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ECONOMIC AND LEGAL IMPACT OF FREE TRADE AGREEMENTS ON THE ECONOMY OF INDIA - SPECIFIC FOCUS ON THE MICRO, SMALL AND MEDIUM INDUSTRY IN KERALA

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DECLARATION

I, Anantha Krishnan.G (REGISTER NO. - LM0223004), pursuing Master in International Trade Law, do hereby declare that the Dissertation titled "ECONOMIC AND LEGAL IMPACT OF FREE TRADE AGREEMENTS ON THE ECONOMY OF INDIA - SPECIFIC FOCUS ON THE MICRO, SMALL AND MEDIUM INDUSTRY IN KERALA", submitted for the award of LL.M. Degree in the National University of Advanced Legal Studies, Kochi, during the academic year 2023-2024 is my original, bona fide and legitimate research work, carried out under the guidance and supervision of Dr. Anil R.Nair. This work has not formed the basis for the award of any degree, diploma, or fellowship either in this university or other similar institutions of higher learning.

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LIST OF ABBREVIATIONS

1. FTA: .Free Trade Agreement
2. EFTA: European Free Trade Association.
3. MSME: Micro, Small, and Medium Enterprises.
4. WTO: World Trade Organisation.
5. PTA: Preferential Trade Agreements .
6. CECA: Comprehensive Economic Cooperation Agreements.
7. CEPA:Comprehensive Economic Partnership Agreements .
8. GTRI: Global Trade Research Initiative.
9. RTA: Regional Trade Agreement.
10. BIT: Bilateral Investment Treaty.
11. GATS: General Agreement on Trade in Services.
12. CPTPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
13. GATT:General Agreement on Tariffs and Trade.
14. USD: United States Dollar.
15. SAFTA: South Asian Free Trade Area .
16. SAARC: South Asian Association of Regional Cooperation.
17. LDC: Least Developed Countries.
18. NLDC: Non-Least Developed Contracting States
19. TPL: Tariff Liberalisation Program.
20. CPTPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
21. GSP: Generalized System of Preferences.
22. TEPA: Trade and Economic Partnership Agreement.
23. ISFTA: India-Sri Lanka Free Trade Agreement.
24. ASEAN: Association of Southeast Asian Nations.
25. RCEP: Regional Comprehensive Economic Partnership.
26. MFN: Most Favoured Nation.
27. ECTA: Economic Cooperation and Trade Agreement.
28. RCA: Revealed Comparative Advantage.
29. NTB: Non-Tariff Barriers
30. SPS: Sanitary and phytosanitary measures
31. TBT: Technical Barriers to Trade.

32. TRIPS: Trade-Related Aspects of Intellectual Property Rights
33. GDP: Gross Domestic Product
34. NAMA: Non-Agricultural Market Access
35. ILO: International Labour Organization.
36 ROO: Rules of Origin
37. IPEF: Indo-Pacific Economic Framework for Prosperity
38. GOI: Government of India
39. GP: Government Procurement
40. IJCEPA: India-Japan Comprehensive Economic Partnership Agreement

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Chapter 1- INTRODUCTION

ECONOMIC AND LEGAL IMPACT OF FREE TRADE AGREEMENTS ON THE ECONOMY OF INDIA - SPECIFIC FOCUS ON THE MICRO, SMALL AND MEDIUM INDUSTRY IN KERALA

1.1 Introduction

We live in an era of globalisation and economic interdependence. Thus, in the present era, international trade plays a pivotal role in shaping regional economies. This dissertation studies the economic and legal impact of Free Trade Agreements (FTAs) on the business landscape of Kerala, explicitly emphasising the repercussions faced by the small-scale industries that constitute the backbone of the State's economy. Kerala has long been considered an unfriendly State for industries and has yet to be able to tap its full potential as compared to its other southern counterparts. FTAs contain many benefits on paper, but when it comes to the actual implementation, it proves to be very challenging. This is evident with the past performance of Preferential Trade Agreements signed by India and how they have affected the country's export potential. The main concern has always been how India, with its current manufacturing capability, can prevent the influx of foreign goods from developed regions with whom trade agreements have been signed and protect domestic industries from superior quality goods from developed countries.

A Free Trade Agreement(FTA) is an agreement between two or more nations to remove trade barriers and facilitate trade between them. In a free trade agreement, both physical goods and services can be bought and traded across countries with minimal government tariffs, quotas, subsidies, or prohibitions.[1] [2]India is currently part of 14 free or regional trade agreements, most recently with UAE, Australia, and the European Free Trade Association (EFTA). India also negotiates FTAs with many other countries, including the UK, Canada, the EU, and Israel.

An FTA focuses mainly on economic benefits and encourages trade between countries by making them more efficient and profitable. Agreements reduce or completely remove tariffs on goods, simplify complex customs procedures, remove unjustified restrictions on what can and cannot be traded, and make it easier for people to travel or live in each other’s country.

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[1] Free Trade Agreement (FTA): Definition, How It Works, and Example,, https://www.investopedia.com/terms/f/free-trade.asp.

[2] India has signed 13 Regional Trade Agreements (RTAs)/Free Trade Agreements (FTAs) with various countries/regions, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1843902

The FTA signed by India cover a wide variety of topics, such as tariff reduction impacting the manufacturing and agricultural sectors, rules on services trade, issues such as data localisation, intellectual property rights under TRIPS having an impact on the accessibility of pharmaceutical drugs; and investment promotion, facilitation, and protection.

The study is prompted by the pressing need to comprehensively understand how FTAs impact the economic trajectory of Kerala and, more critically, the challenges and opportunities they present for small-scale industries. The research encapsulates an in-depth analysis of the existing free trade arrangements, shedding light on their legal intricacies and economic implications. Adhering to FTA guidelines can be very challenging for a state like Kerala.

Small Scale Industries have substantial contributions to the country's economy. Kerala has the 12th largest number of small businesses in India, which is around 23.79 lakh units, of which a majority are micro-enterprises, generating employment for approximately 44.64 lakh people. The impact of FTAs on the Micro, Small, and Medium Enterprises (MSMEs) in Kerala are complex and multifaceted. The actual consequences of an FTA on Kerala and its economy as well as MSME sector depend on several factors, along with the specific traits of the agreement, the industries involved, and the competitiveness of the local MSMEs

India has signed 14 FTAs, all differing in scope and nature**.** Most of these agreements have failed to produce their desired results and contributed to India's high trade deficit.

Trade agreements have increased since the early 2000s. As of March 2022, 354 such agreements are in force between the various World Trade Organisation (WTO) members. These member-exclusive agreements allow participating countries to open their borders to free trade. Even though such agreements are discriminatory, they are permitted by the WTO.[3] Trade agreements occur at varying degrees of openness. The lowest level of integration involves Preferential Trade Agreements (PTA), which are limited to tariff reductions for a select list of goods. According to the Indian government, FTA offer a deeper form of integration through tariff reductions in larger classes of goods. Further, Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA) allow for even deeper trade dynamics through provisions in services, investments, and intellectual property.

In the past, India remained a cautious player in negotiating FTAs. All the FTAs signed were with Southeast Asian/ East Asian countries. In contrast to FTA partners such as South Korea, Vietnam, and Bangladesh, which vigorously developed their export orientation, India's overall goods exports had been stagnant at around USD 300 billion

[3] WTO | Regional Trade Agreements gateway, https://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited Jun 25, 2024).

for a decade. During this period, trade with FTA partners rose by around 20 per cent.

Kerala is a highly globalised state and depends on external trade, tourism, and remittances from Non-Resident Keralites to enhance the economy. A huge number of Keralites have immigrated to different countries and have formed a substantial population there. The presence of Keralites in other countries has also helped create a market for locally produced goods.

1.2 Statement of Problem

The objective of this dissertation titled "Economic and Legal Impact of Free Trade Agreements on India's Business Landscape - Special Focus on Small Scale Industries in Kerala" is to conduct a comprehensive and in-depth analysis of how FTA affect the economic and legal aspects of Indian business environment, with a particular emphasis Small Scale Industries in Kerala. Identify the opportunities FTAs have presented for Small Scale Industries in Kerala and highlight the challenges businesses may face due to FTA provisions. Also, it is meant to analyze the legal framework of FTAs and how they interact with Kerala's existing laws and regulations, along with an assessment of whether FTAs have necessitated changes in domestic legal and regulatory frameworks.

The economic and legal impact of FTAs on the business landscape in the country is multidimensional. FTAs can have both positive and negative effects. Changes in domestic policy and legal framework are required to facilitate FTAs. Certain areas in FTAs are complex and can lead to ambiguity, which may lead to disputes.

1.3 Scope of Study

The study comprehensively explores the historical evolution and critical provisions of India's FTAs, assessing their legal impact on MSMEs in Kerala. It delves into the economic consequences, market dynamics, and competitive landscape alterations for MSMEs while identifying challenges and opportunities arising from these agreements. The research includes a comparative analysis, case studies, and stakeholder perspectives to provide a nuanced understanding. Ultimately, the dissertation aims to formulate insightful policy recommendations for optimising the positive impacts and addressing challenges faced by MSMEs, contributing to a holistic examination of the subject.

1.4 Research Question

- What is the impact of the FTAs signed by India on the economy?
- What are the challenges associated with implementing FTAs ?
- What possible disputes can arise on FTAs due to the presence of MSMEs in the existing domestic frameworks?
- What challenges arise due to FTAs and are the changes in existing policy and legal framework that India and Kerala should bring to facilitate the implementation of FTAs and utilise the opportunities?

1.5 Research Objective

- Analyse the specific clauses and policies in FTA's to boost MSMEs
- Identify areas or particular clauses in FTAs that can lead to potential disputes.
- Identify the threats posed by these agreements and changes that India and Kerala need to bring in policy and law to facilitate the implementation of the FTAs and avail its full benefits.

1.6 Hypothesis

Implementing FTAs has had positive and negative economic and legal impacts on Kerala's economy, with varying effects on MSME. The hypothesis is –

  - There are specific clauses in currently signed FTAs that deal with MSMEs.
  - FTAs can provide export opportunities for Kerala MSME but there are certain challenges.
  - Different FTAs depending on the country, pose different challenges. Some have a positive impact, and others have a negative impact.

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1.7 Research Methodology

The research will primarily use the doctrinal research method. The sources for this research will include India's FTAs, journals, government publications, online articles, newspapers, books, and specific statutes.

1.8 Chapterization

CHAPTER I
Introduction - This chapter introduces the concept of FTA and the different kinds of Preferential Trade Agreements. This chapter also briefly explains Kerala's economy and the role played by MSMEs in boosting the economy.

CHAPTER 2
This chapter deals with the concept and relevance of FTAs.

CHAPTER 3
This chapter deals with the history and evolution of free trade.

CHAPTER 4
This chapter analyses the FTAs entered by India and how they have affected the economy.

CHAPTER 5
This chapter deals with the specific clauses in FTAs signed by India that are concerned with MSMEs . Specific dispute areas within these clauses will be studied, and possible ways to mitigate them will be discussed.

CHAPTER 6
Conclusion

Chapter 2 - FREE TRADE AGREEMENTS - CONCEPT AND RELEVANCE

2.1 INTRODUCTION

Trade policy is a vital policy tool at the government's disposal that determines what India trades, what it produces, and who benefits from its production. Trade policy determines which products a country can import from other countries and which it will domestically produce.

Most developed countries had high industrial tariffs during their process of industrialisation. The US had an average tariff between 35 per cent and 50 per cent during 1830-1913. In 1950, the UK, France, and Germany had 23 per cent, 18 per cent, and 26 per cent applied industrial tariffs. Most developing countries currently have high tariffs compared to developed ones and use them to protect their growing industries. However, these are now much lower than those of the developed countries during their industrialisation phase. South Asia and India have generally higher tariffs (maximum and applied) than most developed countries and developing countries such as China.[4]

The economic principle of free trade enables countries to trade goods and services across their borders with minimal government intervention, such as tariffs, quotas, or subsidies. Essentially, it aims to facilitate smooth and unrestricted international trade, fostering competition and stimulating global economic growth. This principle is based on the theory of comparative advantage, which suggests that countries should specialize in producing the goods and services they can efficiently create and trade those they cannot.

Free trade and protectionism are the two opposing sides to international trade. Free trade encourages the removal of trade barriers and the promotion of economic efficiency and market access. Protectionism is concerned with protecting the domestic industries but in effect can lead to higher prices and reduced consumer choices. Creating a balance between free trade and protectionism remains a subject of ongoing policy debate, with countries adopting different degrees of openness and protectionism based on their economic priorities and circumstances.

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[4] Divya Pandey &Unnikrishnan Meera, Free Trade Agreements (FTAs) by India: Review and Implications for Future -Misra Centre for Financial Markets and Economy (MCFME), IIMA, (Mar., 2023), https://www.iima.ac.in/sites/default/files/2023-03/MCFME_FTAs.pdf.

Free trade on the international level is not different from trade between, for instance neighbors, towns, or states. However, on exception is that it permits businesses in each trading country to focus on manufacturing and selling the goods that best use their resources. In contrast, other businesses import goods that are few in quantity or are unavailable domestically. The mix of local production and foreign trade allows countries to experience faster economic growth while better meeting the needs of their consumers.

In 1817, economist David Ricardo introduced this perspective on Free Trade in his book "On the Principles of Political Economy and Taxation." He contends that free trade enhances the variety and reduces the costs of commodities within a country, while also making better use of its domestic resources, expertise, and specialized abilities.

2.1 There are primarily two Free Trade Models -

2.1.1 Mercantilism

Before the 1800s, global trade was dominated by the theory of mercantilism. This theory prioritised having a favourable trade balance as compared to other countries and accumulating more gold and silver.

To attain a favourable trade balance, countries often place trade barriers like taxes or tariffs to discourage their residents from purchasing foreign goods. This encouraged consumers to buy locally-made products, hence supporting domestic industries.

2.1.2 Comparative Advantage

Ricardo introduced the concept of comparative advantage, which says that countries can attain maximum benefits through free trade. Ricardo demonstrated that if countries prioritise producing the goods, they can create more cheaply as compared to other countries (comparative advantage). They can make more goods in total than they would by limiting trade.

The signing of FTA creates what is known as a Free Trade Area. The term free trade area was meant initially by the General Agreement on Tariffs and Trade to include only trade in goods. An agreement with a similar purpose, to enhance trade liberalisation in services, is named under Article 5 of the General Agreement on Trade in Services(GATS) as an "economic integration agreement".However, the term is now widely used in practice to refer to agreements covering goods, services, and investment.

As mentioned earlier, forming free trade areas is considered an exception to the principle of the most favoured nation. Free trade agreements forming free trade areas lie outside the regulations of the multilateral trading system. However, WTO members must notify the Secretariat when they conclude new free trade agreements. In principle, free trade agreements are subjected to reviewed under the Committee on Regional Trade Agreements. However, a dispute arising within free trade areas is not subjected to the WTO's Dispute Settlement Body.

India has signed as many as 14 FTAs, including the four-nation European bloc EFTA being the latest one, and six preferential pacts with its trading partners to promote exports and ensure greater market access for domestic goods and services. Since 2014, India has signed many free trade agreements with Mauritius, the UAE, and Australia, and the latest with EFTA(The European Free Trade Association (EFTA) whose members are Iceland, Liechtenstein, Norway, and Switzerland.

Together, India's trade agreements form preferential relationships with 94 countries. When India completes its ongoing FTA negotiations, it will have a preferential relationship with over 120 countries. The subjects covered under these agreements range between 10 to 30. Across the globe, over 350 FTAs are currently in force, and most nations have signed one or more such contracts.

According to a report by the economic think tank GTRI(Global Trade Research Initiative), countries worldwide negotiate these trade deals for several reasons. Zero-duty entry into partner country markets helps diversify and expand export markets—a level playing field vis-a-vis competitors who may have already entered FTAs with partner countries. The WTO (World Trade Organisation) uses the abbreviation RTA (Regional Trade Agreement) to denote all preferential economic engagements. WTO is the global watchdog for exports and imports-related issues.[5]

[5] GLOBAL TRADE RESEARCH INITIATIVE (GTRI), https://gtri.co.in/ (last visited Jun 25, 2024).

2.2 There are different types of free trade agreements (FTAs), each with unique characteristics and purposes. The main types are:[6]

2.2.1 Bilateral Free Trade Agreements

Bilateral Free Trade Agreements are agreements between not more than two countries to reduce or eliminate trade barriers and enhance economic integration. Bilateral trade agreements aim to expand access between two countries' markets and increase their financial growth.[7] Standardised business operations in core trading areas prevent one entity from stealing another's innovative products, dumping goods at a smaller cost, or using unfair subsidies. Bilateral trade agreements usually standardise regulations, labour standards, and environmental protections.

Unlike multilateral trade agreements, bilateral trade agreements are negotiated more quickly because only two nations are party to the contract. Bilateral trade agreements initiate and procure trade benefits faster than multilateral agreements.

Many nations will negotiate bilateral treaties when negotiations for a multilateral trade agreement are unsuccessful. New agreements will result in other competing agreements between other countries, eliminating the advantages that the Free Trade Agreement (FTA) confers between the original two nations.

2.2.2 Multilateral Free Trade Agreements

Multilateral Free Trade Agreements, opposite to BIT, are agreements involving more than two countries. They aim to liberalise trade between countries by reducing or eliminating tariffs, import quotas, and other such trade restrictions.

2.2.3 Regional Free Trade Agreements

Regional Free Trade Agreements are similar in nature to multilateral FTAs but involve countries within a specific geographic region. Their purpose is to encourage trade and economic cooperation within that specific region. The European Union (EU) is a prominent example, with member countries practising free trade. Regional trade agreements are treaties signed by two or more than two nations to encourage the free movement of goods and services along their respective borders. The agreement often comes with internal rules that member countries follow among themselves. When dealing with non-member countries, the members follow external rules. Regional trade

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[6] Corporate Finance Institute, https://corporatefinanceinstitute.com/ (last visited Jun 25, 2024).

[7] Free Trade: Definition, Types of Agreements, Benefits, Economics, Vaia, https://www.vaia.com/en-us/explanations/macroeconomics/international-economics/free-trade/ (last visited Jun 25, 2024)

agreements differ depending on the level of commitment and the economic integration among the member countries. They are -

2..2.4 Preferential Trade Areas[8]

A preferential trading agreement requires the lowest or least level of commitment in reducing trade barriers, though countries does not eliminate the barriers among themselves. A preferential trade areas does not share common external trade barriers. A preferential trade area is a group of countries that agree to reduce tariffs and other trade barriers on certain goods and services among themselves while maintaining their own barriers against imports from non-member countries. The goal of a preferential trade area is to encourage trade among member countries and boost their economic development.

2.2.5 Customs Union[9]

Customs unions are a specific type of free trade area. All such areas have internal arrangements that parties conclude to liberalise and facilitate trade. The main difference between customs unions and free trade areas is their approach to third parties. While a customs union requires all parties to establish and maintain identical external tariffs about trade with non-parties, parties part of a free trade area are not subjected to such requirements. Instead, they may develop and sustain whatever tariff regime applies to imports from non-parties as deemed necessary. Parties will adopt preferential rules of origin to eliminate the risk of trade deflection in a free trade area without harmonised external tariffs.

A customs union differs from an economic union. An economic union applies to more than just goods. It also extends to the free movement of money and labour between member countries, which a customs union does not do. The European Union is considered an economic union and a customs union. A customs union makes it easy for countries to trade freely with each other. The union reduces the administrative and financial burden of barrier trading and fosters economic cooperation among countries.

Member countries must be given the freedom to form their own trade agreements. The countries in the customs union restructure their domestic economy and economic policies

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[8] Free Trade Agreement (FTA): Definition, How It Works, and Example, Investopedia, https://www.investopedia.com/terms/f/free-trade.asp (last visited Jun 25, 2024).

[9] Customs Union, Corporate Finance Institute, https://corporatefinanceinstitute.com/resources/economics/customs-union/ (last visited Jun 25, 2024).

to maximise their gain from membership in the union. The European Union is the world's largest customs union in terms of its members' economic output.

The effectiveness of a customs union is decided in terms of trade creation and diversion. Trade creation happens when the more efficient members of the union sell to the less efficient members, leading to better allocation of resources. Trade diversion occurs when efficient non-member countries sell fewer goods to member countries because of external tariffs. The aim is to give less efficient countries in the union the opportunity to capitalise on their exports and sell more products within the union. If the gains from trade creation exceed the losses from trade diversion, that leads to increased economic welfare among member countries.

2.2.6 Common Market[10]

A common market is a form of trade agreement where members remove internal trade barriers, adopt common policies when dealing with non-members, and allow members to move resources among themselves freely.

To be considered as a common market, some conditions must be fulfilled:

- Tariffs, quotas, and all other barriers regarding importing and exporting goods and services among common market members will be eliminated.
- Common trade restrictions, like tariffs on countries outside the group, are adopted by all members.
- Production factors like labour and capital can move freely without restrictions among member countries.

If any of these conditions are not satisfied, the market is not considered a common market. For example, if production factors such as labour and capital cannot move freely without restriction among member countries, then the agreement would be a customs union. The main advantage of a common market includes the free movement of people, goods, services, and capital. A common market is often considered a "single market" as it allows the free movement of production factors without the obstruction created by the national borders.

[10] Common Market, Corporate Finance Institute, https://corporatefinanceinstitute.com/resources/economics/common-market/ (last visited Jun 25, 2024).

2.2.7 Economic Union

An economic union is a different type of trade blocs. It refers to an agreement between countries that allows products, services, and workers to cross borders freely. The union aims to eliminate internal trade barriers between the member countries to benefit all the member countries economically. [11]Economic union requires the integration of monetary and fiscal policies so that members can coordinate policies, taxation, and government spending related to the agreement. The union also use a common currency that comes along with fixed exchange rates.

An economic union is different from a customs union as under the customs union, member countries are allowed to move goods across but do not share a single currency. They are also not allowed to move labour across borders freely.

2.2.8 Plurilateral Free Trade Agreements

Plurilateral Free Trade Agreements contain more than two countries, but not all countries are in a particular region. These agreements focus on specific sectors. An example of a plurilateral FTA is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which involves 11 countries of the Pacific Rim.

Two types of plurilateral trade agreements exist among WTO Members: an exclusive and other an open variant. While the benefits of the former agreements are shared among participants only, the latter is implemented on an Most Favoured Nation basis, hence profiting non-signatories as well.

2.2.9 Preferential Trade Agreements (PTAs)

Preferential Trade Agreements (PTAs) provide member countries with preferential or more favorable access to specific products. This is accomplished by reducing tariffs rather than eliminating them entirely. For instance, the Generalized System of Preferences (GSP) in the United States grants preferential duty-free access to more than 3,500 diverse products from a broad array of designated beneficiary countries. The primary goal of a preferential trade agreement (PTA) is to facilitate trade between two countries or groups of countries, enabling companies from one signatory country or economic zone to benefit from import or export advantages.

The benefits are:

- related to price, such as a reduction in customs fees ;

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[11] Economic Union, Corporate Finance Institute, https://corporatefinanceinstitute.com/resources/economics/economic-union/ (last visited Jun 25, 2024).

- not related to price, notably concerning more straightforward formalities.

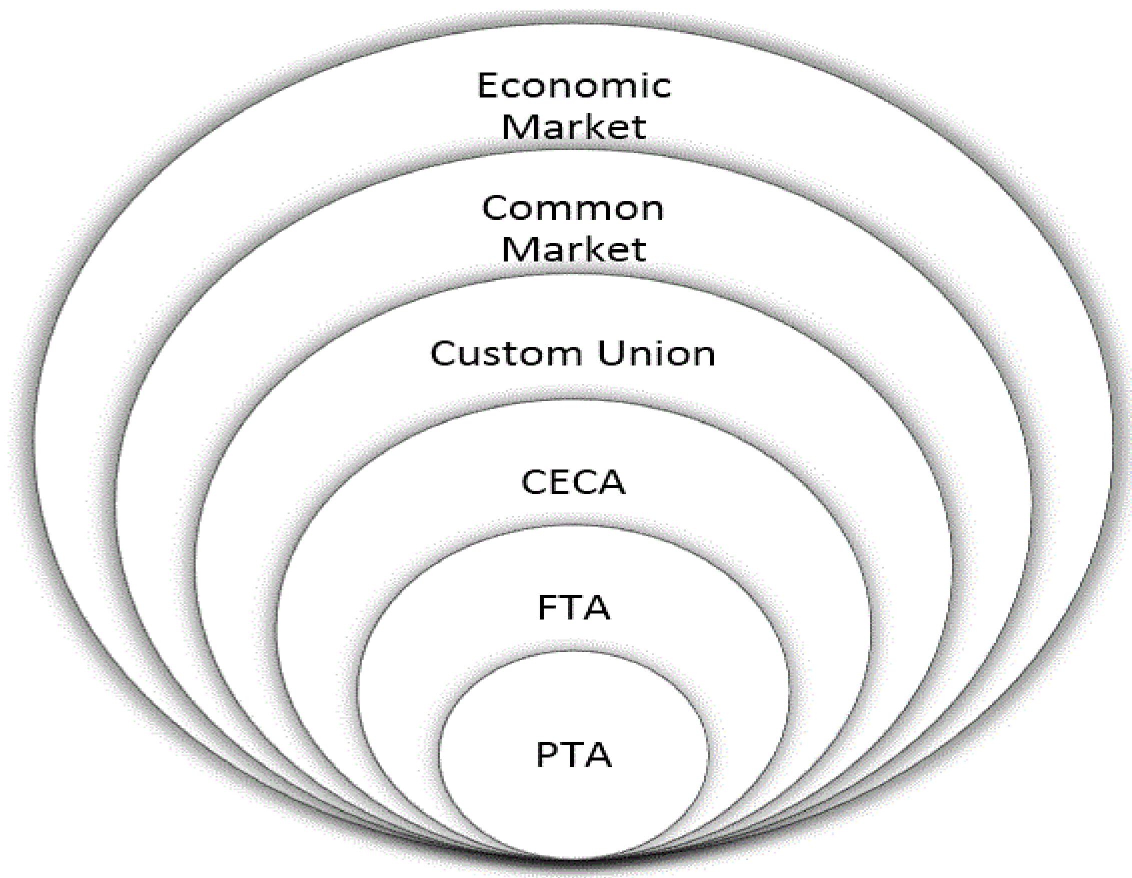
A preferential trade agreement can be regional or international, depending on its scope. Unlike a free trade agreement, a preferential trade agreement aims to decrease fees rather than eliminate them completely.

The critical difference between FTA and PTA is that PTA offers a positive list of products on which duty is to be reduced. In FTAs, there is a negative list of products in which duty is not reduced or eliminated. Thus, FTAs can be considered more ambitious.

Specific agreements are also named CECA (Comprehensive Economic Cooperation Agreement), CEPA (Comprehensive Economic Partnership Agreement), BTIA (Bilateral Trade and Investment Agreement), and TEPA (Trade and Economic Partnership Agreement).

Comprehensive Economic Partnership Agreements are free trade pacts that cover negotiations on the trade in services and investment and other areas of economic partnership. Negotiating trade facilitation, customs cooperation, competition, and Intellectual Property Rights may also be considered. Partnership agreements or cooperation agreements are broader in scope compared to Free Trade Agreements. CEPA also addresses regulatory aspects of trade and includes an agreement on regulatory issues. India has entered into CEPAs with South Korea and Japan. Free trade policies can be classified based on the degree of openness in trade between countries.[12]

[12]Free Trade Agreements, FTA Examples, FTAs of India [UPSC Notes], BYJUS, https://byjus.com/free-ias-prep/free-trade-agreements/ (last visited Jun 25, 2024).



Free trade agreements do more than just lower or remove tariffs. They also work to tackle obstacles beyond national borders that could hinder the movement of goods and services, promote investment, and enhance regulations related to topics like intellectual property, online commerce, and government purchasing. FTAs can positively impact access to new markets and create new opportunities for exporting goods and services. When tariffs and other trade barriers are eliminated, businesses can sell their products to more customers at a lower cost. This can help companies to increase their sales and profits, leading to increased economic growth and job creation.

Furthermore, it allows companies to expand production by accessing new inputs and suppliers, making them more productive and competitive. A free-trade agreement primarily leads to a rise in trade among member nations. It contributes to enhancing the distribution of limited resources to meet consumer demands and advances foreign direct investment (FDI).

On the consumer side, FTAs can lead to lower prices for goods and services. When tariffs and other trade barriers are eliminated, it becomes cheaper for businesses to import goods and services, resulting in lower consumer prices. This can help to increase purchasing power and improve living standards. FTAs can also increase the variety of goods and services available to consumers, giving them more choices and options.

Member countries are prompted by FTAs to concentrate on producing and selling items that effectively utilize their resources, while other businesses within these countries import goods that are in short supply or not available domestically. They increase the production and consumption of internationally traded goods as every country produces selected goods at lower costs. FTAs facilitate the mix of local output and foreign trade, which in turn helps economies boost growth. FTAs facilitate the diversification of supply chains by simplifying and reducing the cost of cross-border business operations for a wider range of companies. Lowering trade barriers will enable small and medium-sized enterprises to expand their exportation of goods and services. FTAs facilitate the movement of goods and services between countries, leading to increased market access. This is particularly beneficial for small and medium-sized enterprises (SMEs), which might otherwise struggle to enter foreign markets due to high trade barriers.

India needed to catch up in Free Trade Agreements, whereas other countries have progressed far and wide. Although India had given importance to multilateral engagements and negotiations at the World Trade Organisation (WTO), it was in early 2000 that it recognised that such trade agreements would feature for a long time in world trade. Thus, it signed bilateral economic engagements with its trading partners to expand the export market. India considered this a building block to achieve trade liberalisation, complementing the multilateral trading system. In recent years, India's Foreign Trade Policy has shifted its focus from WTO's multilateral agreements to FTAs. India's agreements primarily fell into three categories: those with developing but limited scope, those with developing nations in more comprehensive agreements, and those with developed countries yet to be negotiated.

In principle, the purpose of trade agreements is to benefit the countries that sign them, increase their economic growth, eliminate tariff barriers, diversify the market, and leave behind the figure of the protectionist state, which has its drawbacks. Protectionism generates goods and services with high prices for consumers, little variety of products, high tariffs for imports, and, in most cases, only protects national companies in the short term.

The overall success of trade agreements depends on the extent of new trade created based on comparative advantage, which will boost trade and economic growth.
However, if the FTA causes large trade diversions from more competitive nations to the FTA members, then the overall impact of the FTA will be negative.

Chapter 3 - FREE TRADE - HISTORY AND EVOLUTION

The concept of Free Trade in the realm of international commerce has a long history. It was in the 18th century that scholars took a keen interest in the idea of free trade and its benefits. In his most important work, The Wealth of Nations, the economist Adam Smith, published in 1776, saw free trade as a prerequisite for creating wealth and expanding capitalist economies through the division of labour and removing artificial barriers to trading relationships.[13] Adam Smith's work is considered the catalyst for free trade theory. Although in that era, like today, protectionism was the central policy, notably in emerging nation-states eager to protect domestic industries as a symbol of nation strength, free trade theory was increasingly accepted as a progressive, modern policy.

During the medieval and early modern periods, thinkers and the general public predominantly opposed exported goods, leading to the implementation of protective state policies against imports. This gave rise to the economic ideology known as mercantilism, which was prevalent from the early 17th century to the 1780s. Although present across Europe in various forms, mercantilism originated in England, where the theory was most comprehensively developed. Some writers, such as Henry Martyn and Jacob Vanderlint, contended that protective policies were economically inefficient and could trigger a retaliatory cycle of tariffs.

An example of a mercantilist trade policy was the **British Navigation Act of 1651**. Foreign ships were prohibited from participating in coastal trade in England, and all imports from continental Europe were required to be carried by either British ships or ships registered in the country where the goods were produced.

In the 17th century, the Dutch Republic credited its global trade success to the acknowledgment of the essential nature of free trade. Pieter de la Court, a well-known Dutch economist and entrepreneur, was part of a coalition of merchants in Amsterdam who sought to contest the trade monopoly held by the Dutch East India Company. In his 1662 book "Interest van Holland," he stressed the significance of open competition and republican governance as crucial elements in the economic prosperity of the Republic.

In addition, Pieter de la Court attributed the prosperity of the Dutch to their naval power's impact on commercial activities. De la Court linked the definition of free trade in the 16th

[13] Free Trade — EGO, EGO | Europäische Geschichte Online, https://www.ieg-ego.eu/de/threads/hintergruende/wirtschaft-handel/free-trade-free-trade-be-freigabe (last visited Jun 25, 2024)

and 17th centuries, which emphasized monopoly rights and exclusive commercial privileges, to the broader concept of the connection between free trade policies and wealth creation. Adam Smith's work in the 18th century played a significant role in popularizing this broader concept.

In the 1750s, there was a rise in modern free trade doctrines. The French Physiocrats, who supported free trade and deregulation even before the French Revolution, were influential in promoting trade expansion without barriers. They famously advocated for the idea of laissez-faire, laissez passer ("let them proceed, let it pass") and pushed for reducing export prohibitions on agricultural products. The Physiocrats stressed the importance of an automated economy free from government intervention and believed that only agriculture could produce a surplus. Anne-Robert-Jacques Turgot (1727–1781), a prominent figure among the Physiocrats, stated that a surplus of capital was crucial for economic growth and encouraged a free-market environment within France.

The Physiocrats did not actively support the free trade movement as their focus was on increasing agricultural production. Their priorities leaned more towards domestic trade rather than international trade, and their narrow perspective on the economy did not serve as a foundation for developing theories of commercial liberalism on a global scale.

Adam Smith and his followers held that mercantilist policies misallocated resources because they were used to endorse restrictive practices such as tariffs and trade barriers and discourage exports. His fundamental idea was that free trade should be pursued independently of the policies of other countries and that it should be applied to all countries regardless of their economic development.

3.1 RISE OF FREE TRADE IN EUROPE

During the Napoleonic and Revolutionary wars, there was a growing amount of literature advocating for free trade. However, mercantile trade continued to impact commercial negotiations throughout the mid-19th century. British economists from 1750 to 1870 built upon Adam Smith's work to conduct a more in-depth analysis of the production, distribution, and exchange of goods. David Ricardo, among other notable economists, contended that international trade would result in a specialization of labor and mutually beneficial relationships based on shared needs.

Published in 1817, a publication was released to explore the "laws" governing "rent, profits, and wages." These "laws" were based on the theory of international comparative advantage, which suggested that a country could gain from unrestricted trade even if it had an absolute cost disadvantage in producing goods.

The use of free trade concepts had different effects in various parts of Europe. After 1815, much of Europe faced despair due to varying levels of industrial development, political stability, and economic damage from conflicts. Despite this, significant economic progress occurred after the war, highlighted by the establishment of the Prussian Commercial Union in 1818. This union aimed to establish a customs zone with free trade among the German states. In 1818, the Prussian tariff system implemented the lowest tariff rate in Europe, allowing duty-free imports of raw materials. The liberal nature of this tariff zone caused discontent among Prussian manufacturers, leading to the formation of a protectionist movement in 1819.

In 1834, the tariff system was expanded through the establishment of the Zollverein, which was a confederation of German states organised into a customs union. The main goal was to eliminate customs barriers among member states and establish a larger free-trade area. During the 1830s, several German states became part of the Zollverein under the leadership of Prussia, the most influential member state. However, member states faced ongoing challenges in determining tariff levels. Prussia primarily viewed its tariff in terms of fiscal implications. Despite the Zollverein tariff, the linen industry in Silesia remained vulnerable to competition from Britain. Prussia consistently dismissed requests from textile manufacturers in South Germany for higher duties.

Prussia took an active role in advocating for a revision of tariffs across Europe. Following the Anglo-Prussian Convention in 1834, Prussia made efforts to bring about a change in British commercial policy, particularly regarding the import of Prussian corn and timber. Prussia's endeavors to overhaul the British tariff system supplied significant arguments for commercial reformers in Britain. Economists saw the Zollverein as a response to the British Corn Laws, which imposed high import duties to shield British corn producers from foreign competition. The Parliamentary Report on the Zollverein concluded that the industrialization and protectionist measures in Germany were reactions to British protectionism and that tariff liberalization would be met with reciprocal actions by foreign nations.

During the 1800s, in the third quarter, British control over the worldwide economy grew. Advocates of unregulated commerce attributed economic growth, the accumulation of riches, and the general welfare of the country to open trade. Richard Cobden, a businessman and proponent, viewed free trade as the crucial element in a global system in which nations would become more and more linked through commercial interdependence, making conflicts between them impractical.

Cobden described free trade as Divine Law. He argued that Goods distributed throughout the world were "proof that, according to the Divine Order of things, men should fraternise and exchange their goods and thus further Peace and Goodwill on earth." Britain's repeal of the Corn Laws acted as a catalyst in spreading the idea of free trade across Europe.

In 1823, the Reciprocity of Duties Act was approved, greatly assisting Britain in conducting trade and allowing for the mutual removal of import duties through bilateral trade agreements with other nations. The repeal of the Corn Laws in 1846 ended restrictions on grain imports, and by 1850, most protective measures on British imports had been eliminated. A significant event was the signing of the Cobden-Chevalier Treaty between Britain and France, which implemented substantial reciprocal reductions in tariffs. This treaty introduced a most favoured nation clause (MFN), a non-discriminatory policy requiring countries to treat all other nations equally in trade matters. Throughout Europe, this treaty helped establish several MFN agreements, initiating the expansion of multilateral trade liberalisation, known as free trade.

3.2 DECLINE OF FREE TRADE AND INCREASE IN PROTECTIONISM

The trend of liberalised multilateral trading would decline by the late 19th century as the world economy fell into a severe depression in 1873.[14] This lasted until 1877, increasing pressure for greater domestic protection and discouraging any previous endeavour from accessing foreign markets.

Many European nations would take steps to increase protection. Italy would institute moderate tariffs in 1878, followed by more severe tariffs in 1887. Germany in 1879, would impose more protectionist policies with its "iron and rye" tariff, and France with its Méline tariff 1892. Only Great Britain, out of all the major Western European powers, supported free-trade policies.

[14] A Brief History of International Trade Agreements, Investopedia, https://www.investopedia.com/articles/investing/011916/brief-history-international-trade-agreements.asp (last visited Jun 25, 2024)

International, colonial, economic, and national rivalries led to the rejection of free trade, while collectivist and socialist doctrines challenged liberalism. Before 1914, only Britain supported free trade due to financial and political urgency and consumer interests, with customs duties being solely for revenue purposes. The advocates of free trade refused to recognize the beginning of an economic downturn. After the First World War ended in 1918, protectionist movements gained traction in countries like Japan, Australia, and India. Newly established European nations, dealing with economic instability, also adopted protectionist measures. Tariffs increased across Europe during this period.

Due to the instability of currency, tariffs and other restrictions, including licensing, quotas, and exchange control, were implemented. The Gold Standard was no longer in effect during the war, but it was reinstated by the United States in 1919. From 1925 to 1928, the international monetary system was largely overhauled. By early 1926, 39 countries had once again adopted the gold standard. Nonetheless, these changes did not indicate a return to the pre-1914 era. London had lost its financial supremacy, and New York and Paris had emerged as major financial centers and clearing houses, resulting in increased capital movement. Economic and political instability further exacerbated this process.

During the period between the two World Wars, Western economies were subject to government regulations and interventions aimed at stabilizing the market. National economies attempted to combine centralized economic decision-making with private ownership, extensive regulation, and taxation. The approaches to addressing the challenges of post-war reconstruction were shaped by ideology, political culture, and economic and national interests within existing financial and monetary constraints.

The United States initially did not show much interest in the trade liberalization efforts taking place in Europe in the first half of the 19th century. However, protectionism notably rose in the latter half of the century, marked by increased duties during the Civil War and the highly protectionist McKinley Tariff Act of 1890.

After World War 1, the emergence of nationalism and harsh economic conditions disrupted global trade and broke down the trading networks established in the previous century. In 1927, the League of Nations organized the First World Economic Conference to establish a multilateral trade agreement in response to the new protectionist trade barriers. Unfortunately, the agreement was unsuccessful due to the outbreak of the Great

Depression, which sparked another wave of protectionism. The economic uncertainty and intense nationalism of the era set the stage for the events that ultimately led to World War II.

After World War II, the United States and Britain emerged as the two primary economic powers and acknowledged the significance of creating a more cooperative and transparent global framework. The 1944 Bretton Woods Agreement resulted in the formation of the International Monetary Fund, World Bank, and International Trade Organization.

While the IMF and World Bank took on crucial roles in the new global setup, the ITO did not materialize, and its goal of overseeing the establishment of a non-discriminatory multilateral trading system was eventually addressed by the creation of the General Agreement on Tariffs and Trade (GATT) in 1947.

The GATT's main purpose was to promote the lowering of tariffs among member countries and lay the groundwork for expanding international trade. Less than half a decade after the establishment of the GATT, Europe initiated a regional economic integration initiative by establishing the European Coal and Steel Community in 1951, eventually transforming into the European Union (EU).

The development of regional trade agreements in Africa, the Caribbean, and Central and South America also stemmed from this, and Europe's actions contributed to advancing the GATT's agenda as other nations sought further tariff reductions to remain competitive with the trade preferences established by Europe. The growing necessity for countries to exceed the GATT provision likely fueled the push for regionalism.

Following the collapse of the Soviet Union, the EU struck trade deals with several Central and Eastern European countries. In the mid-1990s, it forged bilateral trade pacts with Middle Eastern nations.

In 1985, the U.S. entered into an agreement with Israel, and in the early 1990s, it established the trilateral North American Free Trade Agreement (NAFTA) involving Mexico and Canada. Various other significant regional agreements were also made in South America, Africa, and Asia.

Following the Uruguay Round of trade negotiations in 1995, the World Trade Organization (WTO) took over from the GATT as the main organization for promoting international trade. GATT mainly focused on trade in goods, whereas the WTO expanded its scope to include services, intellectual property, and investment policies. By the early 21st century, the WTO had attracted over 145 members, and China became a member in 2001. The subsequent trade agreements also included these provisions.

Chapter 4 - FREE TRADE AGREEMENTS - ECONOMIC AND LEGAL IMPACT OF FREE TRADE AGREEMENTS ON THE ECONOMY OF INDIA

Signing of trade agreements has increased since the early 2000s. As of March 2022, 354 agreements exist between the various World Trade Organisation (WTO) members. These member exclusive agreements allow participating countries to open their borders to free trade. Even though such agreements are discriminatory in nature, they are permitted by the WTO. Trade agreements occur at varying degrees of openness. The lowest level of integration involves Preferential Trade Agreements (PTA), which are limited to tariff reductions for a select list of goods.

According to the Indian government, FTA offer a deeper form of integration through tariff reductions in larger classes of goods. Further, Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA) allow for even deeper trade dynamics through provisions in services, investments, and intellectual property.

Preferential trade regimes have increased globally, and India has joined the bandwagon by signing 14 of them. With the government showing more interest, there are ongoing discussions with other countries, such as the UK, Canada, and the European Union. However, except for FTAs with its South Asian neighbours, India has faced the issue of a rise in the trade deficit and a reduction in the export potential of competitive sectors in other FTAs, especially with larger and developed trading blocs, thus reducing the effectiveness of such agreements.

The free trade agreements had significant economic and legal impacts on the economy. These agreements have influenced various sectors of the economy, particularly trade, agriculture, and industry. Economically, these free trade agreements have altered the landscape of countries' trade dynamics. Removing trade barriers and tariff walls between India and countries covered under the various agreements has opened up new avenues for trade in exports and imports.

Over the years, India has entered into different kinds of trade agreements. These agreements, in addition to preferential tariff rates, provide deeper integration in services, investment, and intellectual property. India's entry into trade agreements began in 1975 when it signed the Bangkok Agreement([15]Asia-Pacific Trade Agreement) 1975. Currently, 19 agreements are in place; 14 are considered free trade agreements (FTA), and 6 are preferential trade agreements (PTA). In the past, India remained a cautious player in negotiating FTAs. Most of the FTAs signed were confined to Southeast Asian/ East Asian countries and did not venture into the Western market and the Middle East. In contrast to FTA partners such as South Korea, Vietnam, and Bangladesh, which aggressively developed their export capability, India's overall goods exports stagnated at around USD 300 billion for a decade. During this period, trade with FTA partners was around 20 per cent.

The bulk of the FTAs in place today were signed within the first decade of the 2000s. The impact of FTAs on the Indian economy varies from region to region. India registered a positive balance of trade only with its South Asian trade partners Sri Lanka, Nepal, Bhutan, and the SAFTA members), but there were still some drawbacks. In contrast, the FTA with East Asian countries led to negative growth, as India crosses a decade of agreements with countries such as Japan, South Korea, and the ASEAN. Trade agreements with developed countries were characterised by high trade deficits.

4.1 ECONOMIC IMPACT - IN TERMS OF IMPORTS AND EXPORTS

From 1993 to 2018, India's exports to the countries it has agreements with have shown a 13.4 percent increase for manufactured products and a 10.9 percent increase for total merchandise. The trade surplus is most noticeable with SAFTA, which stands for the South Asian Free Trade Area. SAFTA is a free trade agreement that was agreed upon by the members of SAARC on January 6, 2004, and signed in 2004, coming into effect on January 1st, 2006.
[16]

The SAARC members signed the agreement to promote and sustain regional trade and economic cooperation.[17] Since the SAFTA became effective in 2006, Indian exports to

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[15] Ajay Srivastava, Changing Faces of India's FTAs: A Long Way since Bangkok Agreement, The Economic Times, Oct. 7, 2023, https://economictimes.indiatimes.com/news/economy/foreign-trade/changing-faces-of-indias-ftas-a-long-way-since-bangkok-agreement/articleshow/104245971.cms?from=mdr (last visited Jun 25, 2024).

[16] India Briefing, Accessing South Asian Markets from India's SAARC Free Trade Membership, Preferential Trade Agreements, India Briefing News (2021), https://www.india-briefing.com/news/accessing-south-asian-markets-from-indias-saarc-free-trade-membership-other-trade-agreements-22531.html/ (last visited Jun 25, 2024).

[17] Ashish JaiswaiL &Anup Kumar,An Analysis Of India's Trade Performance With SAARC Countries In 21st Century</i>, IJFANS International Journal of Food and Nutritional Sciences (Dec., 2022), https://www.ijfans.org/uploads/paper/e03ac779a169f089efddc56ba67faf33.pdf.

SAFTA countries have increased faster than their imports, leading to a significant rise in trade surplus with these economies from about US$ 4 billion in 2005-06 to US$ 21 billion in 2018-19.

SAFTA has assigned Bangladesh, Bhutan, Maldives, and Nepal as Least Developed Contracting States (LDCs), while India, Pakistan, and Sri Lanka are identified as Non-Least Developed Contracting States (NLDCs). Following these designations, SAFTA initiated a gradual tariff liberalization program (TPL), with the expectation that all LDCs would reduce their tariffs to 30 percent and all NLDCs to 20 percent. Both NLDCs and LDCs were required to decrease their tariffs to zero to five percent within the next eight and five years, respectively, and Sri Lanka within six years.

Under the South Asian Free Trade Area (SAFTA), specific trade figures for individual countries reveal that the Indian government granted significant duty concessions, ranging from 50 to 100 per cent, on certain product categories from Afghanistan under the India-Afghanistan Preferential Trade Agreement (PTA). In return, Afghanistan provided reciprocal concessions on Indian products such as tea, sugar, cement, and pharmaceuticals. At the SAARC Summit in Male in November 2011, India eliminated basic customs duties for all SAARC Least Developed Countries (LDCs), granting duty-free access to the Indian market for all Afghan exports except for alcohol and tobacco.

Afghanistan purchased goods worth US$453.7 million from India in 2019, which consisted of electrical equipment, sugar, iron, steel, pharmaceuticals, fruits, tobacco, aluminium, and miscellaneous articles of base metals. During the same period, Afghanistan sold goods to India worth US$410.14 million. In March 2024, India achieved a trade surplus of $1.4M with Afghanistan, exporting $37.1M and importing $35.7M. Over the year from March 2023 to March 2024, India's exports to Afghanistan decreased by 0.34%, from $37.2M to $37.1M, a decline of $-127k. Similarly, imports decreased by 24% from $47M to $35.7M, a decrease of $-11.3M.
[18]

Bangladesh imported goods worth US$7.91 billion from India in 2019, including cotton, mineral fuels, vehicles (including railway and tramway), machinery, organic chemicals, electrical equipment, iron, steel, and plastics. Bangladesh's exports exceeded US$1 billion during the same year, which included textiles and textile machinery. In the

[18] https://oec.world/en/profile/bilateral-country/ind/partner/afg

2021–22 period, Dhaka's exports to India amounted to $1,990 million, while imports from India totaled $13.69 billion. From April 2022 to February 2023, India's exports to Bangladesh reached $10.63 billion, representing 2.6% of India's total exports. [19]

The India-Bhutan Free Trade Agreement became effective on July 29, 2006, and was intended to last for 10 years. The Trade, Commerce, and Transit Agreement was extended in 2016, enabling unrestricted trade and commerce between the two nations. Bhutan's imports from India in 2018 amounted to US$810 million and included items such as diesel, wood, charcoal, and gasoline. Bhutan's exports to India were valued at US$433 million in the same year. In 2022, India exported $401M to Bhutan.

India is actively involved in implementing infrastructure projects in Maldives, and the country provided assistance to Maldives in the wake of the pandemic. In 2020, Maldives' imports from India were worth US$196.17 million, while its exports to India were valued at US$17.74 million in the same year.

As per the bilateral FTA signed on March 6, 2005, India and Nepal mutually agreed to exempt customs duties and quantitative restrictions on each other’s imports of primary goods. India will provide preferential treatment to Nepal’s industrial products to support its industrial development. The India-Nepal FTA can be extended for five years continuously unless either country provides a written notice three months in advance to terminate the agreement. Nepal's imports from India amounted to US$782 million in 2020. In March 2024, Nepal received exports worth $613M from India and imported goods worth $75.9M, leading to a trade surplus of $537M for India.

In 2020, India's exports to Pakistan amounted to US$242 million, comprising of organic and inorganic chemicals, pharmaceuticals, machinery, plastics, ships, boats, and medical apparatus. During the same period, Pakistan's exports to India totaled US$1.6 million, consisting of organic chemicals, machinery, wool, fruits, lead, medical apparatus, and apparel.

In 2020, India supplied goods worth US$3 billion to Sri Lanka, which consisted of pharmaceuticals, sugar, cotton, mineral fuels, iron, steel, machinery, coffee, tea, spices, and railway and tramways. During the same year, Sri Lanka exported goods valued at

[19]India is Bangladesh’s largest export destination in Asia: Indian High Commissioner, The Economic Times, Feb. 14, 2024, https://economictimes.indiatimes.com/small-biz/trade/exports/insights/india-is-bangladeshs-largest-export-destination-in-asia-indian-high-commissioner/articleshow/107677776.cms?from=mdr (last visited Jun 25, 2024).

US$654 million to India, including mineral fuels, coffee, tea, spices, fruits, apparel, electrical equipment, furniture, and wood.In March 2024, Sri Lanka received exports worth $522M from India and sent imports valued at $86.4M, leading to a favorable trade surplus of $436M for India. The agricultural community had a negative perception of the Free Trade Agreement with Sri Lanka.

4.2 IMPACT OF INDIA-SRI-LANKA FTA ON KERALA

The India-Sri Lanka Free Trade Agreement (ISFTA) was formally established in December 1999 with the objective of establishing a free trade zone between the two countries by eliminating trade barriers. However, the complete elimination of trade tariffs could not be immediately implemented following the agreement. Both India and Sri Lanka agreed on a timetable for the gradual removal of tariffs. India committed to eliminating tariffs within three years after the agreement came into effect, while Sri Lanka aimed for an eight-year period to allow Indian goods access to its market without tariffs. Nevertheless, the agreement did not cover all tradable goods for tariff reduction, as certain product categories were excluded in order to protect domestic production and safeguard local markets.

The ISFTA would result in significant improvement in bilateral trade between India and Sri Lanka. The agreement would allow each country preferential access to the other's market, which would be advantageous to exporters of the partner countries. But at the same time, there was opposition to the agreements in the partner countries for various economic and non-economic reasons. In India, the southern region, particularly plantation crops, would be the worst affected. Thus, most of the opposition was from southern states, especially Kerala.

Kerala was and still is a major producer of cash crops such as tea, rubber, coconut and cardamom. The production and developments of these sectors directly impacts the state economy. Kerala accounts for about 46 per cent of the planted area and 41 per cent of the country's production of plantation crops. These also account for one-fourth of the state's income from agriculture. Plantations are labour-intensive, providing around four lakh workers round-the-year direct employment, mostly in rural and backward areas. Plantations are located in remote hilly and backward areas. In most such localities, the entire population resides on the estate and depends on the plantations since there is no alternative employment opportunity. Kerala and Sri Lanka have similar agroecological features and produce and export similar agricultural commodities. The rural economy of

Kerala and the livelihood of most of its people depend on these crops, which account for more than 70 per cent of the net-cropped area and a major share of the state's agricultural income.

It is reported that the ISFTA contributed to the depression of pepper prices in the Kerala market, leading to a lot of hue and cry among local producers in Kerala. In 2006, the Indian Pepper Spices Trade Association pressured the central government to impose quota restrictions on Sri Lankan pepper imports. Accordingly, the central government imposed an annual import cap of 2,500 tons on Sri Lankan pepper imports and designated one port, Kochi, for such imports in order to monitor the quantity and quality of such imports, as there were allegations that third-country pepper was coming to India via Sri Lanka through the FTA. Unlike other states in the country, trade liberalisation adversely affected the agricultural sector in Kerala because more than 80 per cent of the agricultural [20]commodities/products produced in the state depend on domestic and/or international market situations.

The export intensity of some crops' production, like pepper, cardamom, cashew, etc, is high.Kerala's economy remained relatively isolated until the mid-1990s, which meant that growing commercial crops like coconut, rubber, tea, coffee, and spices was quite lucrative.[21] However, productivity and value addition did not see much improvement due to a protected domestic market and export opportunities. The removal of import restrictions and reduction of tariffs have impacted farmers growing commercial crops, as they now face increased imports and tough competition in the global export market. Recently, there has been a significant rise in the importation of commodities like pepper, cardamom, and tea. etc., which has affected the domestic prices of these crops in the state and, in turn, the financial position of the cultivators.

The imports further increased following the free trade agreement (FTA) with Sri Lanka, which produces and exports many of the commodities which are produced and exported from the state. In the liberalised trade, small and marginal farmers, in particular, cannot compete with other commodity-producing countries due to continued lower yields and high cost of cultivation as no restructuring programme has been undertaken to improve export competitiveness in the new trade environment.

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[20] Saman Kelegama,The India–Sri Lanka Free Trade Agreement and the Proposed Comprehensive Economic Partnership Agreement: A Closer Look(2014).

[21] M. Reghunathan, India-Sri Lanka Free Trade Pact: Impact on Kerala, 37 Economic and Political Weekly 31 (2002), https://www.jstor.org/stable/4411563 (last visited Jun 25, 2024).

4.3 TRADE DEFICIT IN INDIA'S PREVIOUS FTA's

Balance of Trade [22]is the disparity between the value of a country's exports and imports during a specific period. A country experiences a trade deficit when it imports more goods and services than it exports in terms of value, whereas it has a trade surplus when it exports more goods and services than it imports. From 2017 to 2022, India saw a 31% increase in exports to its FTA partners, along with an 82% increase in imports. India's FTA utilization remains low at approximately 25%, while developed countries typically have a utilization rate of 70–80%. Out of the 13 FTAs signed by India, the three comprehensive FTAs with ASEAN . South. Korea and Japan signed in 2010‑2011, are is considered the most crucial.
[23]

India's cumulative merchandise trade deficit with these three FTA partners increased much more than India's global trade deficit. With ASEAN, it stood at 201.5 per cent, South Korea was 142.5 per cent, and Japan was 120.6 per cent. The deficit globally grew by 43.1 per cent. India's exports to the three FTA partners have grown at a rate much lower than its imports. This is evident from the cumulative export and import growth during the pre‑FTA and current periods. With ASEAN, the figures were exports at 104.4 per cent and imports at 131.4 per cent, Japan had exports at 47.8 per cent and imports at 84.0 per cent, and South Korea exports at 62.6 per cent, imports at 106.0 per cent.[24]

As evident, ASEAN is an extremely powerful trading bloc, and Indias's engagement with it has caused high trade deficits. This was one of the reasons India backed out of RCEP (Regional Comprehensive Economic Partnership). One of India's key concerns was the threat to local manufacturers posed by the RCEP's abolishing tariffs, which it feared would open its markets to a flood of imports. New Delhi was particularly concerned about the risk of circumvention of origin laws due to tariff differentials and the inclusion of a fair accord to resolve trade deficits and service openness.

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[22] Balance of Trade (BOT): Definition, Calculation, and Examples, Investopedia, https://www.investopedia.com/terms/b/bot.asp (last visited Jun 25, 2024).
Business Standard, India's Imports from FTA Partners in FY24 Grew 38% over FY19, (2024), https://www.business-standard.com/economy/news/india-s-import-from-fta-partner-nations-up-38-in-fy24-against-fy19-124051301152_1.html (last visited Jun 25, 2024).
[23] Japan-India Comprehensive Economic Partnership Agreement Free Trade Agreement, https://aric.adb.org/fta/japan-india-comprehensive-economic-partnership-agreement (last visited Jun 25, 2024).,
[24]PRESS RELEASE INDIA'S MERCHANDISE TRADE: Preliminary Data March 2022, Mcommerce (Apr. 4, 2022), https://commerce.gov.in/press-releases/press-release-indias-merchandise-trade-preliminary-data-march-2022/ (last visited Jun 25, 2024).

India’s pre-FTA Most Favoured Nation tariff rates were higher than those of its partners, and post-FTAs led to a reduction in tariff rates, enabling partners to penetrate deeper into the Indian market. India gains little from eliminating import duties in the partner countries post‑FTA, as most imports occur at zero or low MFN duties. As high import duties in India came down post‑FTA, India's FTAs have provided immediate and sharp price advantage to partner country firms exporting to India over their competitors. However, Indian firms exporting to partner countries had no luxuries like MFN duties, which were zero or low in most partner countries. This led to a high trade deficit.[25]

Non-tariff barriers such as strict product standards, sanitary and phytosanitary measures, and technical trade barriers restrict Indian exporters' access to partner markets and limit export opportunities.
Despite having a free trade agreement (FTA) with Japan, Indian exports have not increased due to Japan's strict import standards. The certification requirements and rules of origin under the FTAs have made it challenging for India to simplify processes for exporters. The extensive procedures and paperwork have posed challenges for exporters in meeting the required standards, and the high expenses associated with certificates of origin have raised compliance costs.[26]

The manufacturing sectors of South Korea and ASEAN have shown stronger performance than India's in key industries like electronics, automobiles, leather, and textiles. ASEAN's emphasis on research, innovation, government backing, and value chain improvement has enabled its member states to manufacture goods at a reduced cost, thereby bolstering their global competitiveness. Nevertheless, manufacturers in India encounter obstacles that make importing from ASEAN and South Korea more cost-effective than producing domestically.

The effective implementation of FTAs has been hindered by the government's failure to comprehensively promote them to industry stakeholders after they were put into effect. Limited outreach activities and insufficient marketing efforts to raise awareness about the benefits of FTAs among exporters have been observed since the agreements came into force. Exporters lack knowledge about the incentives and potential advantages available to them under the FTAs, resulting in the underutilisation of the agreements.

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[25] Home, Mcommerce, https://commerce.gov.in/ (last visited Jun 25, 2024).
[26] What went wrong with India’s FTAs? | East Asia Forum.
https://eastasiaforum.org/2023/09/19/what-went-wrong-with-indias-ftas/

India refrained from signing any FTA for about a decade. India renewed its interest by signing the Comprehensive Economic Partnership Agreement (CEPA) with the United Arab Emirates and the Economic Cooperation and Trade Agreement (ECTA) with Australia.

India's exports to both countries showed a significant increase just a few months after the conclusion of the CEPA, and good FTA utilisation statistics have also been reported. Along with trade agreements, other crucial developments include boosting trade infrastructure, setting up a fast-track mechanism for dispute settlement and digitising various procedures. [27]In the FTAs under negotiation, India is discussing many new subjects that are not directly related to trade. The subjects have been included at the request of developed countries. These include Environment, Labour, Intellectual Property, Data governance, Digital trade, Gender, MSMEs, Anti‑Corruption, Good Regulatory Practices, Sustainable Food Systems, etc. Most of these subjects are important and discussed in the specialised multilateral and regional institutions where most countries, including India, are active participants.

Commitments on these issues in FTAs may prove too onerous and would increase the cost of manufacturing and services. The FTA texts would provide legal justifications to India's FTA partners for imposing non‑tariff barriers on imports to promote sustainability. Thus, the market access India might expect under the FTA could be undermined by the partner country's restrictions on promoting sustainability. For example, if India's exports fail to meet the stringent environment or labour obligations specified in the FTA, India's apparel exports may become ineligible for benefits under the FTA. Similarly, taking commitments in data flows and digital trade when the domestic policy frameworks are not ready may not be in India's best interests.

Committing to these may restrict domestic policy space to create a vibrant domestic industry in different sectors, including the digital sector and climate‑friendly products. While India is committed to sustainability and green energy goals, it cannot afford to have the same stringent labour and environmental standards as the advanced countries. For example, very high emission standards can backfire if they lead to fewer jobs and greater poverty. Even mere reaffirming of international commitments in an FTA empowers the FTA partner to take action in case of failing to meet the goals. This is

[27] India Exports to Australia - 2024 Data 2025 Forecast 1988-2023 Historical, https://tradingeconomics.com/india/exports/australia (last visited Jun 25, 2024).

because the obligations at global forums like those on sustainability are on the best endeavour basis, while in an FTA, they are binding.

The factors such as low MFN import duties and most imports already at zero or low duties in FTA partner countries that resulted in India's weak export performance to the three FTA partners of ASEAN, Japan, and South Korea continue to be relevant for new FTA partners. To elaborate, India has a lower growth in exports, higher growth in imports, and a rise in trade deficit with the three FTA partners. A country's exports increase for two broad reasons:

- Price advantage gained from FTA‑led elimination of import duties by the partner countries.
- A general rise in the competitiveness of a product due to the low price arising from economies of scale, innovation, high quality, depreciation of the currency, etc.

4.4 REASONS FOR TRADE DEFICIT

In order to understand the effectiveness of trade agreements, they should be viewed against their trade potential. In all the FTAs signed, India promoted textiles, minerals, agricultural products, precious stones, cement, and glass products.[28] Measures of Revealed Comparative Advantage have been used to help assess a country's export potential. The Revealed Comparative Advantage is defined as the ratio of two shares. The numerator is the share of a country's total exports of the commodity of interest in its total exports, and the denominator is the share of world exports of the same commodity in total world exports. The RCA takes a value between 0 and (infinity).

A country is said to have a revealed comparative advantage if the value is more than one. The goods promoted by India in FTAs were competitive goods that initially displayed a high RCA. There is a clear drop in RCAs of several goods promoted through FTAs between 2000-2019. The only categories where India seems to have developed a comparative advantage during this time period are chemicals and metals.

Some factors related to low exports are -

[28] UNCTADstat - RCA Radar, https://unctadstat.unctad.org/EN/RcaRadar.html (last visited Jun 25, 2024).

4.4.1 Low value addition[29]**-** India's top exports feature low value added goods such as refined petroleum, gems, and jewellery, as per data from the World Integrated Trade Solution database. The proportion of high-technology goods within manufactured exports has remained around 10 per cent over the past decade. In comparison, there has been a recent growth in the share of technology exports for many of India's FTA peers, reflecting value-addition. For example, Vietnam has shown an extreme increase in the last decade, and India is discussing a trade agreement with Vietnam. Subsequently, these FTA peers have successfully established a market for their high-value goods in India. An example is South Korea, whose top exports to India include high-value electrical goods and automobiles, and imports include low-value metals, minerals, and textiles from India.

4.4.2 Third country competition and India's declining market shares- India enjoyed a quarter of the world's market share for textiles in the early 2000s. Over the years, this market share has been eroded due to the absence of trade agreements with major importers such as the US and EU. India's market share decreased from 26 per cent in 2000 to 21 percent in 2003 and declined further in the next years. In contrast, major textile exporters such as Vietnam, Malaysia, Turkey, and South Korea have trade agreements with at least one major importer. Such trade agreements allowed free entry of textiles when India faced tariffs as high as 32 per cent in the US for textile products such as T-shirts.

4.4.3 Competition in similar industries- Despite India's comparative advantage in primary goods such as vegetables, fruits, cereals, fuel, and minerals, the largest share of 24 per cent of exports to FTA partners was metals and semi-manufactured products in 2019. The semi-manufactured products sector is already dominated by China and ASEAN nations such as Indonesia, Vietnam, and Thailand. This creates a lack of structural complementarity in the goods traded and reduces the scope for trade. Research shows that structurally dissimilar regions tend to have more scope for trade, increasing the chances for a more successful FTA.

Two trading nations with distinctly different export profiles can be called structurally complementary. According to World Integrated Trade Solution (WITS) data, even to net food importing countries such as Japan and South Korea, India's top ten exports include

[29] Divya Pandey &Unnikrishnan Meera, Free Trade Agreements (FTAs) by India: Review and Implications for Future -Misra Centre for Financial Markets and Economy (MCFME), IIMA, (Mar., 2023), https://www.iima.ac.in/sites/default/files/2023-03/MCFME_FTAs.pdf.

metals such as steel. Steel is a competitive industry in Japan and South Korea; India's steel exports have lower scope for expansion.

4.4.4 Lack of a vibrant regional trade agreement- Theory predicts that trade agreements with neighbouring countries should succeed, given lower freight costs and similar cultural connections. However, India's trade regionally is highly restricted, even in agreements such as those with SAFTA. For example, the average trade costs within South Asia are 20 per cent higher relative to country pairs in the Association and over three times higher than the corresponding costs among the countries of the North American Free Trade Agreement.

4.4.5 Within-country trade barriers- Complex rules of origin criteria, lack of information on the benefits of FTAs, high compliance costs, and administrative delays dissuade exporters from using preferential trade routes. For example, evidence from the Sri Lankan FTA shows that there has been a 50 per cent decline in FTA utilisation by exporters from either side over the years. This is due to increased compliance costs created by new trade regimes. In general, the utilisation rate of RTA by exporters in India is meagre, ranging between 5 and 25 per cent.

4.4.6 Cost and Quality issues- Often, India seems to have yet to grow in market share, even by concessional tariff rates offered through an FTA. A case in point is India's fuel and textile exports to Japan. India's fuel exports dropped by as much as 65 per cent in the years after the Indo-Japan FTA. Similarly, India has a very low (0.05 per cent) share in the Japanese textile market despite zero tariffs applied through the Japanese CEPA. This points to systemic issues such as quality and cost that undermine the competitiveness of Indian goods.

Besides these measures, India's exports have also suffered from non-tariff barriers (NTBs). NTBs have become a popular protectionist tool in recent years, and a typical NTB, which includes import controls, state aid, localisation policies, TBT and SPS measures, reduces trade by almost 2-11 per cent. In the past, India faced SPS-related concerns when several countries, such as the EU, the United States, and Japan, practised discretionary implementation of SPS measures, sometimes motivated by self-interest.

FTAs lower the import duty, but if it is already zero, FTAs offer no benefit. This is why Indian firms do not use FTAs for exports. For example, MFN duty in Singapore on all products except alcoholic beverages and tobacco products is zero. India's exports of alcoholic beverages and tobacco products to Singapore were US$ 68 million in 2022. Indian exporters of these products would use the FTA route to export to Singapore at zero duty. Others would not use the FTA route as FTA does not offer any benefit. Thus, only 6 per cent of India's total exports of US1115 million to Singapore in 2022 would use FTA.

On the contrary, India's MFN duties are high. When these come down to zero under an FTA, importers get high margins, leading to higher utilisation of India's FTAs. On average, India's FTAs used by importers range between 60-70 per cent.

Meanwhile, export usage is estimated at 20-30 per cent. These estimates are based mainly on the fact that most Indian exports end up in FTA partner countries at MFN zero or low duties. The only accurate way is to source data from the FTA partner country. Data by Indian agencies issuing certificates of Origin cannot be accurate as importing country Customs take the final call on granting preference.

The weak performance is mainly due to the asymmetry in tariff structures of India, typically characterised by high tariffs and concentration of most imports in bands of high tariffs, and those of its FTA partners, characterised by low tariffs and concentration of most imports in low tariffs. Gains may be higher with the FTA partners who have high MFN duties. The choice of an FTA partner and negotiation subjects influences the outcome more than the negotiation process.

India signed FTA with UAE and Australia in 2022 and Mauritius in 2021. The government has initiated negotiations with countries such as the United Kingdom, Canada, and Israel. The new wave of FTAs shows a shift in foreign trade strategy. This new strategy comes after changing geo-political relations. The pandemic caused supply disruptions and a global recessionary environment.

In this context, all India's current FTA engagements are with countries working on safeguarding critical supply chains. For example, through the Australian CEPA, India seeks to leverage Australia's advantage in critical minerals that aid in clean energy transition. Similarly, in addition to being India's primary source of fuel imports, the UAE is also a key investor in the logistics and infrastructure industries. The UK is one of India's largest R&D investors, and the FTA would cover foreign investments in India's manufacturing sector through the Production Linked Incentive (PLI) scheme.

In contrast to previous FTAs, which pursued a look East policy, the new wave focuses on gaining access to the Western and African markets. India's young demography and growing middle-class population provide an attractive market for its Western FTA partners. China's strained political relations with countries like the UK and Australia have also allowed trade diversion towards India.
For instance, China-Australia tensions soured when China (Australia's largest wine market) imposed up to 212% tariffs on Australian wine imports. Australia sees significant growth potential through the FTA, along with India, in its wine exports.

Academic literature on natural trading partners identifies factors that would promote robust trade between FTA partners. The initial trade volume, geographic proximity, and trade complementarity are among them. In this regard, the UAE can be classified as a natural trading partner, having been featured amongst India's top three trade partners for the past two decades. UAE has been India's largest export market for gems and jewellery, cereal, and fuel. Through the UAE CEPA, these labour-intensive products will receive preferential access.

Unlike UAE, countries such as Australia and the United Kingdom do not have as large an initial trade volume with India. Even so, the trade baskets of these nations show a reasonable degree of complementarity, thus classifying them as natural trading partners. India imports resources and primary products from Australia and exports finished goods. Similarly, the UK's trade basket shows complementarities as India specialises in clothing, IT services, and agriculture while the UK specialises in pharmaceuticals, automobile components and financial services.

Previous agreements needed to pave the way for a robust trade in services. For example, the Japanese CEPA was assumed to initiate a deeper engagement in services. However, a decade later, market access gains in services have yet to be realised due to language barriers, lax law enforcement and weak data protection norms in India. However, unlike previous FTA agreements, services are crucial to India's trade relations with Australia and the UAE.

The Australian CEPA is the first agreement where India will include a 'mixed scheduling approach' for its service commitments. The mixed scheduling approach ensures that Australia will always receive India's best market access given in the future to any potential FTA partner.[30] Regarding the UAE FTA, India's services trade agreement includes 11 service sectors and over 100 subsectors, including business services, telecommunications, construction, education, tourism, nursing[31], and finance.

India's services trade with the UK has shown around 100 per cent growth over the past decade, with a sharp increase in various consulting services. Through the UK-FTA, services trade is expected to boom, with India gaining in legal, accounting, education, health, [32]and R&D.

Also, India has included digital trade within the ambit of its FTA with UAE for the first time. This will help leverage India's advantage in digital payment and e-commerce services. The UAE FTA agreement also involves government procurement and data usage provisions. Recently signed FTAs like Australia-India also address the non-tariff barriers (NTBs) such as TBTs and SPS measures. India's history with NTBs has shown that using such measures (both by India and its trade partners) has hampered trade potential.

[30] India-Australia Comprehensive Economic Cooperation Agreement (CECA), Mcommerce, https://commerce.gov.in/international-trade-trade-agreements-indias-current-engagements-in-rtas/india-australia-comprehensive-economic-cooperation-agreement-ceca/ (last visited Jun 25, 2024).

[31] Comprehensive Economic Partnership Agreement (CEPA) between the Government of the Republic of India and the Government of the United Arab Emirates (UAE), Mcommerce, https://commerce.gov.in/international-trade/trade-agreements/comprehensive-economic-partnership-agreement-between-the-government-of-the-republic-of-india-and-the-government-of-the-united-arab-emirates-uae/ (last visited Jun 25, 2024).

[32]India FTA, UK Trade and Business Commission (2023), https://www.tradeandbusiness.uk/india-fta (last visited Jun 25, 2024).

Chapter 5 - FREE TRADE AGREEMENTS - PROVISIONS RELATED TO MSME IN FTAs SIGNED BY INDIA

5.1 INTRODUCTION

Kerala makes up 2.8% of India's population and 1.2% of its land area, but contributes over 4% to India's GDP. Its per capita income exceeds India's average by 60%, leading to internal migration for low-end jobs and emigration to the Gulf countries for better opportunities.[33] Approximately 3,000,000 Keralites work abroad, primarily in the Persian Gulf, a trend that began during the Gulf Boom.

The economy of Kerala relies heavily on the trade of services and the remittances it generates. In 2012, the state received the largest amount of remittances in India, totaling Rs. 49,965 Crore, which accounted for 31.2% of the state's GDP.[34] Between 1960 and 2020,[35] Kerala's economy transitioned gradually from being primarily agrarian to being based on services. The remittance factor is slowly reducing as due to pandemic people are returning from other countries and remittance income is reducing. MSMEs are the next big contributor to the States economy

The Micro, Small, and Medium Enterprises (MSME) sector plays a crucial role in providing large-scale employment opportunities at a lower cost of capital while also uplifting rural and backward communities through industrialisation, resulting in a more equitable distribution of national income and wealth not just in the State but to the whole nation.[36] MSMEs also act as ancillary units supporting large industries and have a huge potential to reduce poverty, boost exports, and contribute to overall socio-economic development[37].

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[33] The Hindu Bureau, Kerala’s Economic Review: State Clocks 6.6% Growth in 2022-23, The Hindu, Feb. 2, 2024, https://www.thehindu.com/news/national/kerala/keralas-economic-review-state-clocks-66-growth-in-2022-23/article67803807.ece (last visited Jun 25, 2024).

[34] Keralites working in 182 of 195 countries in the world, The Times of India, Nov. 24, 2023, https://timesofindia.indiatimes.com/city/kochi/keralites-working-182-countries-worldwide/articleshow/105460653.cms (last visited Jun 25, 2024).

[35] State Planning Board, Thiruvananthapuram, Kerala, India- ECONOMIC REVIEW 2022, (2023).

[36] Invest Kerala | Economy, https://invest.kerala.gov.in/kerala-unveiled/kerala-insights/economy/ (last visited Jun 25, 2024).

[37] Innovative MSME Schemes Empowering Indian Businesses, https://www.investindia.gov.in/schemes-msmes-india (last visited Jun 25, 2024).

Presently, the MSME sector contributes 29 per cent to India's GDP and employs more than 11 crore people. It also contributed 48.1 per cent to India's total exports in 2018-19. With the implementation of schemes such as interest subvention for fresh/incremental loans for MSMEs, the Stand-Up India scheme, and the Credit Guarantee Fund Trust for Micro and Small Enterprises, which provide a collateral-free flow of credit from lending institutions, this sector is poised for further growth in India. [38]

According to the MSME Annual Report 2018-19, Kerala is home to the 12th highest number of MSMEs in India, with approximately 23.79 lakh units, of which 23.58 lakh are micro-enterprises, creating jobs for about 44.64 lakh individuals. Since 2016, a total of 52,137 MSMEs have been established.[39] The MSME sector in Kerala has provided employment for over 1.8 lakh people, with investments exceeding INR 4,500 crore.

The acronym MSME represents Micro, Small, and Medium Enterprises. After the enactment of the Micro, Small, and Medium Enterprises Development (MSMED) Act in 2006, these businesses are categorized into two groups[40] - Manufacturing enterprises, which are involved in the manufacturing or production of goods in any industry, and Service enterprises, which offer or provide services.

In 2020, the Government of India revised the definition and criteria for classifying Micro, Small, and Medium Enterprises (MSMEs) under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.[41] The new classification for MSME Registration is based on a composite criterion of investment and turnover instead of the previous investment criterion only.

A micro-enterprise is an enterprise with an investment in plant and machinery or equipment less than one crore rupees, with a turnover of at most five crore rupees. A micro-enterprise can be engaged in manufacturing, services, or trading activities. A small enterprise is defined as an enterprise having an investment in plant and machinery or

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[38] Contribution of MSMES to the country's GDP, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1985020 (last visited Jun 25, 2024).

[39] Annual Report | Ministry of Micro, Small & Medium Enterprises, https://msme.gov.in/relatedlinks/annual-report-ministry-micro-small-and-medium-enterprises (last visited Jun 25, 2024).

[40] SMEStreet Edit Desk, Udyam Portal Highlights Significant Role of Women-Owned MSMEs, https://smestreet.in/policies/msme-schemes/udyam-portal-highlights-significant-role-of-women-owned-msmes-3589280 (last visited Jun 25, 2024).

[41] What's MSME | Ministry of Micro, Small & Medium Enterprises, https://msme.gov.in/know-about-msme (last visited Jun 25, 2024).

equipment that is less than ten crore rupees, and the turnover is at most 50 crore rupees. A small enterprise can also be involved in manufacturing, services, or trading activities. A medium enterprise is an enterprise with an investment in plant and machinery or equipment less than fifty crore rupees. The turnover is at most two hundred and fifty crore rupees. A medium enterprise can likewise be engaged in manufacturing, services, or trading activities. The investment and turnover figures were changed to larger values, resulting in a larger number of medium-sized enterprises[42].

The Micro, Small, and Medium enterprises (MSME) in India play an important role in India's economic and social arena and significantly contribute to output, employment, and exports.[43] It is important that any major policy in India is used with the future growth of MSMEs in mind. India's trade policy has undergone significant changes, with India engaging in about 30 bilateral trade and investment agreements covering various chapters other than the exchange of goods. Though Free Trade Agreements (FTAs) can have a significant impact on Indian producers, there is still limited awareness of FTA provisions among stakeholders, especially among MSMEs.

Trade policy is an important policy tool at the disposal of the government that determines not only what India trades but what it produces and who benefits from its production. Trade policy determines which products India can import from abroad and which it will domestically produce. It has a critical link with the manufacturing sector. Manufacturing policy shapes the conditions for MSME sector growth. The question emerges whether a country's manufacturing policy should determine its trade policy or vice versa. Most developed countries had high industrial tariffs during their process of industrialisation. The US had an average tariff ranging between 35 per cent and 50 per cent during 1830-1913[44]. In 1950, the UK, France and Germany had 23 per cent, 18 per cent, and 26 per cent applied industrial tariffs.[45]

Most developing countries currently have high tariffs compared to developed ones and use it to protect their growing industries though these are now much lower compared to

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[42] DC-MSME, https://www.dcmsme.gov.in/ssiindia/defination_msme.html (last visited Jun 25, 2024).

[43] Micro, Small and Medium Enterprises Development Act, 2006, An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. (2006), http://indiacode.nic.in/handle/123456789/2013 (last visited Jun 25, 2024).

[44] https://www.cato.org/publications/problem-tariff-american-economic-history-1787-1934 (last visited Jun 25, 2024).

[45] Commanding Heights : United Kingdom Trade Policy | on PBS, https://www.pbs.org/wgbh/commandingheights/lo/countries/uk/uk_trade.html (last visited Jun 25, 2024).

what the developed countries had during their industrialisation phase. South Asia and India have generally higher tariffs (maximum and applied) than most developed countries and developing countries such as China.

India has been reducing its actual applied tariffs over the past few years (5.9 as of 2022), allowing more imports.[46] In addition, India's trade policy framework is changing very fast. India has been signing a number of Free Trade Agreements with several countries. While about 14 are already signed, many more are being negotiated or are being considered for negotiations. Sometimes, these are called Comprehensive Economic Partnership Agreements (CEPA) such as the one recently signed with Japan, or Comprehensive Economic Cooperation Agreements (CECA) such as the one with Malaysia, UAE and Australia. Negotiations with the EU and UK blocs are advanced, and talks with other Middle Eastern nations have already begun. In addition, there has been some recent talk of starting FTA talks with the USA and China.

The FTAs represent a bigger package of liberalisation and are moving from the liberalisation of just goods trade to the liberalisation of services trade, investment, TRIPS-plus IPRs, and sometimes even public procurement and competition policy. India's agreements with South Korea, Japan, Malaysia, and the ones being negotiated with the EU are of this variety. Even goods trade under the FTAs implies a reduction of actual applied duties to zero on 85-95 per cent of products under both agriculture and industry and removes tariff protection to a much more significant extent than the WTO requires. Therefore, FTAs represent a substantial part of India's emerging trade policy and can have a significant impact on India's manufacturing process, on its growth, employment creation and economic and social impact.

However, unlike the WTO, the FTA negotiating process is much less open, with secret draft texts of agreements and extremely limited access to impact assessment studies. Therefore, knowledge and awareness about provisions and likely impacts of FTAs is limited among stakeholders. MSMEs are important stakeholders, and small business owners need to understand FTA provisions and assess the possible impact on their business as FTAs will impact not only their export market but also the challenges they face in the domestic market.

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[46] India - Import Tariffs | Privacy Shield, https://www.privacyshield.gov/ps/article?id=India-Import-Tariffs#:~:text=According%20to%20the%20latest%20WTO,WTO%20latest%202017%20data%20available). (last visited Jun 25, 2024).

As per the Ministry of Statistics & Programme Implementation, the share of MSME Gross Value Added in India's Gross Domestic Product (GDP) during the years 2019-20, 2020-21 and 2021-22 was 30.5 per cent, 27.2 per cent and 29.2 per cent respectively. The share of MSME manufacturing output in all India Manufacturing output during 2019-20, 2020-21 and 2021-22 was 36.6 per cent, 36.9 per cent and 36.2 per cent, respectively.[47] As per the Directorate General of Commercial Intelligence and Statistics (DGCIS), the share of export of MSME specified products in all India exports during the year 2020-21, 2021-22, and 2022-23 was 49.4 per cent, 45.0 per cent and 43.6 per cent respectively. [48]

The output and value of fixed assets of 28.5 million MSMEs in India stood at Rs. 880805 and Rs 621753 crores in 2008-09, respectively. The value of fixed assets and output witnessed a growth of 6.66 per cent. Some of the major subsectors in terms of manufacturing output are food products, textiles and readymade garments, basic metal), chemical and chemical products, metal products, machinery and equipment, transport equipment, rubber and plastic products, furniture, paper and paper products and leather and leather products. [49]

Geographically, Uttar Pradesh has the highest share of MSMEs, followed by Tamil Nadu, Maharashtra and West Bengal. The share of export of MSME-specified products in all India exports has been declining year-on-year even as the country's overall exports, including merchandise and services, grew by an estimated 13.84 per cent in FY23. First, most of the MSME sector in India is very small. [50]

As of June 2023, there were 20.09 million MSMEs registered on the Udyam portal, including 19.4 million micro-enterprises, 554,000 small enterprises and about 52,000 medium-sized enterprises. This means most have a small capital base with investment in plant and machinery not exceeding 25 lakhs for manufacturing units and Rs 10 lakhs for service sector[51] units.

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[47] Ministry of Statistics and Program Implementation | Government Of India, https://www.mospi.gov.in/ (last visited Jun 25, 2024).
[48] Directorate General of Commercial Intelligence and Statistics, https://www.dgciskol.gov.in/ (last visited Jun 25, 2024).
[49] India: market value of MSMEs fixed assets, Statista, https://www.statista.com/statistics/719639/india-market-value-of-msmes-fixed-assets/ (last visited Jun 25, 2024).
[50] India: share of key MSME states 2023, Statista, https://www.statista.com/statistics/1385254/india-share-of-key-msme-states/ (last visited Jun 25, 2024).
[51] More than 3 crore MSMEs registered on Udyam portal, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1985022 (last visited Jun 25, 2024).

The average value of fixed assets per unit of MSMEs actually stood at only 2.18 lakhs in 2008-09. Second, the MSME sector still needs to be more organised. According to the NSS(National Sample Survey) data, only 30% of the estimated 63 million MSMEs were registered, which is sufficient for the informal sector. However, manufacturing is still dominated by unregistered enterprises, which have a considerable share. This also has a rural-urban dimension. While the rural-urban breakup is close to 50:50, the rural share is slightly higher (52%) among unregistered enterprises and lower (44.47%) among registered enterprises.

5.2 MSME RELATED PROVISIONS IN TRADE AGREEMENTS SIGNED BY INDIA

Free Trade Agreement	MSME Related Provision	Scope
India-ASEAN[52]	Article 6, Annex C	Agree to strengthen cooperation wherever appropriate
India-Japan[53]	Article 129	Mutually agreed basis, subject to the laws, regulation and availability of funds
India-Korea[54]	Article 13.5, Annex I	Expression of intent through use of"shall" in the text
India-Malaysia[55]	Article 11.2	Expression of intent through use of"shall" in the text

[52] Framework Agreement with ASEAN, Mcommerce, https://commerce.gov.in/international-trade/trade-agreements/framework-agreement-with-asean/ (last visited Jun 25, 2024).
[53] India-Japan CEPA- https://commerce.gov.in/wp-content/uploads/2021/01/IJCEPA_Basic_Agreement.pdf
[54] India-Korea CEPA 2009-https://commerce.gov.in/wp-content/uploads/2023/05/INDIA-KOREA-CEPA-2009.pdf
[55] MITI FTA, https://fta.miti.gov.my/index.php/pages/view/malaysia-india?mid=44 (last visited Jun 25, 2024).

India-Nepal[56]	with reference to Article V	Conditional to certification
India-SAFTA[57]	Annex II	For promotion of SMEs engaged in production for exports
India-Thailand[58]	Article 6	Expression of intent through use of"shall" in the text
India-UAE[59]	Article 13.1-13.5	Separate chapter for MSME[60]

The India-ASEAN Free Trade Agreement (FTA) acknowledges SMEs as an area for collaboration. Collaboration in human resource development training in IT and ICT can be pursued 'where appropriate', but it is not mandatory. The India-Japan Comprehensive Economic Partnership Agreement (CEPA) also recognizes SMEs as a sphere for cooperation. The India-SAFTA (Agreement on South Asian Free Trade Area) also includes provisions for SMEs. Technical support and entrepreneurial skills are utilized to promote SME exports from the least developed member countries within the SAFTA region.

[56] Trade Agreement - NTIP, https://nepaltradeportal.gov.np/trade-agreement?p_p_id=utilportlet_WAR_tepc&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_utilportlet_WAR_tepc_param=getDetail&id=306#:~:text=Trade%2Drelated%20Agreements%20with%20the%20Republic%20of%20India,-Bilateral&text=Nepal's%20first%20treaty%20on%20trade,free%20access%20in%20Indian%20markets. (last visited Jun 25, 2024).

[57] Agreement on South Asia Free Trade Area (SAFTA)-https://commerce.gov.in/wp-content/uploads/2020/05/safta.pdf

[58] India-Thailand Comprehensive Economic Cooperation Agreement (CECA) negotiations, Mcommerce, https://commerce.gov.in/international-trade-trade-agreements-indias-current-engagements-in-rtas/india-thailand-comprehensive-economic-cooperation-agreement-ceca-negotiations/ (last visited Jun 25, 2024).

[59] Comprehensive Economic Partnership Agreement (CEPA) between the Government of the Republic of India and the Government of the United Arab Emirates (UAE), Mcommerce, https://commerce.gov.in/international-trade/trade-agreements/comprehensive-economic-partnership-agreement-between-the-government-of-the-republic-of-india-and-the-government-of-the-united-arab-emirates-uae/ (last visited Jun 25, 2024).

[60] PricewaterhouseCoopers, The UAE-India Comprehensive Economic Partnership Agreement (CEPA) Enters into Force, PwC, https://www.pwc.com/m1/en/services/tax/me-tax-legal-news/2022/the-uae-india-comprehensive-economic-partnership-agreement-enters-into-force.html (last visited Jun 25, 2024).

The India-Korea FTA acknowledges the important contribution of SMEs and includes provisions for collaboration such as facilitating investment, sharing best practices in management, skill development, technology transfers, and providing access to finance and technical assistance. Furthermore, the agreement allows for seeking support through organizing fairs and exhibitions and encourages sharing experiences on SME policy development.

The India-Malaysia FTA also affirms the importance of all forms of cooperation on MSMEs, which are to be identified and discussed by a sub-committee on economic cooperation. India's agreement with Thailand, having a partial scope, provides for cooperation on SMEs. However, many other agreements with India as a member, such as the Asia-Pacific Trade Agreement, Global System of Trade Preferences, SAARC Preferential Trading Arrangement, and those with Afghanistan, Bhutan, Sri Lanka, MERCOSUR, and Chile are silent on SMEs.

India is signing several FTAs that cover both goods and broader trade and investment packages. Non-Agricultural Market Access (NAMA) chapters in these agreements deal with creating border taxes and other measures such as quantitative restrictions on industrial products, non-tariff barriers like standards, certification process, labelling requirements, rules of origin, and dispute settlement. In addition, other areas not involving goods trade, such as investment, intellectual property, government procurement and competition policy, are also included under FTAs.

5.3 GENDER AND DEVELOPMENT ISSUES UNDER MSMEs

In developing Asian and Pacific economies, micro, small, and medium-sized enterprises (MSMEs) provide significant job opportunities. According to the Key Indicators 2009 of the Asian Development Bank , 61% of total manufacturing employment in India, 44% in Indonesia, and 60% in the Philippines could be in micro-enterprises alone. Therefore, investing in the development of the MSME sector is essential for inclusive growth and poverty reduction. [61]

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[61] Opportunities and Constraints of Women Owned Very Small Enterprises in India, IFC, https://www.ifc.org/en/insights-reports/2022/opportunities-and-constraints-of-wvses-in-india (last visited Jun 25, 2024).

India's ability to fulfill its development and climate change goals relies heavily on the growth of micro, small, and medium enterprises (MSMEs). These enterprises account for almost 29% of the country's GDP and provide employment to over 110 million individuals. In MSMEs, women make up roughly 24% of the workforce, a higher percentage than in any other sector of the Indian industry. Additionally, women own around 20% of all enterprises, with approximately 22.24% of these women-owned businesses being located in rural areas, often operating as informal micro units. It's important to note that many women-led enterprises are home-based and unregistered, leaving them more susceptible to market and climate-related risks and potentially causing them to miss out on available government and institutional support[62] as highlighted by the International Centre for Research on Women (ICRW).

Looking at MSMEs from a development perspective, their employment-creating role emerges as important. Though 84% of MSME workers are in informal jobs in unregistered enterprises[63], it provides a source of income to many. Therefore, workers' interests are closely connected to entrepreneurs' interests in this sector. MSMEs also emerge as an option for women entrepreneurs and workers and can be termed a gender-sensitive sector. Because women are assumed to generally have a lower capital base, technical know-how, and entrepreneurial skills, the MSME sector is a softer option for them.[64] Women also face 'time poverty' after looking after their household and children, and that is why a sector with smaller size and lower demands is considered an easier option for them.

As per the Udyam Registration Portal of the Ministry of MSME[65], women-owned MSMEs constitute 20.5% of the total number of MSMEs registered on the Portal since its inception on 1st July 2020[66]. Regarding employment, about 103 lakh women workers were employed in the MSME sector in 2006-07, compared to 9.96 lakhs in 2001-02 (in only SMEs. However, this still represents only 17.28 per cent of the total jobs generated

[62] Home, ICRW, https://www.icrw.org/ (last visited Jun 25, 2024)
[63] UNREGISTERED SSI SECTOR REVIEW OF RESULTS, https://www.dcmsme.gov.in/ssiindia/census/ch5.htm (last visited Jun 25, 2024).
[64] Gendered Pathways to Just Transition for MSMEs in India, WRI INDIA, https://wri-india.org/events/gendered-pathways-just-transition-msmes-india (last visited Jun 25, 2024).
[65]Udyam Registration : Zero cost, No Fee and Free Registration of MSMEs. This is official website of Govt. of India, Ministry of MSME. No other website/portal/app is official. MSMEs are requested to do MSME Registration here only, https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm (last visited Jun 25, 2024).
[66] Udyam Registration : Zero cost, No Fee and Free Registration of MSMEs. This is official website of Govt. of India, Ministry of MSME. No other website/portal/app is official. MSMEs are requested to do MSME Registration here only, https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm (last visited Jun 25, 2024).

in this sector. Women–owned MSMEs constitute 20.5 per cent of the total registered MSMEs in India, but their contribution to employment (18.73 per cent) and investment (11.15 per cent) is slightly lower, indicating potential room for growth and increased impact. Similarly, their contribution to the total turnover of Udyam-registered MSMEs stands at 10.22 per cent, suggesting potential for further economic contribution.

Among registered enterprises, women comprise 23.57 per cent of the workers, while in unregistered enterprises, 16.01%. Though women's employment is very low, women seem to be doing comparatively better than their male counterparts in accessing jobs in the registered MSME sector. While only 15.85 per cent of male workers are in the registered segment, 22.81 per cent of female workers are in registered units, indicating the importance of the MSME sector as a decent source of jobs for women workers. It may also give them more flexibility regarding working from home and other options. [67]

Women entrepreneurs lack visibility in the sector because many women-owned MSME businesses are in the micro segment, home-based and are less likely to be registered. Unregistered enterprises cannot benefit from government schemes, making women-owned enterprises susceptible to missing out on available government support. Across India, women entrepreneurs have lower access to finance than male entrepreneurs. While start-up capital was difficult for both women and men entrepreneurs, prevailing gender realities and gender-biased attitudes of financial institutions make it more difficult for women to access loans.

The states with the highest percentage of women-owned MSMEs are Manipur, Mizoram, Karnataka, **Kerala** and Tamil Nadu in rural areas, and in urban areas Jammu and Kashmir, Mizoram and Meghalaya. According to the Fourth MSME Census 2006-07, the rate of women's employment in registered MSMEs is 20.45 percent and that in unregistered enterprises is 13.02 percent. wGender disaggregated data across MSMEs shows that women's employment like ownership is the highest in the case of micro enterprises, followed by small and then medium enterprises. The states with the highest proportion of female workers are Manipur, Mizoram, Karnataka, Kerala and Tamil Nadu in rural areas, and in urban areas Sikkim, Meghalaya, Gujarat, Orissa, Karnataka, Kerala and Tamil Nadu[68].

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[67] Women Entrepreneurs in MSMEs, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=2002574 (last visited Jun 25, 2024).

[68] THIRD CENSUS OF SSI SECTOR, https://www.dcmsme.gov.in/ssiindia/census/ch11.htm (last visited Jun 25, 2024).

5.4 CHALLENGES FACED BY MSME IN INTERNATIONAL MARKET

India's goods trade is marked by trade deficits with most of its trading partners. India's deficit in NAMA products has increased steadily from Rs. 414 billion in 2000-01 to Rs. 5727 billion in 2008-09, to fall slightly to Rs. 5420 billion in 2009-10. Non Agricultural Market Access (NAMA) relates to trade negotiations on non-agricultural or industrial products. In the NAMA negotiations, WTO Members discuss the terms or modalities for reducing or eliminating customs tariff and non tariff barriers on trade in industrial products.[69] India's merchandise exports in Jan 2024 registers 3.12 % growth at USD 36.92 Billion over USD 35.80 Billion in Jan 2023.[70] Except Singapore, India has a trade deficit, and sometimes an increasing one, with most of its major FTA partners, including the EU, with which India is negotiating an ambitious trade agreement. With ASEAN, South Korea, and Thailand, India's trade deficit has increased consistently. With Japan, the deficit has recently improved partly due to the financial crisis[71]. Japan's bilateral trade with India totalled US$ 21.96 billion during FY23.Exports from Japan to India during FY23 were US$ 16.49 billion and imports were US$ 5.46 billion. Japan's exports to India were 2.65% of India's total imports and India's exports to Japan were 1.19% of India's total exports during April-November 2023. Japan's bilateral trade with India from April-November 2023 totalled US$ 15.17 billion. [72]

Trade under the WTO and FTAs encompasses some concepts that form the basis of the agreements. The most basic is the 'Fair and Equitable Treatment' which refers to treating partner countries fairly, without discrimination. Market Access (MA) refers to opening up markets and National Treatment (NT) refers to treating foreigners and locals equally.

The Most Favoured Nation (MFN) status under the WTO means treating all member countries equally. Under the FTAs, this comes down to treating FTA partners equally or partners under 'like circumstances' equally. Interestingly, the 'special and differential treatment' (S&DT) allowed under the WTO to give concessions to developing countries which encompasses notions like 'less than full reciprocity' are not a necessary part of

[69] Exploring India Japan Trade and Economic Relations | IBEF, India Brand Equity Foundation, https://www.ibef.org/indian-exports/india-japan-trade (last visited Jun 25, 2024).

[70] India's merchandise exports in Jan 2024 registers 3.12 % growth at USD 36.92 Billion over USD 35.80 Billion in Jan 2023, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=2006282 (last visited Jun 25, 2024).

[71] GTRI INDIA FTA OUTLOOK 2004 - https://gtri.co.in/DisplayFlagshipReports.aspx?ID=26

[72] NAMA - Non-Agricultural Market Access, Mcommerce, https://commerce.gov.in/international-trade/india-and-world-trade-organization-wto/trade-in-goods-nama/nama-non-agricultural-market-access/ (last visited Jun 25, 2024).

FTAs. FTAs are based on the principle of full-reciprocity where partners are supposed to give in some areas in exchange for getting some benefits.

According to the latest WTO data, India's average bound tariff rate is 48.5 percent, while its simple MFN average applied tariff is 13.8 percent. In order to ensure competitiveness and in preparation for the WTO, India has been steadily reducing its applied duties. Under the FTAs, India is required to reduce applied rates to zero on at least 85 to 95% of its products (including agricultural goods) within a specified period of 3-10 years. Under the Japan FTA, India has opened up 90% of trade volum e and 87% of its tariff lines on concessional basis to Japan while Japan will cover 97% of trade volume and 92% of its tariff [73] lines.

Under FTAs India can exclude from tariff cuts a limited 5 to 15% of products. India has about 4712 NAMA and about 700 agricultural products or tariff lines. This means India can exclude approximately 270 to 812 products under its FTAs. However, this exclusion list includes both agricultural and industrial products, and India generally needs to use most of it to protect sensitive agricultural products. Duties cannot be increased and face a 'standstill' even on the excluded products. The India-UAE CEPA is likely to benefit about US$ 26 billion worth of Indian products that are subjected to 5% import duty by the UAE. Overall UAE is offering elimination of duties on 97 % of its tariff lines corresponding to 99% of imports from India. 90% of India's total exports to the UAE in value terms would become duty-free immediately upon entry into force of the CEPA.[74]

Certain safeguards are allowed against import surges for industrial products under FTAs under the WTO. If imports increase above a certain percentage, countries can raise duties to certain agreed levels. However a similar price mechanism where prices fall under a certain average price is often not allowed by developed countries in FTAs.

In addition there are many restrictions on the use of safeguards such as cross check (When rise in imports have to be matched by a price fall, or vice versa), notification and data submission to partner country in advance, which make these often unusable. Increased import competition may be a bigger threat for MSMEs because of their

[73] India - Import Tariffs | Privacy Shield, https://www.privacyshield.gov/ps/article?id=India-Import-Tariffs (last visited Jun 25, 2024).

[74] India's International Free Trade Agreements - India Guide | Doing Business in India, https://www.india-briefing.com/doing-business-guide/india/why-india/india-s-international-free-trade-and-tax-agreements (last visited Jun 25, 2024).

somewhat weak marketing abilities. According to the SIDBI survey, MSMEs report several problems in marketing.

“Most MSEs do not have money to invest in market research, advertisement, packaging and cannot carry out design and technical improvements to keep up with market demands”. According to the study, the five major challenges restricting access to domestic markets are cost of production that emerges from high raw material cost, market information, import surges, regulatory mechanism and availability of professional management skills.

5.4.1 EXPORT TAXES

India uses export taxes to generate revenues and ensure cheaper raw material inputs to industries, especially growing ones.In the context of India, export duties are not as prevalent as import duties, given that the country aims to promote exports to boost its economy. India is the third largest producer of metallic minerals, including chromite and other rare earth minerals, and currently restricts exports of iron ore, non iron metal scraps and hides and skins (raw leather). India, in May 2022, raised the export tax on low-grade iron ore lumps and fines - with iron content below 58 per cent - to 50 per cent from zero, and hiked the duties on pellets to 45 per cent from zero as part of efforts to meet rising local demand.

The government scrapped these taxes November 2022, and currently allows duty-free exports of low-grade iron ore or ore with iron content below 58 per cent. India primarily exports low-grade iron ore.[75]

Some countries, especially developed countries, especially the EU, want export taxes to be completely removed in partner countries in their FTAs. The EU has a specific policy of acquiring raw materials including minerals from resource rich countries under ‘The Raw Materials Initiative’ [76]and uses its trade agreements to achieve this objective.

Taxes on exports are apparently asked to be removed by the EU in its current FTA negotiations with India. EU has asked many other countries e.g. the Economic

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[75] India considers export tax on low-grade iron ore, The Economic Times, Feb. 26, 2024, https://economictimes.indiatimes.com/news/economy/foreign-trade/india-considers-export-tax-on-low-grade-iron-ore-sources-say/articleshow/108015484.cms?from=mdr (last visited Jun 25, 2024).

[76] Proposed EU-India FTA | Heinrich Böll Stiftung | India Office, https://in.boell.org/en/2023/06/07/proposed-eu-india-fta (last visited Jun 25, 2024)

Partnership Agreements(EPA) countries in Africa, to remove export taxes with potential adverse effects on their domestic industry Under the EU rules, restrictions apply not only to existing but future export taxes as well. "Countries would only be allowed to introduce new export taxes 'temporarily', often only after securing the agreement of the EU, and even then on only a 'limited' number of goods, sometimes after 'justifying' why they are needed"

If India is forced to remove export taxes, MSMEs can be specially affected if their raw material costs go up. The SIDBI Report on MSMEs already points out high raw material cost as one of the major problems of MSMEs in accessing domestic markets. In fact specific export taxes like the one on leather caters mainly to the needs of the MSME sector. Export taxes have been used the world over to ensure raw material supply to small industry . Removal of export taxes coupled with strong investment rights to foreign investors under FTAs can actually lead to large-scale outflows of much needed raw material from India.[77] If India is also asked to remove quotas or prohibitions on exports, there may be problems for certain other products.

Currently, India's prohibited products include wood and wood products, shavings of shed antlers products of Chital and Sambhar, sandalwood and red sanders wood, all wild animals, live exotic birds, beef and offal of cows, oxen and calves, tallow, fat and/or oils of animal origin (excluding fish oil), human skeletons, special chemicals, organisms, materials equipment and technologies (SCOMET), chemicals under the Montreal Protocol. India also issues temporary bans on essential products such as food like it did recently with sugar and basmati rice. However, quantitative restrictions on exports can generally stay under FTAs, for example bans on food exports etc, unless a partner country specifically asks for these to be removed. India needs to negotiate these issues cautiously with the active involvement of the MSME sector.

5.4.2 NON TARIFF MEASURES

Non Tariff Measures (NTMs) are all measures other than normal tariffs, namely; trade related procedures, regulations, standards, licencing systems and even trade defence measures such as anti-dumping duties etc which restrict trade between nations. In

[77] Publications & Reports - Small Industries Development Bank of India, https://www.sidbi.in/publication-and-reports (last visited Jun 25, 2024).

common usage, those NTMS that generally cannot be justified under WTO law are termed as non tariff barriers (NTBs). These barriers may be imposed on several grounds which include: [78]

Standards- High standards in destination countries act as barriers to trade even if tariffs are low. The sanitary and phytosanitary measures (SPSMs) are imposed on grounds of quality, food safety, health. These may specify for example, the type and proportion of chemicals that can be used in manufacturing a product.

Technical Barriers to Trade (TBTs)- These include labelling, packaging requirements, and Process requirements. Mutual Recognition Agreements (MRAs) may be signed in FTAs[79] between countries to recognise each others' conformity assessments (certification processes, etc).

Anti Dumping Duties- Countries can impose and face additional duties on grounds of selling below actual cost (with thehelp of hidden subsidies). India has faced several cases of dumping and has also filed many cases against other countries on grounds of dumping. These can act as barriers to trade if used as protective instruments in disguise.

A criticism of NTBs is that these are used as a protective measure to block imports in the absence of tariffs. Many Developed countries have been accused of this. But NTBs are not limited to developed countries alone, even developing countries including India have started using NTBs more extensively. However, it is difficult for developing countries such as India to use them as a protectionist tool by raising NTBs to a point where it will be difficult for developed countries to meet them, given that Indian domestic producers will also then have to meet those standards. Therefore, developing country NTBs including India's are generally used against other developing countries.

MSMEs generally find it more difficult to meet these as meeting high quality standards not only requires more investment, in process raising costs , but accessing the process requirements may be more complicated, time consuming and costly.[80] A problem in

[78] India Non-Tariff Measure (NTM) Summary | WITS | Data, https://wits.worldbank.org/tariff/non-tariff-measures/en/country/IND (last visited Jun 25, 2024).

[79] Kirtika Suneja, EU's Proposed Sustainability Standards to Hurt Indian Exports: GTRI, The Economic Times, Jun. 19, 2024, https://economictimes.indiatimes.com/news/economy/foreign-trade/eus-proposed-sustainability-standards-to-hurt-indian-exports-gtri/articleshow/111119332.cms?from=mdr (last visited Jun 25, 2024).

[80] Sustainable development in India's FTAs, (2022), https://www.leidenlawblog.nl/articles/sustainable-development-in-indias-ftas (last visited Jun 25, 2024).

exporting to developed country markets is that their standards are much higher than that of India's and Indian certification bodies and labs are often not recognised by them. The EU is well known for its high standards in food products and in a range of other products.

With the increase in FTAs, NTBs have been included under its purview. However, NTB discussions are sometimes avoided under the FTAs because they are being discussed multilaterally at the WTO. For example, the Canada-Chile FTA negotiations do not address these issues.[81] However, some FTAs do include NTB discussions on a bilateral basis. Most FTAs affirm at least WTO level standards and sometimes even raises them. But often FTAs can target to get a Mutual Recognition Agreement to ease process requirements.

FTAs cannot lower standards per say but have the potential to address the procedural issues and the technical barriers. India has managed to get some MRAs in its agreements such as with Japan. However, many developed countries are very resistant to giving MRA in their FTAs and most FTAs around the world do not see major achievements in the field of NTB negotiations. These also require immense negotiating skills and technical resources.

As mentioned, developed countries such as the EU and USA attempt to impose labour and environment standards on developing country exports through FTAs. This is done under a chapter on 'sustainable development'. Developing countries such as India sees these as NTBs and protectionist instruments. India has resisted any attempt to include such standards in its FTAs, most notably with the EU, on the ground that these are non trade issues.

Though many Indian exports have to often meet such labour and environment standards anyway in order to access developed country markets, agreeing to these in FTAs will make it compulsory for all Indian exports to meet these standards. These must be pursued domestically; committing to these in trade agreements represents an invasion of India's domestic policy space.

India signed a free trade agreement (FTA) with the European Free Trade Association (EFTA) countries on 10 March 2024. The EFTA members include Iceland, Liechtenstein, Norway and Switzerland. The Agreement was concluded after more than 15 years of

81 https://www.ceew.in/sites/default/files/sustainability-driven-non-tariff-measures-and-assessing-risks-foreign-trade-risks-india.pdf

negotiations. Apart from being India's first 'European' FTA, the agreement is significant as it contains specific provisions on labour and environmental standards. India has been uncomfortable negotiating these subjects in its FTAs. The FTA with the EFTA marks a distinct shift in India's perspective. In the FTA, Chapter 11 contains provisions on labour and environmental standards. Titled 'Trade and Sustainable Development', the chapter commits to the effective enforcement of environment and labour laws by the members of the FTA. [82]

In this context, it clarifies that the members do not intend to harmonise their labour and environment standards. From an Indian perspective, therefore, while committing to enforcing domestic labour laws, it will not be required to bring the rules closer to those of the EFTA members. Such efforts will invite domestic resistance from several interest groups – a possibility that India would want to avoid.

The chapter also mentions that the members will implement their respective labour laws in a manner that will not adversely impact trade between them and that the laws will not be used for protectionist purposes. This implies that domestic labour standards will not be used for restricting imports from other members.

India would interpret this as a commitment from the other EFTA members that they would not cite their arguably higher domestic labour standards for restricting labour-intensive exports from India. The assurance is important for maintaining the comparative advantages of Indian exports in the EFTA markets. The chapter specifically mentions that "Parties note that their comparative advantage should in no way be called into question".

The reference to comparative advantage is unique and interesting and works in India's favour. India and several other developing countries have for long argued that exogenously imposed strong labour standards can erode their comparative advantages in labour-intensive production. The imposition of high minimum wages, for example, can reduce comparative advantages of Indian producers who employ labour at cheaper costs due to its greater local supply.

[82] India-EFTA Trade and Economic Partnership Agreement, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=2013169 (last visited Jun 25, 2024).

From an Indian perspective again, refraining from questioning comparative advantage in the use of labour should suggest that labour standards in the FTA would not lead to future demands for parity in wage rates between India and the EFTA members.

While these provisions definitely safeguard India's interests, the eventual implications of the labour standards on comparative advantage and productivity will depend on the extent to which members uphold the International Labour Organisation's (ILO) labour rights, such as the elimination of forced or compulsory labour, child labour and discrimination in employment; ensure a safe and healthy working environment; and freedom of association and right to collective bargaining. The chapter is explicit and clear in its provisions in this regard.

India has not joined negotiations in Pillar 1 of the IPEF that is discussing trade rules. However, it has engaged closely with the other three pillars – resilient supply chains, clean economy and fair economy. Among these, the Supply Chain Agreement came into force on 24 February 2024. India's proactivity in this regard has been visible from it being one of the first five members of the group, along with the United States, Fiji, Japan and Singapore, to ratify the agreement to enable it to come into force. The Supply Chain Agreement commits the members to uphold the same labour rights of the ILO as Chapter 11 of the FTA with the EFTA. It also sets up the IPEF Labour Rights Advisory Board to effectively enforce labour rights. [83]

The agreement further provides for the addressing of labour rights inconsistencies among the members by establishing a reporting mechanism for tracking these inconsistencies.Compared with the FTA with the EFTA, the IPEF supply chain rules are more stringent in ensuring that the members implement labour rights in a uniform manner and are held accountable for not doing so. The fact that India ratified the agreement, notwithstanding the stringency, indicates its new-found inclination to not shy away from committing to labour rights in regional rules frameworks. The same inclination has been reflected in its commitments to the FTA[84] with the EFTA.

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[83] Pillar I – Fair and Resilient Trade, U.S. Department of Commerce, https://www.commerce.gov/ipef/pillar-i (last visited Jun 25, 2024).

[84] Indo-Pacific Economic Framework for Prosperity (IPEF) Supply Chain Agreement signed by the 14 IPEF Partners, Mcommerce (Nov. 17, 2023), https://commerce.gov.in/press-releases/indo-pacific-economic-framework-for-prosperity-ipef-supply-chain-agreement-signed-by-the-14-ipef-partners/ (last visited Jun 25, 2024).

In February 2022, India finalized the Comprehensive Economic Partnership Agreement (CEPA) with the UAE. Following that, the Comprehensive Economic Cooperation Agreement (CECA) with Australia was concluded in April 2022. Consistent with India's traditional trade policy approach, these agreements lack significant environmental provisions. The preamble of the CEPA acknowledges the necessity of environmental protection and includes environmental provisions. Additionally, the CEPA affirms the commitment of each party to implement the multilateral environmental agreements it is a party to.

The dispute settlement mechanism in the FTA applies to this provision, as with all others in the CEPA. The agreement, however, does not offer additional details on environmental standards and instead focuses on the parties' sovereign rights to establish their own environmental policies. The lack of emphasis on sustainable development in the agreement is a concern, particularly given that the UAE's primary exports to India are oil and petrochemical products.

5.4.3 RULES OF ORIGIN

Preferential Rules Of Origin(ROO) describe the local processing requirements necessary for a good to be considered as being of local origin and hence qualify for preferential market access. This is used to block access of non partner countries to preferential tariffs and creating trade deflection. Generally, manufactured products have several stages of processing before it turns into the final product. Each stage requires inputs and processing which may be sourced from India or from abroad. Sometimes an entire stage of processing may be done outside India.
[85]

Each stage contributes some value to the overall value added of the product as described, For a product that is to be exported to a FTA partner country, the product must have enough local content, specified by the ROO, to be able to get the preferential duty (zero or lower than the general duty).

There are several ways of specifying ROO which include [86]-

[85] Engineering Export Promotion Council of India : EEPC India, https://www.eepcindia.org/rules-of-origin (last visited Jun 25, 2024).
[86] Rules of Origin - Handbook - World Customs Organization

Changes in Tariff Heading/ Classification (CTC/CTH)- This involves showing that the tariff heading of the final product is substantially different from the tariff heading of the imported inputs. This can also refer to changes in tariff sub heading at a more disaggregated (6 digit) level (CTSH).

Local Value Added (VA) or Value Content (VC)- This requires that the share of local (or regional in case the partner is a trading bloc) content must be a certain minimum percentage. This can be specified in terms of local value content (RVC), or import content (MC: difference between the value of the final good and the costs of the imported inputs) or the value of parts (VP). This is now the most common rule adopted for ROO. Generally about 30-60 per cent for MC and 25-65 per cent are adopted for MC and RVC. VP is usually specified around 67%.

Specific Production Process (SP)- This specify that all or most processes must take place in the origin country. The USA has this rule in many of its FTAs.

Cumulation of Origin- This rule may allow some specified regional content, say allow inputs or processing from South Asian countries for an Indian product. FTAs by developed countries are often quite strict and allow little regional content. However, sometimes special concessions are given for content within a regional bloc (e.g. EU allows this for some African countries within the ACP countries or IEPA).

Product Specific Rules (PSR)- may be there for products of key interest to partner countries. The USA is known for its ‘fibre forward’ or ‘yarn forward’ rules in textiles and garments, where every input and all processing from fibre onwards or yarn onwards must be sourced from within the partner country to sell garments to USA through an FTA.

ROO imposes certain restrictions on exports that can be made on preferential treatment. First, the ‘cummulation of origin’ rule, followed by the EU, is generally strict and may hamper options for regional integration. India needs to negotiate this to be able to import cheaper inputs from other parts of Asia to reduce costs. Second, there are complicated procedural requirements involved in ROO. Products need to get certificate of origin, meet consignment criteria e.g. label origin country sometimes even city of production has to be mentioned. These procedures may be more difficult for MSME products, and for agro based products as these are both costly and complicated. Unless procedures are considerably simplified, especially by developed countries, this chapter may prove to be a block towards generating actual additional access in FTA partner markets for Indian exports. The third issue is the duty drawback scheme of GOI which refunds import duties paid on imported inputs for products which are exported from India. This boosts the import content of exports and makes them cheaper. However, under FTAs these products may get blocked off by the ROO.

5.4.4 ANTI CONCENTRATION CLAUSE

Partner countries can keep some products on a sensitive list where they do not cut tariffs. Each industry may come under several chapters, and each chapter has several tariff lines or products classified by eight digits. The Anti Concentration Clause proposal in the WTO (still under negotiations) stipulates that a minimum of 20 per cent tariff lines or 9 per cent of the value of imports in each tariff chapter would be subject to the full formula tariff reduction. Many countries, for example EU, want to include the anti-concentration clause in their FTAs.

However, how much trade or tariff lines will need to be covered for full tariff reduction will vary from FTA to FTA, depending on the negotiating ability and the sector's sensitivity. This clause may be problematic for industries where all or most tariff lines under a chapter are sensitive, for example, in auto industry, textile and garments, and fisheries (included under NAMA).

The government may also keep industries where MSMEs dominate in the sensitive list. But this may be difficult to do under the anti-concentration clause if most products of that industry or a certain segment (chapter) of it, is produced by MSMEs (such as sports goods, leather, textile and garments, food processing, wool and wool products).

This can also be a problem for gender-sensitive products, i.e. products where women workers proliferate if such a criterion was ever seriously considered for deciding on the sensitive list. For industries like food processing, where all products may be gender-sensitive, the anti-concentration clause will force the government to choose between products as all cannot be exempted. There is also the question as to why should the Indian government agree to the anti-concentration clause in its FTAs if it has resisted it at the WTO.

5.4.5 SECTORAL - ZERO FOR ZERO DUTY REDUCTION

Under this WTO proposal, trading partners reduce import duty to zero in some sectors with immediate effect on a voluntary basis. This is a relatively new and much contested proposal even in the WTO which may be replicated in some FTAs. At the WTO, efforts have been made by the developed countries to turn this into a compulsory commitment rather than a voluntary one, especially from countries like India and China. There are currently 14 sectors under consideration for sectorals.

Under FTAs, since most segments see duties reduced to zero, it is actually close to what sectors are to cover under the WTO. But under FTAs some segments may see zero duty on both sides with immediate effect. For example in the India-Japan CEPA, textiles is opened up immediately on a zero for zero basis.

The difference with WTO sectors is that many more tariff lines are offered on a zero duty basis under FTAs, some with immediate effect. On the other hand, unlike the WTO where concessions are made to many members, these may be made to only one partner at a time. The industry must be fully competitive to open up under this provision. MSMES need to discuss their competitiveness and whether they are ready to take on zero-for-zero cuts in import duty with immediate effect under FTAs.

5.4.6 INTELLECTUAL PROPERTY RIGHTS

Trade-related intellectual property rights (TRIPS) is an associated WTO agreement that member countries signed in 1995. The TRIPS mechanism was set up to lay down minimum harmonised standards of protection of intellectual property, or the ownership of ideas, knowledge and technology, for the smooth conduct of free trade. Its primary purpose is to encourage innovation by giving the inventors rights over their creations. Long-run gains for society offset the short-run costs in terms of knowledge and technology.

The TRIPS Agreement relates to innovation and the smooth transfer and dissemination of technology between inventors and users. It refers specifically to 'trade-related' aspects of intellectual property. The system asks for several forms of intellectual property protection, such as patents, geographical indications (GIs), trademarks, industrial design rights, Copyrights, etc. TRIPS sets minimum standards, often strengthening existing standards like Patent protection of not only products but processes and having minimum coverage of 20 years in least developed countries.

The TRIPS regime of IPRs has generated some major criticisms. First, the high cost of conforming to intellectual property is difficult to meet for developing countries. For MSME, the costs of applying for IP instruments, following up, and complying with others' IP rights are expensive. Smaller producers are often pushed out by bigger companies, especially multinationals, which can get IP rights such as patents much more easily as they have huge resources to spend on R&D, patent application, and follow-up.

Second, extensive intellectual property coverage in often very complex terrains has generated much controversy. It has made access to many essential commodities, produced by smaller producers and sold cheaply, much more restricted by allowing patents and other forms of IPRs. This has threatened access to cheaper products made by MSMEs and has thus threatened even the developmental role of MSMEs. The threat to access to cheap generic medicines, of which India is a major producer, is an example. The debate on public health and access to cheap medicines remains the strongest criticism of the TRIPS regime worldwide.

Another major criticism of TRIPS, relevant for MSMEs, is that a significant part of technology and R&D's ability to generate new technology, processes, and products is held by developed countries. Around 85 per cent of all patent filings in 2022 occurred in the IP offices of China, the US, Japan, and the Republic of Korea. China accounted for 46.8 per cent of the world total.[87] Most developing countries are net intellectual property importers. For example, Malaysia's royalty payments on intellectual property exceeded its receipts of royalties by USD 867 million in 2009, and 98 per cent of patents granted in Malaysia are to foreigners. [88]

This is probably because they lack the resources and capability to do research and development and acquire advanced technologies.TRIPs, in effect, give considerable control to developed countries over critical resources in developing economies. It also threatens products based on traditional knowledge, such as herbal medicines often produced by MSMEs.

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[87] Patents by Country / Number of Patents Per Country 2024, https://worldpopulationreview.com/country-rankings/patents-by-country (last visited Jun 25, 2024).
[88] World Intellectual Property Indicators 2022 - https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2022-en-world-intellectual-property-indicators-2022.pdf

However, TRIPS provides certain flexibilities for balancing IP rights and public interest, especially related to public health (such as compulsory licensing parallel importation) or research. Given this scenario, the FTAs often include chapters on IPRs that attempt to go beyond TRIPS and include extra provisions that further strengthen the IP regime.

Data exclusivity that gives protection over trial data submitted by innovator for marketing rights, patent term extension by another five years or more, strong IP enforcement where products supposedly violating IP rights can be seized at the border of third countries (not countries of seller or buyer), are some of the TRIPS plus provisions brought in by FTAs. These may have the potential to limit some of the TRIPS flexibilities, strengthen IP rights and pose even a bigger threat to MSMEs.

Developed countries such as EU, USA, Japan, and Switzerland impose TRIPS plus norms in their FTAs. India has however refused to give TRIPS plus IPRs in any of its concluded FTAs, including Japan. TRIPS plus demands by EU, Switzerland (part of EFTA) are part of the FTAs being negotiated.

EFTA is the first agreement that contains TRIPS plus norms. It provides enhanced and non-discriminatory protection for intellectual property among the signatory states. With stricter implementation of the rules, companies from Switzerland and other member countries are expected to encounter fewer obstacles when entering the Indian markets. Being a "TRIPS-Plus Agreement", some of the baseline levels of protection exceed what is generally conferred by the WTO TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement.[89] This enhanced protection is expected to significantly impact the nature and scope of trade between Indian and Swiss companies.

The changes introduced for patent protection by the new agreement are primarily intended to address uncertainties in legal procedures within the Indian markets. These changes aim to ensure that only Swiss products enjoy the same status and level of patent protection as any other product manufactured or developed in India—and vice versa. Additionally, there is now a stricter timeline for processing patent oppositions, along with the right to dismiss or reject frivolous or baseless oppositions.

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[89] New Free Trade Agreement between EFTA and India Offers Enhanced IP Rights for Business Owners, Aarna law (2024), https://www.aarnalaw.com/new-free-trade-agreement-between-efta-and-india-offers-enhanced-ip-rights-for-business-owners/ (last visited Jun 25, 2024).

Other obligations under the free-trade agreement include limitations on the disclosure requirements for patent functioning. For patent owners, it is no longer mandatory to disclose information with gaps longer than 3 years. These confidentiality obligations also restrict the publication of any confidential information shared during such disclosures.

Despite these changes, the provisions on compulsory licensing under the TRIPS Agreement still apply. If the need arises for such licensing to meet the extent and production requirements of pharmaceutical products, member parties are required to adopt and follow the procedure stipulated under the TRIPS Agreement. These changes are expected to facilitate smoother trade between Indian and Swiss companies.

The new agreement extends protection to both agricultural and non-agricultural goods. Concerning Geographical Indications, parties are restricted from using comparisons or descriptive terms that denote the origins of products to geographical locations when those products do not originally originate from there. For instance, the use of the description "Swiss-style Chocolates" for any product made in India would not be permissible under the free-trade agreement. This enhanced protection goes beyond the TRIPS Agreement and applies to all signatory states of the free-trade agreement.

India and Switzerland have taken it a step further by restricting the use of their country names in each other's trademarks. Consequently, no trademark in Switzerland can include the name "India" and vice versa. This change aims to ensure the respective markets know the actual origins of the goods being sold.
[90]

However, any trademarks registered before the agreement entered into force are not restricted from continued use or renewal. The enhanced level of protection, along with the affirmation of the quality of goods and services associated with Swiss companies, are expected to boost the positions of Swiss manufacturers in India.The trade agreement between EFTA and India also marks a significant step in shaping agricultural trade relations. By extending enhanced protection to intellectual property rights, including trademarks, patents, and geographical indications, the FTA aims to create a level playing field for Indian farmers. The reduction of trade barriers and the commitment to robust supply chains benefits both producers and consumers.

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[90] Simon Bradley, Explainer: Will the India-EFTA Pact Be a 'Game-Changer'?, SWI swissinfo.ch (Mar. 12, 2024), https://www.swissinfo.ch/eng/swiss-politics/explainer-will-the-india-efta-pact-be-a-game-changer-switzerland/73650947 (last visited Jun 25, 2024).

5.4.6 INVESTMENT

Investment policy determines the pace of investment and the ownership of investment and, therefore, the ownership of domestic companies. Because of the sensitivity of this issue, opening up full foreign direct investment in all segments of the economy was kept out of the WTO under the Singapore Issues. The investment was restricted to 'Trade-Related Investment Measures' .

However, Bilateral Investment Treaties (BITS) between India and other countries and investment chapters in FTAs may allow both; liberalisation of investment or entry of FDI in all/specified sectors (additional market access) as well as and strong investor protection by giving foreign investors strong legal rights.

The investment chapter may contain several important features such as -

Market Access- Partners may ask India to open up more sectors to foreign investment, lift caps on foreign investment and remove existing performance requirements.

National Treatment: Foreign investors must be treated at par with domestic investors.
MFN: Sometimes partners may ask that if any other country is given access to a particular sector even in future, then they will also automatically get access.

Investor Protection: Foreign investors get strong legal rights and can sue even governments in international arbitration courts in secret cases. This investor-state clause differs greatly from the WTO's state-state clause where only governments can sue other governments.

In addition to FDI caps, countries usually impose performance requirements on foreign investment such as; limits on ownership, board membership, and on exports; compulsory local content, compulsory transfer of technology etc. These requirements can be used to improve opportunities for MSMEs. But under FTAs, imposing such performance requirements on FDI is usually prohibited. Under the Japan FTA (IJCEPA), both National Treatment and MFN are included and performance restrictions are no longer permissible under Article 89 (Prohibition of Performance Requirements or PPR), under Chapter 8.

However, certain exceptions are allowed in certain sectors. Whether MSMEs can also be given any kind of preferential treatment, such as described under Section B, such as export promotion policies, becomes the question. If GOI gives a certain treatment for domestic MSMEs it must give similar treatment to foreign companies coming under this category (under like circumstances). However, India may exclude giving NT, MFN, or PPR in certain sectors and either keep FDI out of sensitive sectors such as MSMEs or subject them to domestic laws.

For example, in the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA): “Items reserved for manufacture by Micro, Small and Medium enterprises” is excluded from “prohibition of performance requirements”. In most industries in India, FDI is already allowed given certain restrictions or caps so additional FDI may not necessarily be forthcoming specifically from FTAs. [91]

However, wholly foreign owned enterprises may now be set up in many more areas and it could also lead to mergers and acquisitions in certain MSME segments. In the pharmaceutical industry, such acquisitions are already taking place. Technology transfer from FDI cannot generally be made compulsory under FTAs (under PPR), though technology diffusion may still occur. However, technology transfer may be kept compulsory for MSME investments in the IJCEPA as an exception. On the other hand, Indian investors may now technically get access to invest in partner countries.

5.4.7 GOVERNMENT PROCUREMENT

Many developed countries, like EU, are very keen to get ‘market access’ to the significant government procurement market in other countries. At the WTO, the Agreement of Government Procurement is a voluntary agreement which only 46 members have signed. Developing countries agreed that this agreement should not become mandatory for member countries to join because this was found to be a development policy tool for governments to address economic and social inequalities by giving certain preferences to vulnerable groups such as MSMEs, women’s groups, village enterprises, minorities, backward communities.

Giving equal rights to foreign companies meant giving up critical policy space to address these needs. Therefore, public procurement became one of the Singapore Issues at the WTO. In India, the government procurement (GP) market includes all purchases by

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[91] Japan-India Comprehensive Economic Partnership Agreement Free Trade Agreement, https://aric.adb.org/fta/japan-india-comprehensive-economic-partnership-agreement (last visited Jun 25, 2024).

central and state governments, such as the railways, other public transport services, energy services, health and education services, purchases by public sector undertakings etc. Under public procurement the GOI canreserve items for exclusive production ,give preferential treatment such as waive tender fees keep price difference of 15 per cent; and and ask MSMEs to match the lowest bid and then award the contract on a preferential basis.

Even then, MSMEs face difficulties in accessing the GP market due to "unavailability of financial guarantees, lack of knowledge about tender procedures, new opportunities and large size of contracts". However the Report suggests that like in many other countries, this market should be specifically used to boost the market and growth of MSMEs. Though government purchase is generally open to foreign bids in India, foreign companies do not have a legal 'right' to such tenders.

But this will change if the government gives market access to public procurement under its FTAs or joins the GPA. Companies/ producers in partner countries or GPA member countries will have a legal right to be treated at par with domestic companies under the 'national treatment' clause. However, India has not yet given market access in public procurement in any of its FTAs. The India-Japan CEPA has a chapter on public procurement which only agrees to 'transparency'.

But if India joins the GPA or gives market access to any of its FTA partners in the future then this chapter has to be re-negotiated to give Japanese companies similar rights. The EU is insisting that India includes GP in the FTA. And if India gives market access in GP to the EU, it will have to give similar access to Japan and perhaps, to some other FTA partners as well. India is not keen to include its GP market under FTAs especially when it is not likely to get much access into developed country GP markets where a host of NTBs block foreign suppliers. In the EU and USA, only about two per cent of GP markets are catered to by foreign countries other than USA (for EU) and EU (for USA).
India can possibly use an exception (carve-out) for MSMEs from 'national treatment' and and 'market access' clauses in its public procurement chapter if it signs onto one in its FTAs.

However, the MSMEs need to engage with the GOI to ensure this proactively. However, the Indian government has been changing the public purchase norms in the recent years. The Central and several State governments have been increasing the turnover limit of companies which can bid for government supply contracts in several segments. For example, in the pharmaceutical segment, the minimum. turnover required is now 25 crores in some states and in the Centre.

This has been automatically eliminating MSMEs from this segment of government purchase. Like in many other areas, the GOI is raising domestic rules to comply with international trade requirements including that of FTAs. Then they may or may not commit to this in the FTAs. If they do, they give binding rights to foreign companies and cannot give preferential treatment to MSMEs. If they do not, they will enjoy some policy space, but in practice the GP market may become out of bounds for Indian MSMEs.

5.4.7 COMPETITION POLICY

Competition policy was another of the Singapore issues which was kept out of the WTO because of sensitivity from a development perspective. India had strongly resisted its inclusion in the Uruguay Round. However, developed countries now demand that principles of ‘non-discrimination’ through ‘national treatment’ and ‘MFN’ should be applied vis-a-vis competition policy through the FTAs. This implies that partner countries must ensure ‘fair competition’ not only among domestic companies but give equal treatment to partner countries’ companies and establish conformity to competition law. India has set up the ‘Competition Commission’ to implement competition law in India. However this caters to completely domestic competition laws.

Until now, India has not yielded major concessions under this chapter. For example, in its FTA with Japan, though non-discrimination is included it is not enforceable. However, the EU, for example, wants a stronger competition policy in conformity with its own domestic competition policy. However, the problem is that free competition as envisaged by the developed countries is often dictated by them and developing countries cannot follow standards.

If India has to adhere to a high and enforceable standard of competition that must not discriminate between a foreign entity and an Indian one, whether India can pursue some of its preferential policies to certain segments such as MSMEs, is a complicated question. ‘Non-discrimination’ under like circumstances has been interpreted in many ways in international law. Whether it relates to entities with same economic size or in same industry have been some of the questions raised. In addition, allowing free competition often allows the smaller enterprises to be eaten up by larger ones.

The history of competition policy in most countries has shown that mergers and acquisitions of smaller companies have happened rather than new additions to capital stock. Therefore, rather than adding to the number of smaller companies, it has ended up consolidating investments in a few large companies. Competition policy also often prevents state aid and limits the activities of state trading corporations.

CHAPTER 6 - CONCLUSION

6.1 INTRODUCTION

It's clear that FTAs are rapidly circumventing the entire WTO framework for trade liberalization by encompassing both broader (covering more areas) and deeper (delving into existing areas) liberalization. The FTAs being negotiated and ratified by India are becoming increasingly ambitious and are leaving goods trade in the background. From my research, it's evident that there are numerous chapters/provisions with varied implications for MSMEs. [92]The implications for MSME producers and workers in general may become more challenging and unfavorable, particularly for women entrepreneurs and workers in this industry.

The impact on each MSME will vary depending not only on the specific terms of each FTA, but also on the MSME's access to inputs, infrastructure, domestic and international markets, technical expertise, credit, and labor. As a result, it is crucial for MSMEs to comprehend the provisions of each FTA and evaluate their unique circumstances based on this information. This toolkit offers an overview of some of the most significant provisions and provides insight into potential effects and options, while also presenting questions to aid MSMEs in conducting this assessment.

The State of Kerala has accomplished remarkable feats in education, healthcare, and social support. However, Kerala struggled to achieve the desired expansion in the manufacturing industry. The Central Government's policies have ignited intense competition among States to lure investments. As a result, States are continuously updating their industrial policies to keep pace with this. The traditional industry is in the midst of a significant crisis. It is imperative to modernize in order to revamp the sector, reduce production costs, and enhance competitiveness. Mechanization, while safeguarding the existing labor force, presents a feasible solution. The sector ought to be capable of manufacturing products demanded by the market.

In Kerala, there is significant potential for Micro, Small, and Medium Enterprises (MSMEs). A recent law allows non-Red category MSMEs to operate for three years without specific prior approvals under State laws under the THE KERALA MilCRO

[92]India's Free Trade Agreements and Micro, Small and Medium Enterprises: Provisions, Linkages and Possible Impact-Ranja Sengupta

SMALL AND MEDIUM ENTERPRISES FACILITATION ACT, 2019. [93]The financial year 2022-23 was designated as the ‘Year of Entrepreneurship’, with the goal of initiating one hundred thousand new enterprises. Remarkably, this objective was achieved in just 250 days, garnering national attention.[94]

6.2 SUGGESTION

The FTA process is highly confidential, and as a result, preliminary agreement texts and impact assessment studies are often not widely distributed, leading to limited public awareness of FTA provisions. However, considering the substantial potential impact, it is crucial for MSMEs to utilize this assessment for two main purposes:
- Equipping themselves to safeguard their existing markets and explore new opportunities
- Proactively collaborating with the government to articulate specific, well-informed demands in order to protect both their offensive and defensive interests.

MSMEs are able to request specific domestic policies that allow them to access trade-related policies and benefits. Given the significant developmental role MSMEs play in India, including creating jobs for both women and men, generating income, and providing affordable consumer goods, their growth is crucial for the Indian economy and society. The survival of MSMEs also impacts the future and well-being of workers, and based on this rationale, they can request special treatment.

The government has put in place protective measures for MSMEs, including sensitive/negative product lists, carve outs, exemptions in investment regulations, and gender-sensitive MSME products. It is crucial for MSMEs to comprehend the extent of these measures and engage with the government to ensure their full utilization. The implementation of schemes such as the Production Linked Incentive Scheme is aimed at enhancing the capabilities of MSMEs.

The MSME sector needs to focus on internal improvements in production, technology, labor, and environmental matters, while also advocating for domestic policies that enhance their potential for expansion. Simultaneously, the global trade landscape is evolving rapidly, and their involvement in international policy matters is crucial to

[93]Kerala to ease procedures for MSMEs, can operate without license for 3 years, India Today (2019), https://www.indiatoday.in/business/story/kerala-to-ease-procedures-for-msmes-can-operate-without-license-for-3-years-1621346-2019-11-21 (last visited Jun 25, 2024).

[94] Kerala Indisutrial Policy 2023 - https://industry.kerala.gov.in/images/pdf/2023/IND_POLICY_ENG.pdf

shaping India"s trade policy, which in turn will significantly influence their domestic market, growth prospects, and opportunities.

India has made significant strides in executing several Free Trade Agreements (FTAs), providing a boost for MSMEs in the global market. FTAs have positively impacted MSME exports by:

- Efficient connection and logistics are crucial in the aftermath of the pandemic. Support from governments comes in the form of training programs and financial rewards, aiming to help MSMEs capitalize on the opportunities provided by FTAs and enhance their global competitiveness.

- FTAs with Rules of Origin provisions promote the participation of MSMEs in global value chains by granting them preferential treatment when they obtain inputs from partner countries. This helps MSMEs enhance their competitiveness in the global market.

- MSMEs benefit from reduced trade costs due to more efficient customs procedures and fewer administrative burdens. FTAs also enable MSMEs to expand their export markets beyond conventional ones, strengthening their ability to adapt to market fluctuations.

- The elimination or reduction of tariffs and non-tariff barriers through FTAs makes it easier for MSMEs to access overseas markets, leading to increased exports and reduced dependence on a single market, thereby improving economic stability.

- Indian products become more competitive in partner countries due to the reduced trade restrictions and taxes under FTAs, potentially leading to higher export rates and prices, ultimately enhancing India's position in the global market.

- Furthermore, MSMEs globally have access to cluster programs across different sectors, which is an emerging trend.

The participation of MSMEs in these initiatives on a global scale indicates a potential for propelling India to unprecedented levels of development. Sectors such as aerospace and defense, semiconductor healthcare, artificial intelligence, and cybersecurity offer unexplored opportunities for MSMEs to thrive. On the other hand, it is crucial to emphasize that India has engaged in 14 Free Trade Agreements, each with its own unique scope and characteristics. However, a majority of these agreements have not yielded the anticipated results and have contributed to India's considerable trade deficit.

From 2017 to 2022, India has seen its imports from its FTA partners grow more rapidly than its exports. Furthermore, while India's exports to its FTA partners have increased by 31 percent, its imports have surged by 82 . The utilization rate hovers at around 25 per cent, whereas developed countries typically range from 70 to 80 per cent. This highlights India's disappointing inability to take full advantage of the available benefits through its bilateral agreements.

The Indian government initiated a review of the effectiveness of these FTAs in 2019 due to their significance. MSMEs are expected to drive India's export capabilities in the Indian subcontinent. While FTAs offer promising prospects, it is essential to acknowledge their diverse nature and scope. To maximize the impact of their efforts, stakeholders and the government need to collaborate and support MSMEs, particularly considering the low utilization of FTAs.

Moreover, gaining a thorough understanding of contract provisions specific to each business and their unique challenges is crucial. By receiving comprehensive support such as trade facilitation measures, capacity-building programs, and initiatives, MSMEs can fully leverage the potential of FTAs and contribute to India's growth as a major global economy.

India’s MSME sector in general and certain industries in particular play an important role in its economic and social arena. Given the fact that 26 million MSMEs in India employ about 60 million people, contribute about 8% to its GDP, 45% to its industrial output and 40% to its exports, it is important that any major trade policy in India should keep in mind the trade prospects of MSMEs.

In the realm of global trade, the interaction between FTAs and certain sectors within the MSME industry can hold significant implications, as the terms within FTAs may greatly influence their potential for growth. The leather and leather products sector is a prime example of this. This case study aims to outline the pertinent provisions in FTAs related to the leather industry, explain the implications of these provisions and chapters, and assess how they might affect the growth prospects of the leather and leather products industry.

The use of advanced technologies such as artificial intelligence and the internet of things is essential in today's production process. Studies suggest that automation may result in the displacement of up to 30% of jobs, impacting an estimated 800 million employees by 2030[95]. This potential effect is of particular concern for small and medium enterprises (SMEs), which are the main providers of jobs, employing 508 million workers in 162.8 million SMEs worldwide. Furthermore, SMEs play a vital role in addressing poverty and promoting a fairer distribution of wealth.

India's MSMEs contribute almost half of the country's exports and 29% of the GDP. The Indian government aims for SMEs to have a more significant impact, with a target of at least $2 million in a $5 million economy by 2024. The small proportion of registered MSME exporters indicates that most current MSME exporters conduct their business through export houses.[96]

The emphasis is on the lack of knowledge of documentation procedures and the presence and characteristics of non-tariff barriers (NTBs) that apply to their products. It is crucial for companies to be familiar with quality standards and regulations to enter new markets successfully and prevent rejected shipments. It is vital to comprehend the variations in markets and adhere to standards, as requirements differ across regions and markets.

Enhanced and transparent communication can significantly aid in achieving these objectives. Furthermore, up-to-date and accurate information is increasingly crucial as governments worldwide implement more protectionist measures in the post-pandemic recovery phase.

In India, as many as three explicit interventions for the SMEs have been announced in the post-Covid recovery stimulus. These include the long pending revision in definition of MSMEs, emergency collateral-free credit, and the promotion of e-market linkages in the times of social distancing.[97] Revising the definition does not offer much assistance in generating demand. In the post-pandemic period, MSMEs are encountering dual challenges due to reduced demand and limited supply of materials and inputs. Given the

[95] What the future of work will mean for jobs, skills, and wages: Jobs lost, jobs gained | McKinsey, https://www.mckinsey.com/featured-insights/future-of-work/jobs-lost-jobs-gained-what-the-future-of-work-will-mean-for-jobs-skills-and-wages (last visited Jun 25, 2024).
[96] Annual Report 2014, IFC, https://www.ifc.org/en/insights-reports/2014/ar2014 (last visited Jun 25, 2024).

[97] Covid-19 and MSMEs: Addressing Information Barriers, Madhyam (Jul. 7, 2020), https://www.madhyam.org.in/covid-19-and-msmes-addressing-information-barriers/ (last visited Jun 25, 2024).

limited number of people willing to take credit, concerns about demand seem to be more pressing from the perspective of the demand side..

SMEs have identified "lack of market information" and "lack of business contacts" as the top two factors that limit their export activities. SMEs, lacking a formal institutional structure, face disadvantages due to information imbalances. Unlike large firms, SMEs do not have dedicated resources for advertising, market research, or building distribution networks due to their smaller scale. Sharing market information can help address this information deficit and level the playing field for SMEs. Traditionally, access to trade-related information was primarily through digital sources.

However, digital penetration in India, offers no room for complacency. With a comparably low internet penetration of the overall economy, it is not unfair to comment that SMEs, particularly the micro and small enterprises, are more severely constrained in their information access. Further, information even if accessible is not always adequately understood due to the complex nature of text and language issues. In fact, information deficit of MSMEs forbids their direct participation in trade.

India has not fully taken advantage of its FTAs and has not effectively benefited from its large base of SMEs. If SMEs are offered dedicated support through information and by addressing their concerns, it will not only improve their prospects, but also lead to greater utilization of the FTAs. Currently, there are three key reasons why it is important to emphasize the improvement of collaboration on small and medium enterprises (SMEs) within India’s FTAs:

1. The need for recovery from the pandemic-induced crisis,
2. India's ongoing FTA negotiations with the United Kingdom and the expansion of the current FTAs, and
3. The government's commitment to implementing post-Covid19 measures to facilitate e-market connectivity for MSMEs.

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APPENDIX

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES

Kalamassery, Kochi – 683 503, Kerala, India

CERTIFICATE ON PLAGIARISM CHECK

1.	Name of the Candidate	Mr. Anantha Krishnan G.
2.	Title of thesis/dissertation	Economic and Legal Impact of Free Trade Agreements on the Economy of India - Specific Focus on the Micro, Small and Medium Industry in Kerala
3.	Name of the supervisor	Dr. Anil R. Nair
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5.	Acceptable maximum limit (%)	10%
6.	Software used	Grammarly
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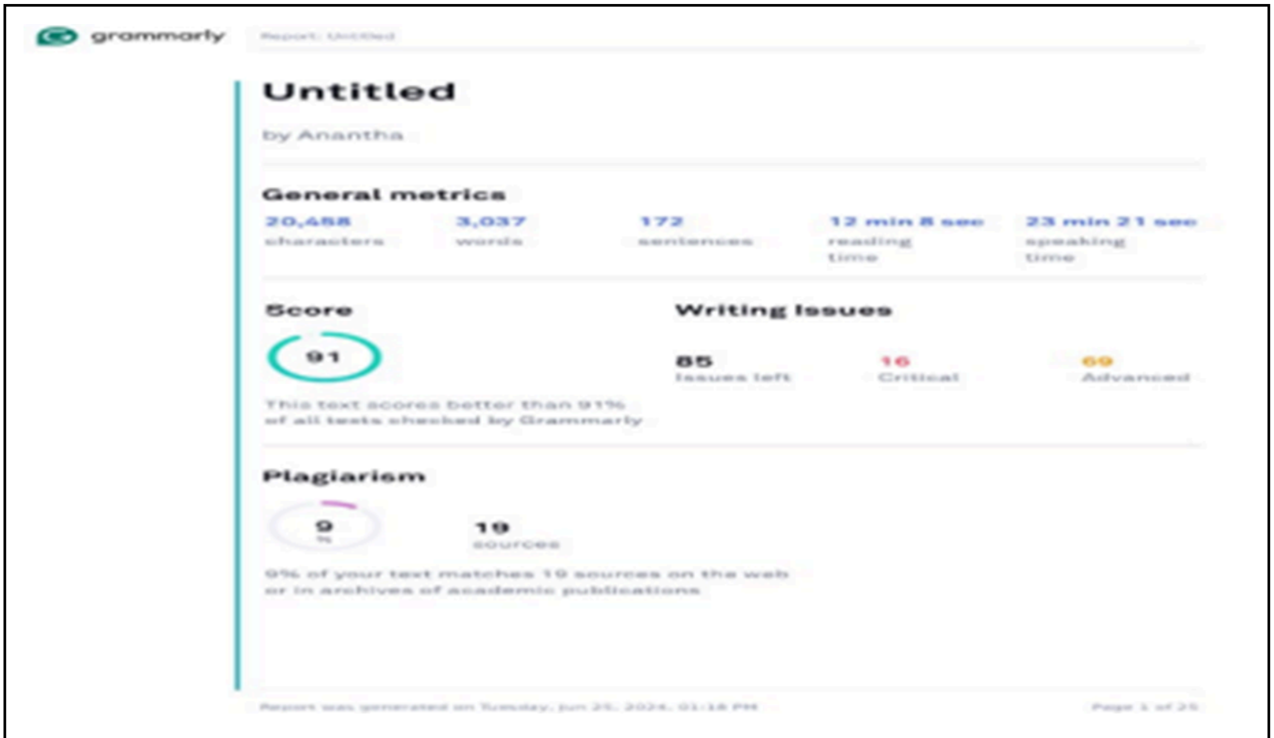

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Name & Signature of the Supervisor	Dr. Anil R. Nair, Associate Professor	Dr. Anil R. Nair