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INDIA-CHINA TRADE RELATIONS AMID COVID-19 PANDEMIC: RECOURSE TO ARTICLE XXI OF GATT

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ABSTRACT

The relationship between the two giants of Asia has been progressing at a tremendous pace. The contracting parties have witnessed their share of ups-and-downs over the years. India and China today represents Asia's two largest and most dynamic economies which are emerging as new trend setters in international relations. In the ancient times, trade started between India and China through the Silk Route. The bilateral trade between India and China has grown four-fold in the past decade. The year 2020 will go down in history as one where lives were changed by the Chinese-origin COVID-19 virus. The pandemic represents an unprecedented disruption to the global economy and world trade, as production and consumption are scaled back across the globe. Amid the massive outbreak of novel Coronavirus globally, India-China trade faces major restraints. In this year, many countries including India have reset their relations with China due to coronavirus. Given the fact that the India and China are parties to World Trade Organization agreements, unilateral acts without invoking exceptions under the General Agreement on Tariffs and Trade would be considered as violation of the non-discrimination principle. This paper will deal with the trade relationship between India and China. Further, this paper will analyze the impact of covid-19 on India-China trade relationship. Lastly, this paper seeks to examine whether India can cut its trade ties with China with reference to Article XXI of GATT.

KEYWORDS: *Covid-19, India-China relationship, Security threat, Article XXI of GATT.*

INTRODUCTION

The ancient history reveals that India and China had contact during the 2nd century BCE. In the 1st century CE, Buddhism was transmitted to China from India. The Silk route paved way for trade relations between the India and China.¹ India and China established their diplomatic relations on 1st April 1950, and India is the first non-communist country to have an embassy in China. Both these countries have completed 70 years of their establishment of diplomatic relationship with each other as on 1st April 2020.

There was a series of visits by highest officials of both the states. In June 1954, Zhou Enlai the first Premier of China visited India. In October 1954, the then Prime Minister of India Jawaharlal Nehru visited China. Again in January 1957 and April 1960, the Chinese Premier came to India. There was a serious setback to the bilateral relations on 20th October 1962 due to China-India conflicts. In August 1976, both the states restored their ambassadorial relations. In February 1976, the then External Affairs Minister AtalBihari Vajpayee visited and revived the higher level political contracts. In June 1981, Foreign Minister of China Huang Hua visited India. In December 1988, the then Prime Minister of India Rajiv Gandhi visited China. At this time, both the states agreed to expand and develop the bilateral relations in all sectors. In December 1991, Chinese Premier Li Peng came to India and in September 1993 out the then Prime Minister P.V.NarasimhaRao visited China.²

In order to maintain peace in the India-China border area along the Line of Actual Control, an agreement on Maintenance of Peace and Tranquility was signed. This was done to provide both the contracting states the status quo on the border region and also to clarify the doubts in line of actual control.

INDIA-CHINA TRADE RELATIONSHIP PRIOR TO COVID-19

The bilateral trade between India and China was not very significant as the trade was restricted to specific variety of goods due to the reforms initiated in the year 1991. But in a short span of time, China became India's single largest trade partner although in 2010 India reached \$26.3 billion unsustainable bilateral trade deficit.

¹Backus, Maria, *Ancient China*, Lorenz Educational Press, September 2002.

²*India-China trade relationship: the trade giants of past, present and future*, PhD Chamber Of Commerce and Industry, January 2018.

The major goods which India exports to China are iron and steel, ores, plastics, slag and ash, cotton and organic chemicals. There is a necessity to have a special emphasis on investment, knowledge based sector and trade in services, so as to increase the volume of exporting Indian goods to China. The potential goods of trade between the contracting parties are rubber, salt, marine products, medical equipment, oil seeds, dairy products and inorganic chemicals. The other potential areas are tourism, education, information technology, health, finance, and bio technology.³

The significant goods which China exports to India are machinery, oil, mineral fuel, silk, electrical machinery, cement, equipment, nuclear reactors, organic chemicals and boilers. The Chinese dominated exports to India are mainly electrical machinery. It is seen that the goods exported by China are diverse and includes manufactured items, resource based products and technological items.⁴

Both the contracting parties provides for a powerful economic exchange. The Chinese manufacturing sector is five times greater and its economy is three times greater than India's. In India, there are huge reserves of iron ore, manganese and bauxite and it majorly exports raw materials are to China. India mostly imports manufactured good from China. The trade in service sector is relatively low among the contracting states.

The bilateral trade has boosted because of the vast size and immense growth rate of both the economies. The contracting party's economies have grown faster than other foremost economies in the world. There are many prospects for continuous growth in the bilateral trade between the two countries.

IMPACT OF COVID-19 ON INDIA-CHINA TRADE RELATIONSHIP

India-China trade faces significant restraints due to the massive global outbreak of Covid-19. The bilateral trade between the contracting parties has been significantly affected in sectors of consumer goods, medical equipment, oil and gas, automobiles, steel, pharmaceuticals and electronics. The trade among the countries is undergoing enormous change amid the global

³Sunandan Ghosh, Manmohan Agarwal, Adrita Banerjee, *India-China Trade: Asymmetrical Developments and Future Prospects*, South Asia Economic Journal, Volume 20, Issue 1, Pg. 70-93, 2019.

⁴TP.Bhat, *India and China: The Trade Policy Dynamics*, India Quarterly, Volume 68, Issue 1, Pg. 69-87, 2012.

pandemic. China had delayed in informing the rest of the world about the novel coronavirus and consequentially this has raised anti-Chinese sentiments across the world.⁵

In the year 2019 between April and December, India has imported goods worth \$52 billion from China and this shows that India largely depends on China for trade.⁶ Since trade restrictions were imposed by India, there has been a shortage of many important goods. India is one of the fifteen majorly affected economies in the world with trade impact of \$348 million due to coronavirus pandemic and slowdown of production in China.

According to reports of United Nations Conference on Trade and Development, the global coronavirus outbreak has led to slowdown of manufacturing process in China which in turn has disrupted the world trade and consequentially there has been a decrease of \$50 billion worth exports across the globe. The report further stated that despite having serious impact on human beings, the coronavirus has rapidly slowed down not only the economy of China but also the rest of the world. Since China is the central manufacturing hub of many products, any disruption in its production will lead to repercussions across the globe. The Secretary General of United Nations Conference on Trade and Development stated that “any slowdown in manufacturing in one part of the world will have a ripple effect in economic activity across the globe because of regional and global value chains.”⁷

Out of the total exports of China, only 2% it exports goods to India. Hence even if Indians try to boycott Chinese imported goods, it will not have a massive effect on China. India's largest trading partner is China, but the trade is majorly skewed in Chinese favour. So, starting a trade war with China when there is a limited manufacturing capability in India, then it will not favour India.

SECURITY EXCEPTIONS UNDER ARTICLE XXI OF GATT

⁵Somesh Mathur and Anusree Paul, *COVID-19 and India's trade dependency on China: Should we continue our ties?*, The Economic Times, June 13th 2020 at <https://economictimes.indiatimes.com/news/defence/covid-19-and-indias-trade-dependency-on-china-should-we-continue-our-ties/articleshow/76351547.cms>

⁶Samiksha Mishra, *Coronavirus Impacts India-China Bilateral Trade*, India Head News, March 2nd 2020 at <https://www.indiaheadnews.com/top-headlines/coronavirus-impacts-india-china-bilateral-trade-349293>

⁷*COVID-19: Trade impact for India estimated at \$348 million: UN report*, The Hindu, March 5th 2020 at <https://www.thehindu.com/business/Economy/covid-19-trade-impact-for-india-estimated-at-348-million-un-report/article30987932.ece>

There are two kinds of exceptions under the General Agreement on Tariff and Trade. The Article XX of GATT provides for general exceptions and Article XXI provides for security exceptions. When the action of another state imposes danger to the national security of a state, the security exceptions under Article XXI can be invoked.⁸

The Article XXI deals with the security exceptions. The state imposing restrictions is granted with immunity protection on the ground that the act done by the state was to protect its security due to any international disturbance. If the nation imposing sanction wants to defend itself from violating their obligations to GATT when imposing restrictions, then protection of security interest has to be pleaded.⁹

The Article XXI provides for a procedural aspect and a substantive aspect. The procedural requirement is that state against which the restrictions are levied must be made aware of the complete extent of measures. The state which has imposed sanctions must follow all substantive necessities that are required to impose sanctions under Article XXI. The state which imposes sanctions must also ascertain that their measures were taken at the time of emergency in international relations.¹⁰

Under Article XXI(b)(iii) there are 3 conditions for invoking the provisions. First, the state which imposes sanctions must prove that the actions were taken only in the time of “emergency in international relations”. Second, the state must prove that there was a threat to the “essential security interest”. Third, the state has to show that the measures which were taken are “necessary” to safeguard its essential security interest.

Under Article XXI of GATT, the interpretation of the phrase “essential security interest” is not definitive.¹¹ So its determination has remained the only prerogative of the state which involves the Article XXI (b) (iii). It is necessary for each country to state that on what issues it affects the security interest.¹²

⁸https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf

⁹Peter Lindsay, *The ambiguity of GATT Article XXI: Subtle Success or Rampant Failure*, Duke Law Journal, Volume 52, Pg. 1277-1313, 2003.

¹⁰Rishika Lekhadia, *Can the West Justify its Sanctions against Russia under the World Trade Law*, Indian Journal on International Economic Law, Volume 7, Pg.151-176, 2015.

¹¹Sweden-Import on restrictions on certain footwear, L/4250, 17th November 1975.

¹²United States-Trade Measures affecting Nicaragua, L/6053, 13th October 1986.

In the year 1982, imports were indefinitely suspended from Argentina by Australia, Canada and European Community.¹³ A decision relating to Article XXI of GATT was adopted. This decision provides for some procedural protection which has to be followed while imposing restriction. These are as follows:

- The contracting states upon whom the trade restrictions are imposed must be informed with the measures completely probable.
- The contracting states on which the sanctions are imposed has the complete right to challenge the act under the settlement of dispute mechanism.
- The council would be required to provide additional consideration in this issue in due course of time.

In *United States v. Nicaragua*¹⁴ dispute, the substantial interpretation of Article XXI was provided and held that the state which invokes Article XXI has to determine the “essential security interest”. The other decisions given under Article XXI majorly relates to the contentions and allegations states by the affected states when they violated their duties under WTO. Thus, the limited decisions under Article XXI leave a broad scope of interpretation for future disagreements when Article XXI is stated to defend the violation of GATT provisions.¹⁵

CAN INDIA CUT ITS TRADE TIES WITH CHINA?

In the year 2020, India has banned a total of 224 Chinese apps. During the month of June, 59 apps, July 47 cloned apps and August 118 Chinese apps were banned. In the month of June, the first salvo of trade war was fired by New Delhi between India and China. Only in the recent times India took a first big step towards waging a trade war, although Beijing was already involving a low-intensity trade war with India for over a decade by rampant dumping of products subsidized by the state.¹⁶

¹³Czechoslovakia v. United States dispute, CP.3/SR22, 8th June 1949.

¹⁴United States v. Nicaragua, 1986 ICJ 14, 27th June 1986.

¹⁵ Michael J. Hahn, *Vital Interests and the Law of GATT: An Analysis of GATT's Security Exception*, Michigan Journal of International Law, Volume 12, Issue 3, Pg. 588-620, 1991.

¹⁶Jaijit Bhattacharya, *With App Ban, India Has Fired First Salvo In Trade War With China. How Can Dragon Retaliate?* Outlook India, July 6th 2020 at <https://www.outlookindia.com/website/story/opinion-with-app-ban-india-has-fired-first-salvo-in-trade-war-with-china-how-can-dragon-retaliate/356169>

India and China are parties to WTO agreements, and any unilateral act without invoking the exceptions under GATT would be considered as violation of the principle of non-discrimination. This principle protects international trade between two states and it is the basic principle of world trading regime. The non-discrimination principle consists of national treatment and most favoured nation treatment.

Under the most favoured nation obligation, a member state of WTO grants some favourable treatment to another state which in turn grants the same kind of treatment which is favourable to other WTO member states. Under the national treatment, a member state of WTO is required to treat foreign goods and services not less favourable than it would treat the domestic goods and services.

When India was planning to alter the Chinese trade relationship, it was feared by many people that even other countries may do it similarly against India also, and these unilateral action would amount to violation of principle of non-discrimination. The exception which is given under Article XXI is self-judging since it states that any action which is necessary can be taken by the state to protect the essential security interest. The deference can be given to the state which adopts such kind of measures in view of the territorial sovereignty of the concerned state. Therefore, any unilateral act taken by India under Article XXI cannot be considered to be in derogation from the principles of non-discrimination.

India can cut its trade ties with China or can also take any other decision that may contravene with its obligations under GATT by relying on the provisions of Article XXI. Only when the government of India contemplates that it is necessary to protect the essential security interest of the state, it can impose trade restrictions or take any other measures which would be required, without applying Article XXI, would contravene its obligations under GATT.¹⁷

CONCLUSION

The Atmanirbhar Bharat scheme can provide the most wanted boost to the disrupted business operations in the State by encouraging Make in India manufacturing, promoting replacement of

¹⁷Vivek Kumar, Can India cut its trade ties with China? A closer look at Article XXI of the GATT Agreement, July 5th2020 at www.barandbench.com.tnlibrary.remotexs.in/columns/can-india-cut-its-trade-ties-with-china

imports of low-technology products specifically from China and encouraging local goods at lesser prices.

It is not possible to predict the next crisis in the world. Building a strong international cooperation network is the most efficient and reliable way. What remains elusive is the global political consensus. India has initiated the first step in trade war by banning the Chinese apps. All businesses will be severely affected if a blanket ban on Chinese imports is enabled, given the fact that businesses are already suffering due to the covid-19 pandemic. So, if a trade war is fired when India's manufacturing ability is very low, then it will not favor India at all. By waging a war against China to boycott its products as a form of revenge will have a great impact on India more than China due to the nature and size of Chinese trade. It would be like a self-harm if India plans a blanket ban of Chinese goods at the time when there is a sharp fall of GDP in the state.

But this doesn't mean that India should not protect its own interest. As an alternate to the blanket ban, a larger strategic push is required to fix the bilateral trade skew. India must support its collapsing infrastructure and correct the complicated regulatory regime and then finally become globally competitive. Unfortunately with the current economic situation of the state, boycotting the Chinese products will not make any sense.



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