THE NEXUS BETWEEN TRADE POLICIES AND INVESTMENT OPPORTUNITIES

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ABSTRACT

Trade policies include all the regulations or strategies that the government imposes to facilitate and control trade between nations. These policies have a profound impact on the economy, and also influence trade relations. Trade policies are framed in such a way that they play a dual role, meaning they should promote the development of the domestic industry, and at the same time foster the foreign investment opportunities. Foreign investment is very much needed for those countries to develop in areas where they are weak, as they stimulate growth, boost technological advancements, and help to maintain a competitive edge among other nations. Diversification of the economy can be done through foreign investment, hence the need for attracting investments in one's country is inevitable. This article focuses on the importance of strategic alignment between trade and investment policies for maximizing economic benefits.

Keywords: Investment, foreign trade, balance of payment, trade barriers, protectionism.

Introduction

Trade policy serves as a tool for governments to influence trade flows, achieve economic objectives, and protect national interests in the global economy. Trade policies are framed to regulate the trade practices among nations, though they are framed by the respective government of a nation, they are watched by the international organization like World Trade Organization. One example of such a scenario occurred during the Trump Administration when approximately $200 billion worth of tariffs were imposed on Chinese imports. The World Trade Organization (WTO) declared that these tariffs violated international trade rules, as they were specifically targeted at China, and there was no evidence to demonstrate that the domestic industry benefited from these measures.[1] Trade policies may include free trade regimes and protectionism measures as well. In a free trade policy, government involvement in a country's trade activities is minimal or nonexistent. In contrast, protectionism involves government regulations that control imports and exports to safeguard domestic industries and reduce dependence on foreign countries. Many countries try to adopt a blend of these two measures, rather than relying on one approach alone.

In 1930, the United States enacted the Smoot-Hawley Tariff Act, raising tariffs to protect American farmers from European agricultural products.[2] The EU also imposed tariffs on American agricultural imports and other products, including Harley Davidson motorcycles.[3]

Trade policies include tariffs and non-tariff restrictions as well. While tariff restrictions are concerned with imposing duty or tax on the goods, making it more expensive in the domestic country, like antidumping duty, non-tariff restrictions include all other measures taken to promote domestic industries, like quota restrictions, subsidy measures, voluntary export restraints, local content requirements, product quality and standards etc. these can be brought under the category of protectionist measures.

Example of tariff restrictions, in 2023-24 Annual Budget, India raised tariffs for private jets, helicopters, plastic goods, jewelry, high gloss paper, and vitamins.[4] Example of anti-dumping

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[1] Jamey Keaten, *World Trade Organization Rules U.S. Tariffs on China Are Illegal*, PBS (Sept. 2020), https://www.pbs.org/newshour/world/world-trade-organization-rules-u-s-tariffs-on-china-are-illegal.

[2] Tax Foundation, *Tracking the Economic Impact of U.S. Tariffs and Retaliatory Actions* (2021)

[3] Harley-Davidson, Inc., *Harley-Davidson, Inc. To Vigorously Defend Its Position Following Aggressive EU Tariff Ruling* (2021).

[4] Ministry of Finance, Government of India. (2023). *Union Budget 2023-24* [Press release]. https://www.indiabudget.gov.in

duty includes India imposing anti-dumping duties on products such as **imported solar panels from China** and **aluminum foil from Malaysia.**[5] In India, between 2013-2017, LCRs contributed to the growth of local capacity for specific solar modules, with growth rates of 27% per year. Example of product standards include French cheeses made with raw milk, rather than pasteurized milk, are required to be aged for a minimum of 60 days before they can be imported into the United States. However, since many French cheeses are aged for 50 days or less, some of the most popular varieties are prohibited from entering the U.S. market, giving an advantage to domestic producers[6].

Foreign investment

When a country's individual or institutions or government invest in the assets, businesses or ventures of another country it is called as foreign investment. It can be either a foreign direct investment, foreign portfolio investment or a foreign institutional investment. Foreign investment in a country reflects many new changes to the economy of the country, including access to new markets, the potential for higher returns, and economic growth for the investing country. They are also seen as a key driver of globalization, promoting capital flows, technology transfer, and knowledge sharing across borders.

Foreign Direct Investment : This occurs when a company or individual from one country makes an investment in a business or asset in another country, typically by acquiring a controlling interest (usually at least 10%) in a foreign company or setting up a new business (such as a subsidiary or joint venture). FDI often involves a long-term commitment to the foreign economy and may include both physical assets (e.g., factories or infrastructure) and intellectual assets (e.g., technology or trademarks).

Foreign Portfolio Investment : This involves the purchase of stocks, bonds, or other financial assets in a foreign country. FPI generally does not involve a controlling interest in the company, and it is often considered a short-term investment relative to foreign direct investment.

Foreign institutional investment : These are investments made by institutions such as mutual funds, pension funds, and insurance companies in foreign markets, often in the form of stocks,

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[5] Directorate General of Trade Remedies (DGTR), Ministry of Commerce and Industry, Government of India. (Year). *Anti-Dumping Duty Notification*. https://www.dgtr.gov.in.

[6] U.S. Food & Drug Administration, *Joint FDA / Health Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Report*, at 88 (page 103).

bonds, or other securities.

Regulatory Framework for FDI in India[7]

Indian companies can receive FDI under two routes

1. Automatic Route – It does not require prior approval either of Reserve Bank of India (RBI) or government. It is allowed in all activities / sectors except where the provisions of consolidated FDI policy paragraph as ―Entry route for investment‖ issued by government of India from time to time is attracted.

2. Government Route –Government route,, means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval from FIPB, Ministry of Finance or SIA, DIPP as the case may be. FDI in sectors, not covered under automatic route requires prior approval of the government which is considered by Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, and Ministry of Finance.

Following sectors require prior approval of Government of India.

a.) Sectors prohibited for FDI - retail trading, lottery business, atomic energy, gambling and betting, business of chit fund, agriculture and plantation, nidhi companies, housing and real estate business.

b.) Activities that require industrial license

c.) Proposals in which the foreign collaborator has existing financial / technical collaboration in India in the same field.

d.) Proposals for acquisition of shares in an existing Indian company in financial services and where Securities Exchange Board of India (SEBI) regulation, 1977 is attracted.

e.) All proposal falling outside notified sectoral policy in which FDI is not permitted.

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[7] Ministry of Finance, Government of India, *Foreign Direct Investment (FDI) Policy and Guidelines, 2023,* https://www.finmin.nic.in.

Effect on Trade policy on Manufacturing Sector

The manufacturing sector plays a crucial role in driving economic development in developing countries. As part of the transition from low-productivity agriculture to higher-productivity manufacturing, this sector creates employment opportunities and generates income for unskilled labor. It also enhances value addition, enables countries to benefit from economies of scale, and ultimately contributes to higher economic growth rates. Government of India has undertaken various steps to promote manufacturing sector and to boost domestic and foreign investments in India. Several key policy reforms have been introduced to boost the Indian economy, including the implementation of the Goods and Services Tax (GST), reductions in corporate tax rates, and initiatives aimed at improving the ease of doing business. Other notable measures include reforms to Foreign Direct Investment (FDI) policies, efforts to reduce compliance burdens, and policy actions aimed at enhancing domestic manufacturing, such as public procurement orders and the Phased Manufacturing Programme (PMP). These efforts are part of a broader strategy to foster economic growth and development.

In response to the disruptions caused by the COVID-19 pandemic, the Government of India has implemented a series of initiatives designed to turn this crisis into an opportunity for economic recovery. These initiatives include the Atmanirbhar Bharat packages, the introduction of the Production Linked Incentive (PLI) Scheme across various ministries, and the creation of new investment opportunities through the National Infrastructure Pipeline (NIP) and the National Monetisation Pipeline (NMP). Other measures such as the India Industrial Land Bank (IILB), the Industrial Park Rating System (IPRS), and the soft launch of the National Single Window System (NSWS) are also aimed at facilitating economic growth. Furthermore, an institutional framework known as Project Development Cells (PDCs) has been established in relevant ministries and departments to expedite the investment process.[8]

Besides this, the foreign companies that invest in manufacturing operations often bring advanced technologies and best practices, which can benefit the domestic sector and lead to improvements in productivity and quality. Countries with open trade policies and favorable investment climates are more likely to see increased foreign investment, as businesses look for new markets and cost-effective production bases. For example, the establishment of Special

[8] Ministry of Commerce & Industry, *Initiatives Taken by the Government to Boost Manufacturing*, Press Information Bureau (Dec. 9, 2022), available at https://pib.gov.in/PressReleasePage.aspx?PRID=1894935.

Economic Zones (SEZs) and trade policy reforms in India have attracted substantial foreign direct investments into manufacturing industries. SEZs play a critical role in boosting India's manufacturing, exports, and attracting foreign investment, they offer certain benefits like tax exemptions, regulatory relaxations, and high-quality infrastructure, hence these SEZs help India integrate into the global economy and become a key player in international trade. They also provide a single window clearance facility where all the companies here in these zones can easily get all approvals and licenses for starting manufacturing industries.

However these trade policies can also at times be burdensome to the manufacturing concerns, when high tariffs are levied on raw materials it makes the cost of production of those goods high, making them less competitive due to high prices. Therefore foreign investors might take a step back, which can impact capital inflows. Also countries with unpredictable trade policies may be viewed upon by foreign investors as risky destinations for investment. Trade policies that provoke retaliation from other countries can have a significant negative impact on investment. For example, if a country imposes tariffs on imports, its trading partners may retaliate by introducing their own tariffs. This escalation of trade restrictions (trade wars) can hurt export-oriented manufacturers and reduce their willingness to invest in new manufacturing capacity. The U.S. imposed heavy tariffs on Chinese goods, citing intellectual property theft, unfair subsidies, and currency manipulation. In response, China levied counter-tariffs, leading to disruptions in global supply chains. [9]

Effect of Trade Policy on Agricultural Sector

Trade policies might bring forward local agricultural markets to international competition to encourage domestic producers to innovate, adopt more efficient farming practices, and improve product quality. The need to compete in global markets can lead to better resource management and innovation, which in turn encourages investment in productivity-enhancing technologies and practices. Besides this, when the local agricultural sector is opened up, there will be greater investments in this sector if the trade policies of the government favour them. At present, 100% foreign direct investment (FDI) is allowed through the automatic route into India for the following agricultural activities: Floriculture, horticulture, apiculture and cultivation of vegetables and mushrooms under controlled conditions, Development and production of seeds

[9] U.S. Imposes Tariffs on Chinese Goods Amid Trade Dispute *The New York Times* (July 15, 2022), https://www.nytimes.com/2022/07/15/us/tariffs-china-trade.html.

and planting material, Animal husbandry (including breeding of dogs), fish farming, aquaculture, under controlled conditions, Services related to agriculture and its allied sectors. The National Agricultural Policy of the government of India, promotes private sector participation in the agricultural sector through the concept of contract farming and land leasing. This is to allow accelerated technology transfer, capital inflow and assured market for crop production, especially that of oilseeds, cotton and horticultural crops. This promotion of agri-tech has led to huge investments of over $10 mn in 2017.[10]

However, sometimes trade policies on the investment in agricultural sector may also have negative effects as well. Sometimes, the policies only favor large-scale, industrial agricultural operations leaving behind the smallholder farmers. This can lead to the marginalization of smaller producers. For example, imported goods may flood the market, making it difficult for small-scale farmers to compete. When trade policies do not favor these small scale farmers, they might face difficulty n getting access to newest and advanced technology which is necessary for competing in international markets. As a result, investments may flow away from smallholder agriculture to larger, more commercially viable operations, exacerbating inequality and reducing investment opportunities for smallholders. [11]

The Trade and Development Report (1997) highlights that globalization driven by trade, investment, and technology has created significant challenges related to employment generation, as well as the distribution of income and wealth both within and between countries. This underscores the importance of adapting international trade and investment policies to better support the creation of employment, income, and wealth in developing nations, in line with their natural, human, entrepreneurial, and other resources. Developing countries should focus on both creating value from their resources and realizing that value within the framework of international trade and investment flows.[12]

Case laws

[10] Strategic Investment Research Unit (SIRU), *Examining Foreign Direct Investments in the Indian Agricultural Sector* (2022).
[11] World Bank, *Agriculture and Rural Development: Challenges and Opportunities* (2021), available at https://www.worldbank.org/en/topic/agriculture.
[12] United Nations Conference on Trade and Development, *Trade and Development Report 1997: Globalization, and the Role of Trade and Investment Policies in the Development Process* (1997).

EC – Bananas case[13] ; this case focused on the trade policies and trade barriers imposed on the banana industry which affected the investment in these industries. They preferred the bananas from countries which had former tie with European communities(African, Caribbean, Peru) which affected the interest of banana cultivators in the Latin American countries. The argument was that these practices are in violation of the World Trade Organization's rules, most favoured nation rules and rules of fair treatment. The European Union was required to amend its banana import regime to bring it into compliance with WTO rules. This case was an important example of how trade policies can affect market access and investment opportunities in a key global commodity like bananas.

China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights (WT/DS362).[14] This was about the practice followed by China of not properly enforcing intellectual property filings, which created a fear in other countries to invest in China as their intellectual property may not be protected once invested in China. The U.S. claimed that China was failing to meet its obligations under the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),** which is part of the WTO framework. The inadequate protection of intellectual property rights in China had a direct impact on foreign investments, especially in industries like technology, pharmaceuticals, and entertainment, where intellectual property is a key asset. Foreign companies were reluctant to invest in China or transfer technology to the country without strong legal protections for their intellectual property. The U.S. and other foreign investors feared that their innovations and products would be stolen or counterfeited, which diminished their willingness to enter the market. World Trade Organization ruled in favour of the US directing China to reform its intellectual property enforcement mechanisms.

Philip Morris v. Uruguay (2016)[15] – this case focused on the application of international investment law, with special focus on **Investor-State Dispute Settlement** mechanisms. **Philip Morris**, a multinational tobacco company, brought a case against the **Government of Uruguay** under the **Bilateral Investment Treaty** between Switzerland and Uruguay. The challenged Uruguay's tobacco regulations, which required that all cigarette packages should

[13] European Communities-Regime for the Importation, Sale, and Distribution of Bananas WTO Doc. WT/DS27/R (1997).
[14] China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights, WTO Doc. WT/DS362/R (2009).
[15] Philip Morris Brands Sàrl v. Uruguay, ICSID Case No. ARB/10/7, Award (July 8, 2016).

contain health warnings covering 80 percent of front and back of that package, also one company can only produce one brand of cigarette. This according to him was violating the WTO rules of national treatment and denying the fair treatment to foreign investors. This case became a landmark in the discussion of the balance between the protection of public health and the rights of foreign investors. The decision reinforced the idea that governments have the right to implement measures aimed at protecting public health, even if such measures affect foreign investment and that at times public policy will override investor protection.

Conclusion

It can be concluded that nexus between **trade policy** and **investment opportunities** is a critical and relationship that can impact the global economic landscape. Trade policies, including tariff structures, regulations, and trade agreements, directly influence the flow of foreign direct investment by creating a conducive environment for business operations. Countries with favorable trade policies that promote market access, protect intellectual property, and provide a level playing field are more likely to attract foreign investment, stimulate economic growth, and enhance competitiveness. However at the same time trade policies can at times turn to be restrictive in nature which can impact the investment. There should be balanced and more structured platform between the trade policies and the investment opportunities so that it can protect the interest of the domestic industries and favour international investments as well.