RBI hasn't asked to block real-time global processing of financial data, there's no guarantee of precise eye-for-eye reaction. If the Trump administration strikes back with 'no processing of US sensitive data in India', there goes much of India's BPM exports.

There's still hope: there will be stakeholder consultations, as the IT minister has committed. And of course, enacting this Bill into law is a long way away, though the RBI could well go ahead with its harsh data localisation demands, striking at Visa, Mastercard and others.

But I'm not holding my breath on the stakeholder consultation. The swadeshi wave is rising.

The connected, global digital economy of 2018 may need to give way to the realpolitik of 2019.

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Govt can relax data localisation conditions based on criticality of info: Srikrishna

Business Line

3 August, 2018: The government has the authority to relax conditions on local storage of data based on the criticality of information, said former Supreme Court Judge BN Srikrishna.

This comes in the backdrop of the Justice Srikrishna Committee report on Personal Data Protection, which has recommended that every data fiduciary should store one live, serving copy of personal data in India.

This, in industry parlance, is called data localisation, which businesses believe would impose additional costs. "The government has the authority to relax conditions based on the criticality of information and the situation," Srikrishna told BusinessLine through email. He added that the government may alter the settings as things progress.

Data Protection Bill

On July 27, the Srikrishna committee released a draft Bill setting the framework for India's first comprehensive law on privacy and data protection. The Committee's recommendations came almost a year after the Supreme Court recognised privacy as a fundamental right guaranteed by the Constitution. These recommendations will be discussed before the Bill is moved in Parliament.

These recommendations have the potential to reshape the users, the industry and the government deal with data. The Committee has recommended setting up a Data Protection Authority (DPA) which will be responsible for monitoring, enforcement, standard setting, awareness creation and grievance handling.

But it is the data localisation part that has rattled the industry. Industry body Nasscom along with the Data Security Council of India (DSCI) pointed out that mandating localisation of all personal data, as proposed in the draft Bill, can become a trade barrier in key markets.

Srikrishna is of the view that the country needs to take the middle path, thereby balancing interests of both the people and businesses. Globally, a debate has been raging on use of people's data by companies such as Google, Facebook, and Amazon, without clearly stating the purpose. In India, too, there have been widespread debates around Aadhaar and the fact that information can be hacked.

"When this collision happens, rights of the citizen must always prevail as it is for the sake of a citizen that business exists and not the other way," said Srikrishna. He also said that no business or industry can ever be totally free of monitoring. In any new legislation, there are concerns as to how it affects any section of society but as people get used to the new legislation, such fears subside.

Nasscom-DSCI, however, pointed out that policies that govern data protection, storage and classification need to be carefully crafted given the global footprint of the IT-BPM sector. Service providers in India process financial, healthcare and other data from all over the globe. India is also the destination for R&D, product development, analytics and shared services, they said in a statement.

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Short on details, government may rejig draft e-commerce policy

The Times of India, Sidhartha

August 3, 2018: The controversial draft of the e-commerce policy appears set for an overhaul amid severe criticism of several of its provisions, including from Indian businesses, and glaring gaps in the proposal.

While businesses are concerned over the government's plan to "micro-manage" aspects such as discount and procurement of goods, government officials too conceded that some of the proposals need to be deliberated upon threadbare as the current draft offers little clarity.

The 19-page draft — circulated for stakeholder consultation — will see "wholesale revision" based on feedback from several quarters, said an official. Sources said that the document is more like a "discussion paper" with the details to be filled in by the ministries and departments concerned.

The policy drafted by a team of officials is seen to be heavily tilted in favour of Indian businesses and officials who believe that there are not enough businessmen and startups willing to take up the challenge to emerge as India's Alibaba. The attempt, sources in the commerce department acknowledged, was to create some Indian e-commerce players that can take on the might of Amazon and Uber, for which protection was needed. At the same time, the idea is to prepare a policy that will help the government argue for a strong architecture under theWorld Trade Organization(WTO), where countries such as the US and China are seeking global rules to bring about predictability in businesses.

Officials as well as companies believe that there is lack of clarity on several aspects. For instance, "deep discounts" have not been defined so far and do not budget for the fact that the cost of operations are lower for e-commerce sites. The draft has sought to ban steep discounts after two years from the time the law is enacted. "Who decides what is a deep discount? Should it be 10% or 50%? Should it be the same for all products and services?" wondered a company executive. Companies also said that heavy discounts was a thing of the past now.

A major concern, which has been flagged by one of the ministries, is the heavy legal overlap that some officials believe can be dealt with through existing laws. The need for a regulator is also being questioned as there are existing agencies dealing with several of the aspects. For instance, the Competition Commission of India can act against

predatory pricing, while consumer courts already deal with complaints against sellers.

Additionally, some of the provisions are seen to be against the provisions of the WTO. For instance, the move to mandate RuPay as a payment solution on e-commerce sites may be seen to be discriminatory unless a similar facility is also sought for others such as Visa or Mastercard.

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Flipkart-Walmart deal: CCI seeks govt response on FDI

The Times of India

August 1, 2018: The Competition Commission of India CCI), which is scrutinising Walmart's acquisition of majority stake in homegrown e-commerce player Flipkart, has sought the government's response on the foreign direct investment (

FDI) rules for the sector ahead of a decision, which is expected in a few days.

Sources told TOI that the department of industrial policy and promotion, whose comments have been sought by the fairplay watchdog, is expected to cite the FDI rules, which provide for 100 per cent overseas investment through the automatic route. This means that no government clearance is required, with CCI being the only agency whose prior approval is needed in case of large transactions.

On its part, CCI has already sent two-three sets of questions to Flipkart and Walmart, seeking details of the American company's B2B model, the overlap that it may have with the e-commerce venture and common consumers for the two outfits. In addition, sources said, the regulator has sought to understand Flipkart's business model, which had initially raised some concerns. "Given CCI's mandate, it will evaluate the transaction from all possible angles before deciding if it impacts the market and creates a dominant entity," said an officer.

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In Consumer Interest: Don’t hobble e-commerce with archaic tools like price regulation

The Times of India

August 1, 2018: E-commerce in India has changed the way millions of Indians shop and simultaneously influenced operations of manufacturers and service providers. In a sense, this transformation has taken place in a policy vacuum. This is set to end with the advent of the draft e-commerce policy.

The salient feature of this policy is the strategic intent which underpins it. In this most globalised of businesses, there is a clear intent to create an architecture which encourages Indian entrepreneurs. This should have a positive spillover on the domestic economy.

While the overall intent of the policy is positive, there are some suggestions which are inconsistent with the essence of e-commerce. The e-commerce phenomenon piggybacks on path breaking advances in information and communications technology. These advances have simultaneously transformed many areas such as financial payments.

Another key outcome of e-commerce is that it radically lowers the cost of doing business and this, in turn, depends on ensuring the seamlessness of the chain. Some suggestions in the draft policy can lead to a regulatory regime which will be out of sync with the above essence of e-commerce.

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Draft that’s daft: An ecommerce policy that won’t produce local champions & will discourage foreign investors

The Times of India, Saubhik Chakrabarti

2 August, 2018: On business matters, governments think wrong and do wrong frequently. They think right and do right a few times. And sometimes they think right but do horribly wrong, like in the draft ecommerce policy.

GoI wants locally-owned, locally-managed ecommerce success stories. That’s right thinking. But the draft policy goes about this spectacularly wrongly. If this is the final policy, India won’t get what it should, and will lose what it has.

What India's ecommerce market has is plenty of foreign investment. What it should have, while keeping foreign investors interested, are locally owned and managed competitors to firms backed by outside capital.

Given this, the draft is really smart on only one count – the suggestion that startups can issue shares with differential voting rights. The aim is to provide Indian founders of successful online ventures more control over companies they have built even if foreign investors have put in most of the capital. So, a share owned by a founder will carry more weight than, say, a share owned by a Chinese venture capital firm.

Shareholding structures that restrict voting rights of foreign investors are not unusual. Some hugely successful startups in the US and China, the world's two largest internet economies, have shareholding rules that allow founders with minority stock to call the shots.

Will large investors lose interest if they can't be the boss of a company they put money in? Not at all. As is the case in China and the US, India can attract large investors in ecommerce under rules that favour more control for local entrepreneurs, provided the returns on investment are potentially high.

So, that was good thinking. Now for the really bad bits of the draft policy – socialism-type restrictions on pricing strategies, a completely needless additional layer of regulation, silly dos and don'ts on what can be sold and how, etc, etc. Space for this column is limited, and silly suggestions abound in the draft. So, we will pick just a few examples to demonstrate our argument.

Take the recommendation that deep discounting – selling goods really, really cheap – must be thoroughly discouraged. This seems aimed principally at pricing strategies of Amazon India and Walmart-owned Flipkart – two American giants.

Of course, Amazon India and foreign-investor controlled Flipkart use capital available from abroad to sell stuff really cheap. And of course, that's one of the big reasons they control nearly three-fourths of India's online market. But even locally-backed and locally-managed online shops would want to do the same thing.

Deep discounting is a universal ecommerce strategy. It's employed to win customer loyalty, more so in markets where online commerce is still a small part of overall retail. India's online retail is just 3% of total retail sales. Therefore, a policy that targets discounting will actually harm future local entrepreneurs.

People who made this recommendation forgot basic economics, which is that government intervention in pricing, especially in consumer market pricing, always ends up disastrously. Local startups won't flourish if they as well as Amazon and Flipkart can't sell products cheap.

A smarter way to level the playing field against deep-pocketed foreign investors who can afford deep discounting is to have a policy that allows firms to offer steep price cuts only when all or most of their capital is locally sourced. This will truly discourage capital dumping from abroad, without ridiculous inter-ference in firms' pricing strategies.

But won't that be unfair to an Amazon or a Walmart? No. They are free to offer deep discounts but the capital deployed in Amazon India or Flipkart must be raised locally. They will compete with local firms for capital, and they may actually attract more investor interest. But that's wholly fair.

Amazon or Walmart won't like it. But they will have to balance their loss of the capital dumping option against giving up on one of the world's most exciting online marketplaces. That's smart policymaking.

Terribly unsmart, too, is the draft policy's idea of a new regulator for ecommerce. Governments love new regulators by instinct, and also because bureaucrats who make policy know every new regulator means a bunch of nice jobs for retired administrators.

Why do you need a new ecommerce regulator? All transactions in an ecommerce play are covered by existing laws. If there's a contractual violation by any party in the buy-sell chain, there are consumer courts and courts. If there are disputes over, say, shareholding patterns in a listed startup, there's Sebi, the stock market regulator. If there are questions over data storage, there's a new law on data protection coming up.

Indeed, that the policy suggested data storage norms different from those suggested just days before by the Srikrishna committee seems to suggest those writing the draft were in some other world.

In this world, an ecommerce policy for India shouldn't be a nanny state in dotcom disguise. Indian startups need a few regulations, like those against capital dumping, and a committed government push to creating an environment rich in capital-raising possibilities. It's the lack of local capital that's holding back creation of local champions. But guess what? The draft policy has almost nothing to say on this.

The draft, that's why, is pretty daft.

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Data localisation must go, it damages the global Internet

Hindustan Times

August 3, 2018: On July 27, the committee of experts under the chairmanship of Justice Srikrishna finally submitted its report on the principles that will guide the framing of India's data protection statute. With its report, the committee also submitted a draft Personal Data Protection Bill, which, it is hoped, will guide further consultation on the subject. Given that India remains a notable exception to the now long list of countries with data protection laws, this draft Bill is a welcome step. Regretfully, however, some of the committee's proposals not only risk weakening privacy rights guaranteed under the Constitution, but also undermine the committee's own stated objective of a free and fair digital economy.

One such recommendation is the requirement to mandatorily store a copy of all personal data on servers located in India, subject to the Central government's power to exempt such storage if necessary or in the strategic interests of the State. However, for sensitive personal data, which includes information about religious or political beliefs as well as health and financial information, the government has no power to exempt recipients of personal data (data fiduciaries under the Bill) from this obligation. A further category of "critical personal data" — a term that is undefined under the Bill — must be stored exclusively in India. The requirement to store data locally needs reconsideration not only because it militates against the idea of a global Internet, but also because it fails to adequately consider surveillance harms, issues of data security as well as their detrimental effects on industry.

Usually, the rationale behind restricting cross-border flow of data is to prevent entities from circumventing their obligations under national laws for data protection, or to protect personal data from processing risks abroad. Viewed in this context, the requirement to retain only a copy of all personal data in India is curious as it fails to achieve either of the two objectives mentioned above. Instead, most countries across the globe attempt to achieve these objectives by making cross-border transfer of data contingent on additional safeguards — a proposal that has also been incorporated in this Bill.

As lawyer Chinmayi Arun has pointed out, this mandate appears to be geared more towards the State having access to personal data rather than a desire to protect it. The committee's report suggests that such access is necessary for law enforcement agencies to be able to enforce domestic laws. Investigation and prosecution of offences is undeniably a legitimate state interest. However, advocating for increased access to personal data through mandatory localisation without adequately considering surveillance risks is unhelpful. While it is arguable that surveillance reform was outside the committee's terms of reference, it nevertheless ought to have taken note of the lack of effective checks under the extant legal regime before recommending data localisation. Among other limitations, the current legal framework allows communications to be intercepted without any judicial oversight.

In its report, the committee accurately notes that gaining access to data stored abroad through Mutual Legal Assistance Treaties (MLAT) — an agreement between states for exchange of information — has become a tedious process. However, it does not note that the failure of MLATs is a global concern and several states are already exploring alternatives.

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Google penalised: Consumers, innovation are end-victims

Avirup Bose, The Financial Express

August 2, 2018: Recently, the European Commission (EC) imposed the biggest ever antitrust fine on Google—of $5 billion—for abusing its dominant position in relation to its Android operating system. This is the second time that the EC—Europe's antitrust regulator—has penalised Google for its business practices. In June 2017, the EC had fined the search giant 2.42 billion euros for illegally prioritising Google's own comparison shopping service, in its search results, over similar other services. A third EC antitrust investigation is ongoing against Google for abusing its market power in its AdSense online advertising business, and a decision is expected later in the year.

Today, 80% of all smartphones and 60% of all tablets, the world over, use Google's free and open source operating system—the Android. It is free, and it works better than the now-discontinued alternatives such as Windows Phone and Symbian. So, what is the EC's problem with Google? The EC's yearlong investigation concludes that Google has leveraged its dominant position in the Android operating system to "cement its dominant position" in the general internet search—Google's main source of revenue.

Anyone buying any Android phone must have found certain Google apps—including Google Play Store, Google Search and Google Chrome browser—pre-installed in their smartphones. Did anyone wonder why? The device manufacturers were required to pre-install Google's search app and browser app (Chrome) as a condition for licensing Google's app store (the Play Store). Google also paid device manufacturers and certain network operators to exclusively pre-install Google Search across their portfolio of Android devices. The EC held that this greatly reduced the device makers' incentive to pre-install other competing search and browser apps. The EC relied upon empirical data that consumers typically stick with such pre-installed apps, resulting in the foreclosure of rival search and browser apps. The EC then concluded that Google's such market practices have denied European consumers the benefits of effective competition in the important mobile sphere.

The legal reasoning that the EC adopts to correct Google's alleged market abuse is eerily close to the now much-discredited enforcement action in the 1990s by the US Department of Justice (DOJ) against Microsoft, where Microsoft was sanctioned for bundling its flagship Internet Explorer web browser software with its Windows OS, enabling Microsoft to gain market share in web browsers (at that time, web browsers were payware, not freeware) over competitors like Netscape Navigator and Opera. Not only has DOJ's foreclosure theory in the Microsoft case been discredited, such alleged foreclosure occurred in a world without apps, or appstores, or user-driven device customisation available with a few swipes and clicks.

So, how plausible is the EC's foreclosure theory? How many of us would use either Google's search or browser apps just because it is pre-installed on our Android smartphones or tablets? Given that the competition is only "one download away", consumers are free to download any competing browser of search apps, even if they are not pre-installed. The Android platform does not have any technical or economic constraints preventing users from downloading other non-Google apps.

Customer preference for these Google apps is not because they come pre-installed but more because of their better quality and efficient features. Non-Android smartphone users regularly download Google's search and browser apps, where such apps do not come pre-installed. On the other hand, customers regularly prefer non-Google apps like Facebook, Dropbox and WhatsApp, even when their Google equivalents come pre-installed in the Android devices.

It is not a good thing when any competition agency undermines innovation, and the EC's decision against Google does so at two levels.

w One, consider the billions of dollars of investments that have been made by Google to develop Android as a free, open source platform. Moreover, it is not a static, one-time investment for Google, and requires continuous rounds of investments to develop the platform further. The EC did not even consider that Google's business model is to offer Android for free, and its business practices ensured that an increased traffic on Google Apps would finance the Android R&D cost. The EC's decision affects Google's core business model in Europe, and the company might decide to finance Android through licensing fees, which, ultimately, would increase the cost of handsets and tablets. In the end, it is the European consumer who suffers.

w Two, the EC's $5 billion fine represents more than 30% of Google's annual R&D investments (2017 figures), and the company could decide to cut its R&D costs or, at least, slow down Android-related R&D expenditure. In fact, the company, in its recent annual report filed with the US Securities and Exchange Commission, stated it is uncertain of the impact of these penalties on its financial stability. Such innovation concerns are not reflected in the EC's calculation of the fine or how it is not disproportionate, given that the EC also issued a "cease and desist" order correcting Google's market conduct for the future.

In addition, the EC order prevents Google from contractually preventing device manufacturers who pre-install Play Store or Google Search from selling any devices running on competing Android operating systems (Android forks). The EC found that this practice restricts the development of new open source version of Android. However, the EC failed to evaluate efficiencies generated from such restriction on Android forks. It maintains the technical integrity of the Android ecosystem and this ultimately benefits consumers. It also fundamentally preserves the attractiveness of the Android ecosystem for app developers. In fact, app developers would not code or code far fewer apps for multiple versions of forked mobile OS. This ensures lower prices, greater output and innovation for app developers. It also allows consumers to easily switch between devices, increasing competition and innovation among device manufacturers.

India's antitrust system

How could this decision affect India's antitrust authority—the Competition Commission of India (CCI)? India's antitrust system is modelled on that of the EC, and the CCI has often adopted a European consumer protection approach to its enforcement of India's competition laws. A host of high-tech companies are being investigated by the CCI, and the Indian regulator has also penalised Google `136 crore for unfair business practices in the online search market.

Hopefully, India will not follow the EC's erroneous lead. The CCI, in the past, has often based its decisions on the subjective benchmarks of "fairness" (fair price, fair contractual terms), ignoring pro-competitive effects or those of innovation and economic growth of a sector. Such antitrust enforcement—especially for high-tech firms—without linkages to any identified anticompetitive effects could end up injuring one of India's most dynamic sectors.

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E-commerce: Policy of no control for foreign investors to hit fund-raising

The Financial Express

2 August, 2018: The recommendations of a task force on e-commerce to make suitable policy changes to enable founders of such companies to have control even if their shareholding is small, will potentially discourage foreign investment in the sector and make fund-raising, especially by start-ups, harder, according to analysts.

It is like "going back in time" and would be counter productive when many start-ups in India are starved of capital and hungry for foreign funds, they said.

This could also threaten inflows of foreign direct investment in trading (including via e-commerce), which jumped 86% to $4.35 billion in FY18.

Although Flipkart will be the only large player where a foreign investor (Walmart) will have control, all established Indian start-ups — from Paytm Mall to Ola — have received sizeable chunk in foreign funding. Some of the fund-raising by domestic start-ups was possible as foreign investors were certain of exercising their control in these ventures at some point in future by raising their stake on prospect of a booming Indian e-tail market, said analysts.

Now, fund-raising from even existing foreign shareholders could be difficult, if the government approves the recommendations, they said.

The task-force has suggested “the need to amend the relevant provisions in the Companies Act so as to facilitate founders to have control over their e-commerce companies, despite having small shareholding, would be examined in the light of the experience of their utilisation by e-commerce companies.”

E-commerce firm in India is defined as one where foreign investment doesn’t cross 49%, the founder/promoter is a resident Indian and the platform company is controlled by the Indian management.

The recommendations come at a time when foreign players are rapidly investing in India’s e-commerce market, which Morgan Stanley estimates may be worth $200 billion in 10 years.

Bharat Anand, partner at Khaitan and Co, said: “This step may increase the risk premium on investment in India. If companies perform, founders retain value. If companies fail, shares are issued cheaply.” He said the central bank, in any case, has valuation norms to ensure the stake of Indian promoters is not unfairly diluted and performing Indian companies are permitted to freely raise capital.

Amarjeet Singh, partner (tax, regulatory and internet business) at KPMG India, said: “If such a policy is enforced, any discussion between promoters of Indian start-ups and foreign investors is going to be difficult and their ability to raise funds will be a bit less effective.”

Manoj Kumar, partner and head (M&A and insolvency resolution services) at consultancy firm Corporate Professionals Capital, said: “It will be difficult to assume a situation where major shareholding is held by foreign investors and control is with the Indian owner with minority shareholding, because in such case the risk element is on a higher side.”

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E-commerce policy deliberations: Compounding the confusion

Arvind Singhal, The Financial Express

New Delhi, August 2, 2018: The deliberations of the task force constituted by the Union government of India to come up with a suitable e-commerce policy have now been consolidated into a draft policy and covered widely in the media. The authors of this policy would have made the mandarins of the erstwhile Planning Commission in the 1950s and 60s very proud. While they rightfully acknowledge the potential of the digital economy now, and in the decades to come, the understanding of what the digital economy and e-commerce is all about seems to be quite muddled.

The India of today does not need a “nanny-state” treatment. The nation urgently needs to catch up, in just about every domain, with the developed world if it were to give a chance to all its 1.3 billion inhabitants to live a better life. Innovative, intelligent use of various digital technologies and platforms provide a glimmer of hope to a nation which has unfortunately missed the previous industrial revolutions and must not miss the incoming industrial revolution 4.0. With the incredible pace of change all around us, the last thing that India needs is the straitjacket of a government created “policy” which creates artificial and undesirable schisms such as scale of e-commerce businesses, ownership in terms of nationality of the key investors in such businesses, differentiation of goods sold through such businesses in terms of country of manufacture, etc.

There are several glaring anomalies and impracticalities in this draft policy. The first one is to do with the supposed distinction between "domestic" and "foreign" firms. In today's economy, capital flows are seamlessly global. India-based start-ups, with Indian nationality entrepreneurs, require access to millions (and in some cases, billions) of dollars in funding at various stages of their growth. These funds (and in many cases, technical and managerial know-how) cannot be sourced only from resident Indian investors. Indeed, almost all the major venture capital and private equity funds raise their corpus from investors that are spread across the globe. Many of these ventures may also have a need to enter into mergers/acquisitions/divestments to other business entities who may have different ownership structures (in terms of nationality). India has already lost a lot by keeping out international investment in the country over the last 7 decades through myriad restrictions and regulations. It is high time that the nationality of investors in almost any business in India (other than, perhaps, in a very few areas relating to national defense and internal security) is no longer a matter of consideration for the Centre in normal business activity.

Secondly, it is absolutely essential to support the MSME sector. However, that support has to be provided by the Central government only by way of providing requisite high quality, cost-effective physical infrastructure and facilitating access to start-up/growth capital through suitable policy and fiscal incentives. Thereafter, it is up to the MSMEs to take advantage of a growing economy and rising consumer demand and set up/grow their businesses in tandem. Governments, in the past 70 years, have nearly killed many business sectors by creating all kinds of reservations based on scale and area of operation. Textile industry is one such example wherein the Centre's confused thinking in 1980s-2000s prevented Indian industry to grow while China was still a relatively small player in that sector. Today, India is struggling to even compete with Bangladesh and Vietnam simply because the Centre created policy distortions. In e-commerce, for successful companies, the entire world is a potential market and many such companies can rapidly scale up from being an MSME to world scale businesses. The last thing Indian MSMEs need is government forced restraints on their scale of operation.

Thirdly, the Union government has no business to directly or indirectly exercise any kind of price control on the goods (and services) being sold to Indian consumers. There is no definition or benchmark of what constitutes a normal discount versus excessive discount. Competitors and consumers decide what the appropriate price should be. In any exceptional situation of any evidence of predatory pricing, the CCI can easily take a view and address any such anti-competitive practice. E-commerce in India, currently, is less than 2% of the total consumer spending across various channels. Surely, at this insignificant level of penetration, it cannot distort the market conditions. Indeed, even if it touches 10% penetration in a decade from now, it would still be the smallest channel of retail for the 1.3 billion relatively low-income consumers who need the lowest possible price for whatever they buy. It would have been useful if this task force had studied if any such e-commerce "policy" currently exists in any developed nation before it attempted to write one for India and thereby potentially stymie growth of e-commerce in the country.

What this task force should limit its attention to is on a few specific areas. Data protection and data privacy is a genuine challenge, and therefore the Centre should ensure this. Transparency in the ownership structure of all businesses operating in India is important so that there is no circumventing of various laws and regulations through creative corporate holding structures. There should be adequate protection to the consumer whereby the channel/marketplace through which they have bought any specific product or service is held fully accountable for remedying any genuine shortcoming experienced by any consumer post purchase. Accordingly, CCI and ministry of consumer affairs should update and upgrade their expertise to handle issues arising out of e-commerce.

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