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Optimising FTA Utilisation

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Finance Minister Nirmala Sitharaman announcing the setting up of an FTA Utilisation Mission on September 14, 2019. Source: Hindustan Times

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by

Dr. V.S. Seshadri

Introduction

Free trade agreements (FTAs) currently active worldwide and notified to the WTO¹ number 302 and continue to rise. With the Doha Round of WTO trade negotiations virtually dead, FTAs have become the primary mode for enhancing a country's market access. A relative latecomer to FTA making, India's first FTA with Sri Lanka came into force in the year 2000. But after the FTAs with Japan and Malaysia in 2011, India has not concluded any more. Support for FTAs among domestic industry and policy makers in India has shrunk.

The general perception is that India's FTA partners, outside of South Asia, have gained far more than India from the increased market access resulting from the respective FTAs. Table 1 provides the list of these FTAs and a snapshot of trade performance, which broadly indicate this to be the case. Several factors are responsible for this situation, including India's limited export profile and lack of competitiveness in certain sectors that has been exacerbated by inadequate trade infrastructure². These aspects will need remedial actions on the supply front that will take some time to produce results. But poor FTA utilisation even in areas where India has significant current export potential is certainly another factor.

The announcement, therefore, by India's Finance Minister Nirmala Sitharaman on September 14, 2019 about setting up an FTA Utilisation Mission headed by a senior Commerce Ministry official, as part of several other measures to boost exports, was not a day too soon. It underlines a growing recognition that concluding an FTA is only a first step and securing optimal benefits from it needs a sustained effort. In India's case, apart from getting more from existing FTAs, this initiative was also essential to get the domestic industry to gain more confidence in the ability of future FTAs to provide greater market access for

¹ See RTAs gateway in the WTO website at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

² Detailed appraisals of implementation of India's CEPAs with Republic of Korea (February 2016) and Japan (September 2016) and the CECA with Singapore (March 2017) were undertaken by this author and those reports published by Research and Information System for Developing Countries, New Delhi can be accessed from RIS website.

their products. Otherwise, they are unlikely to be supportive of concluding future FTAs as in fact appears to have happened during the final stages of negotiating the agreement for Regional Comprehensive Economic Partnership (RCEP) resulting in India's decision to withdraw from the pact.

Table 1: Trade trends with some FTA partners (Figures in US\$ mn.)

Name of FTA partner & date of commencement of FTA	Exports from India to the FTA partner			Imports into India from the FTA partner		
	Export average of three years 2009-12	Export average of three years 2016-19	Percentage increase in exports the interim	Import average of three years 2009-12	Import average of three years 2016-19	Percentage increase in imports the interim
Republic of Korea CEPA (January 1, 2010)	3833 (1.56)	4469 (1.47)	16.6	10621 (2.77)	15235 (3.35)	43.4
Japan CEPA (August 1, 2011)	5017 (2.04)	4481 (1.48)	-12	9122 (2.38)	11167 (2.45)	22.4
ASEAN FTA (January 1, 2010)	26829 (10.96)	34212 (11.28)	27.5	32855 (8.6)	49024 (10.78)	49.2
Singapore CECA (August 1, 2005)	11758 (4.66)	10446 (3.44)	-9.36	7373 (1.91)	10279 (2.26)	40.3
Malaysia CECA (July 1, 2011)	3562 (1.45)	5787 (1.9)	62.5	7058 (1.84)	9588 (2.11)	35.8

Source: DGCIS. Figures within parentheses indicate percentage share in India's total export/import during the corresponding period.



Finance Minister Nirmala Sitharaman announcing the setting up of an FTA Utilisation Mission on September 14, 2019. Source: Hindustan Times

When we look at FTA utilisation, there is much that can be done by several players under the overall coordination of the Ministry of Commerce. While a good part of it needs to be dealt with domestically, India's Missions abroad, particularly their Commerce wings, can also play a very important supportive role. While it is not clear what actions have been taken so far by the government since the announcement of the initiative in September 2019, what will be attempted in this brief is to set out the possible actions that can be taken up domestically and by our Missions abroad.

Actions that need to be taken domestically

The Utilisation Mission as announced by the Finance Minister was mandated³ to work with FIEO and export houses to enhance awareness of FTA provisions, particularly among SMEs. It was also meant to facilitate compliance requirements in respect of certificate of origin, rules of origin etc., under FTAs by importers and exporters. Furthermore, it was to set goals for utilisation and to put in place an effective FTA monitoring system. There are several aspects that the Utilisation Mission can look into which are flagged below.

a. Spreading awareness about benefits: Exporters and importers need to be informed in simple and plain language about each FTA. Merely making available the legally worded text of the FTA on the website or answering a few Q&As will not suffice. Websites of the Trade/Foreign ministries of Australia,

³ See Press Release of PIB at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=193194>

Canada, New Zealand and Singapore, for example, explaining their latest regional FTA, the Comprehensive and Progressive Trans Pacific Partnership (CPTPP), are instructive. They provide a fact sheet of the FTA, chapter summaries of the FTA text, an all-round summary about the outcome, illustrative examples of who could potentially benefit including supply chains and the overall expected gains. We can emulate these models. Such information should be provided not only by the Commerce Ministry on its website, but also by FIEO and every other export promotion council (about products/sectors relevant to them) and industry associations. Information dissemination seminars also need to be regularly held. Even in recent years, much after the coming into force of the FTAs to which India is a party, lack of information about FTA is a complaint⁴ that is regularly heard.

b. Handholding about how to use the FTAs: A step by step guide could also be provided on the websites on how to find the reduced tariff for each product (websites of certain countries even provide a tariff finder) for import/export for the year in question, the applicable rules of origin (RoO) for the product, cumulation provisions, existence of any understanding on standards for the particular product, how to obtain advance ruling etc. A separate portal, or at least a contact point for each FTA, should be established for responding to such queries.

c. Facilitating RoO navigation: Getting the rules of origin certification for a consignment is perhaps the most time consuming and arduous step for an exporter in terms of FTA compliance. If it involves undue delay/cost the exporter may be compelled to export outside of the FTA that will involve paying MFN duties. The Utilisation Mission should conduct a detailed audit of each step of the process and examine how every one of them can be further simplified and quickened, particularly also from an SME point of view. These steps include manner of filing of CoO requests, payment of required fees, supportive documents needed, the time frames involved and whether a single CoO can cover consignments over a period. There are also other aspects like record keeping by the exporter, traceability and indemnity bonds to be taken. If the certification agency for the FTAs, which is the Export Inspection Council of India (EIC) including its various regional offices, can be made to operate on

⁴ This was a complaint voiced at many of the industry producers associations that this writer had the opportunity to interact with during the eight month long study relating to RCEP undertaken by him under the sponsorship of CII in 2018. Of course all such associations themselves had a responsibility to make this available, in relation to products of relevance to them, to their members in a manner that will also be understood by them.

a 24/7 basis including on week-ends and holidays, deeming it as an essential service, that can be another facilitational feature.

Several of these elements can be obviated if there can be a system of authorised/registered exporters (called REX) with a self-certification facility that is already operational⁵ for availing EU GSP concessions. Could this be built upon further so that it can work for FTAs as well? Such self-certification procedure for authorised exporters is already in vogue, for example in the EU-Korea FTA (2011) and EU-Japan FTA (2019).

Among the other measures announced by the Finance Minister to boost exports was also the launch of an online “origin management system”. It is not clear if obtaining such online certification will be only for availing GSP concessions and certain preferential trading arrangements, or will extend to FTAs as well since the latter will require concurrence of the FTA partners. But if such an interim system can be put in place, until we can have a REX like system, it can vastly reduce time and cost involved in obtaining certificates of origin for exports under an FTA, particularly for exporters who do not have EIC offices near their venues.

d. Regularly publish the Utilisation Rates: Utilisation rates provide the percentage of import/export occurring under FTA preferences versus total import/export taking place for eligible items under an FTA. Utilisation rates⁶ should be regularly published on a quarterly/half yearly basis since they help identify underutilised tariff lines. If necessary, co-operation of partner countries should be sought for this purpose. Countries like Korea and Japan have this data available even at the level of each tariff line on request, as was found by this author while studying the implementation of India’s CEPAs with them. Having at least sectoral utilisation rates made available to stakeholders concerned will help to identify laggard sectors and assist in taking quick remedial actions.

It is not clear why the utilisation figures are not regularly published by DGCIS or made publicly available by the Ministry of Commerce and Industry since it is seen that in some of the Ministry’s reports⁷ utilisation rates are referred to,

⁵ A brief on REX as operated by DGFT for EU’s GSP scheme may be seen at <https://dgft.gov.in/basiccontent/brief-rex>

⁶ Utilisation rates can differ depending on the methodology used depending also on whether products that in any case attract zero MFN duties are included or not. But this should not deter us from publishing as long as methodology used is explained.

⁷ For example in a report brought out by the Ministry of Commerce and Industry in 2017 on “India-Korea CEPA: A trade analysis” the utilisation factor along with utilisation percentages

indicating that these are compiled by DGCIS. In fact, if the Utilisation Mission has to set goals for utilisation as mandated, it will be best if both the current rates and targetted goals are published so that FIEO, export promotion councils and others concerned can be urged to achieve them.

It must, however, be admitted that preference utilisation data is a more universal issue⁸ and even after having access to this data, diagnosing the causes for underutilisation will require careful analysis and assessment.

e. Make full use of bilateral Cooperation provisions in the CEPAs with Korea and Japan: Japan and Korea are known to be not so easy markets to export to, particularly with their corporations preferring to rely on their own procurement and distribution networks. The language factor, higher standards required for certain products, specific labelling, packing and other requirements, intricate trading and distribution arrangements further complicate entry, particularly for SMEs. India should seek to fully operationalise the cooperation chapter (Chapter 13 in the CEPAs with Korea and Japan) that specifically outlines possible such activities in several areas including pharmaceuticals, textiles and leather, SMEs, IT etc., for facilitating market entry.

As pointed out by this author in the appraisal report⁹ on implementation of the India-Korea CEPA, the report of the bilateral Joint Study Group prior to commencement of negotiations of the India-Korea CEPA had clearly recognised the complementarity in economic structures between the two countries with a recommendation that the synergies inherent in the complementarities needed to be exploited to full benefit. The chapter on bilateral cooperation in the CEPA text itself must have been intended as a mechanism to implement this recommendation and needs follow up.

f. Make available standard certification/product approval systems in partner countries: FTA utilisation can also improve if we can arrive at mutual recognition of each other's standards and compliance systems in as many areas as possible with FTA partners. Considering India's current export strengths, arriving at some understanding for faster approvals for generics exports and of certain auto parts could be a good starting point. In any case,

have been discussed in some detail although it has been remarked that there are significant differences in utilisation rates between Korean figures and Indian figures.

⁸ See for example the ECIPE policy brief No.2/2019 on "Preference Utilisation and Customs data: The Missing pieces of the FTA puzzle" by Dr. Anna Jerzewska and Nicholas Kohler that also points to a pressing need to create a centrally-held, WTO-driven and standardised database for utilisation of trade agreements.

⁹ See pages 24-25 of the report by this author on "India-Korea CEPA: An appraisal of progress" published by RIS, New Delhi.

information regarding the standards and other requirements in the FTA partner, certification agencies and procedures, particularly in areas relevant to SMEs (for example, product safety) can be made available on the website providing also the related web links.

The new measures announced by the Finance Minister to boost exports included adopting time bound adoption of mandatory standards and having an affordable testing and certification procedure. If implemented, these could in turn help improve FTA utilisation.

It will also be very appropriate if provisions of Chapter 13 in the CEPAs with Korea and Japan can be put to use to help set up facilities that can assist in the certification of export units meeting the required standards, such as in the case of shrimps and certain marine products, so that testing on consignment basis does not happen at the import end, causing delays. Vietnam is known to have benefitted from such assistance.

g. Submission of an Annual Report on implementation of each FTA: The Utilisation Mission has already been tasked by the government with regular monitoring of FTA implementation. This should include submission of a detailed annual report on the implementation of each FTA that should also be subsequently discussed in a seminar with attendance of all stakeholders.

h. Undertaking regular reviews of the FTAs: The India-Korea CEPA is already under review. The Minister of Commerce and Industry¹⁰ has also called for a review of our FTAs with ASEAN and Japan. In these reviews, apart from seeking improvements in market access, we should also seek to ease utilisation particularly on the RoO front. Recent FTAs such as the EU-Japan FTA have introduced innovative self-certification provisions that need examination for possible adoption.

i. Need for Indian businesses seeking to export to the East and South East Asian markets to suitably orient their business strategies: Each market in our FTA partner countries has its own business culture and these are quite different from western markets. While it is needless to add that our businesses seeking to trade with these countries need to factor in this aspect in their approaches, there is also a strong case for more organised training for executives of corporates or SME entrepreneurs wishing to enter these markets. Our IIMs may be well placed to develop short term executive development

¹⁰ See for example the news item "Com Min to review FTAs says Goyal" dated December 30, 2019, in The Indian Express.

programmes which include case studies of Indian companies that have succeeded in these markets and those that have not been able to do so well.

Possible actions by India's diplomatic Missions

FTAs are typically intended to promote economic integration with partner countries through closer exchanges in merchandise trade, services, investments and technology collaboration. Indian Missions in FTA partner countries have a special role in the implementation and monitoring of FTAs and in leveraging its provisions for promoting India's interests, including in attracting investments from businesses in those partners. In order for that to happen, Mission officials, particularly in the commerce wings, have to be fully familiar with the various FTA provisions and their technical details. A general overall understanding will not suffice. Heads of Commerce wings in the Missions to FTA partner countries should make it a point to receive a full technical briefing and background material about the FTA provisions before taking up their posts.

Beyond closely monitoring bilateral trade and investment trends at sectoral levels, attention by the Missions will also have to be given to checking utilisation rates as may be published by the host authorities and to difficulties if any faced by India's exports as a result of the host countries' standards and certification mechanisms. Reporting regularly to India's Ministry of Commerce in as much detail as possible with possible remedial suggestions (based also on how competitor third countries may have dealt with the issue) will in turn make the overall monitoring system more effective.

Missions should also be reporting in detail about any further FTAs entered into by the partner country with third countries. Any such new FTA has the potential to bring more competition and may even negatively impact on India's own access in that FTA partner. This will need detailed analysis of the market access provisions in such FTAs and where necessary technical help should be availed of to get a full assessment. More recent FTAs have detailed the mutual acceptance on standards and their compliance mechanisms¹¹, which also impacts on competition. This again needs analysis and assessment. It needs appreciation that both Korea and Japan have by far many more FTA partners today, including developing country ones, than was the case when India's CEPAs with them came into force. Likewise, several ASEAN countries have

¹¹ Korea's FTA with EU (came into force in 2011) for example has separate annexes on standards issues dealing with motor vehicles and parts, pharmaceuticals and medical devices, chemicals and electronics.

expanded their portfolio of FTAs, some of which could be impacting India negatively.

Innovative elements, if any, in a new FTA signed by the partner country with third countries including those which have incorporated improved implementation mechanisms in such FTAs (including possible ways in which utilisation figures are compared) could also be reported for consideration of adoption in India's FTA with that partner country during a subsequent FTA review process. For example, the CPTPP or Japan's FTA with EU, which are the most recent FTAs, have certain new elements particularly on standards and certification compliance and trade facilitation that merit flagging.

It needs recognition that trade policy evolution is no longer taking place only at the WTO in Geneva. Several FTAs are setting the pace and it will not be a surprise if some of those features eventually also get packaged into proposals for WTO reform. Such FTA provisions can serve as useful early alert signals.

Finally, Indian Missions abroad have the opportunity to be in direct touch with local importers and exporters who may again come forward with useful suggestions for better implementation of India's FTAs, which will be a critical input. Further, the Missions are at a vantage point based on ground realities in assessing possible areas in which the provisions of Chapter 13 on technical cooperation can be harnessed to mutual benefit.

Conclusion

India has only a limited portfolio of FTAs at present. Beyond South Asia, it has no FTA to the west of India. India will need to get more active on this score if it has to expand its market access and have a more level playing field with several of its competitors in third country markets. The EU, for example, already has 42 FTA partners and India's entry into that market is presently significantly disadvantaged. Moving on this front, however, requires demonstrating better returns from existing FTAs. The Utilisation Mission has an urgent task in hand that needs active follow up on its important mandate. These efforts will need full participation of various stakeholders and industry associations. Commercial wings of India's Missions abroad can also help to strengthen this effort.



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