Asian Exporters' Chamber Of Commerce and Industry

SOURCING ENTERPRISE

24th June 2023 Issue No: 85

AECCI WEEKLY VIEWPOINT

Stay Informed, Stay Ahead..!

PUBLISHED ARTICLE OF:
CA. RAJENDRA KARNMAL BHUTA

LATEST INSIGHTS OF THE WEEK

COME GROW WITH US..!

Vol: 3 By: Vinuth Kumar(Digital Efforts)

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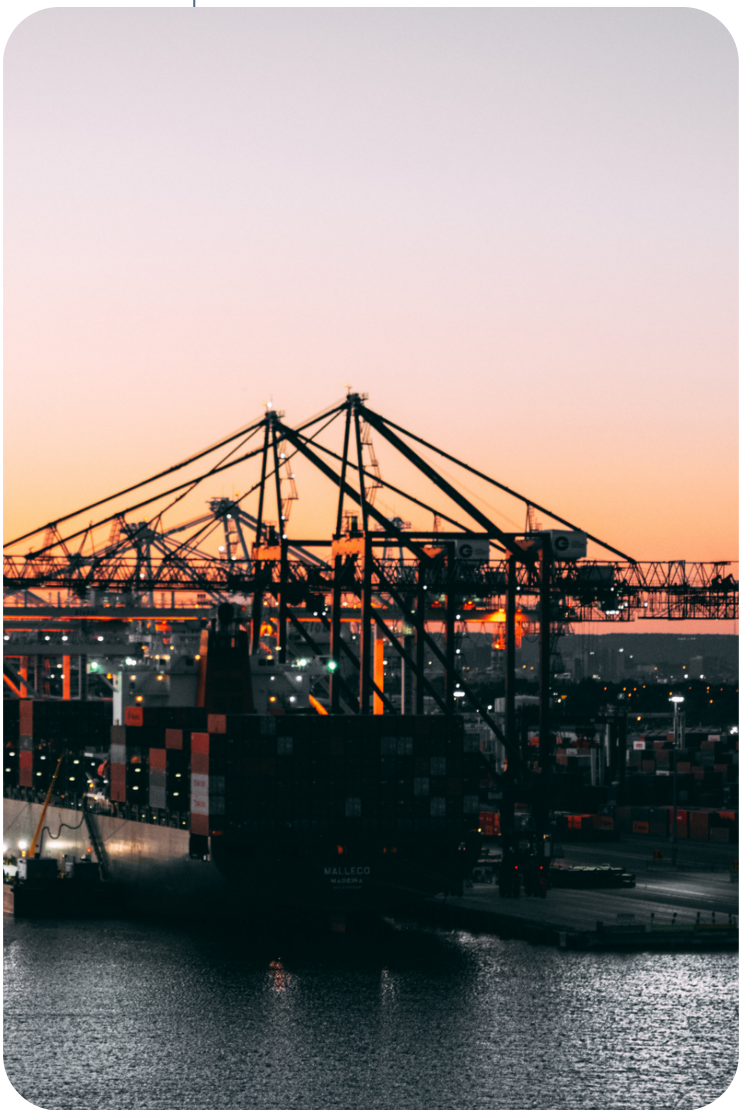
INDIA'S LAND PORTS LEAD THE WAY IN TRANSFORMING THE BORDER TRADE ECOSYSTEM



India has 109 border check posts with its immediate neighbours that form an integral part of its 'Neighbourhood First' and 'Act East' policies. Of these check posts, 11 are upgraded from a Land Customs Station (LCS) to an Integrated Check Post (ICP), housing customs, immigration authorities, border security forces, quarantine and recently sanctioned land port health units, together as single-window facilitation facility, for smooth cross-border movement of passengers and goods. Development of logistics infrastructure complemented with enabling policy and regulatory ecosystem holds significant potential towards making MSMEs more competitive.India has 109 border check posts with its immediate neighbours that form an integral part of its 'Neighbourhood First' and 'Act East' policies. Of these check posts, 11 are upgraded from a Land Customs Station (LCS) to an Integrated Check Post (ICP), housing customs, immigration authorities, border security forces, quarantine and recently sanctioned land port health units, together as single-window facilitation facility, for smooth cross-border movement of passengers and goods. Development of logistics infrastructure complemented with enabling policy and regulatory ecosystem holds significant potential towards making MSMEs more competitive. Although trade between the BBIN (Bangladesh, Bhutan, India and Nepal) countries grew six-fold between 2005 and 2019 (pre-COVID), the unexploited potential remains massive, estimated by the World Bank at 93 per cent for Bangladesh, nine per cent for Bhutan, 50 per cent for India and 76 per cent for Nepal. Within the BBIN countries, Petrapole-Benapole (along the India-Bangladesh border), Jaigaon-Phuentsholing (along the India-Bhutan border) and Raxaul-Birgunj (along the India-Nepal border) are the busiest trading points and as a result, also the focus of government efforts towards improving logistics and infrastructure.

Source : Financial express

Asian Exporters' Chamber Of Commerce and Industry

(Recognized by Ministry of Commerce, Govt. of India)

AECCI
Sourcing Enterprise

JUNE 2023

LIMITED SEATS

AECCI PRESENTS WORKSHOP ON

"IMPORTS FROM FTA & PTA COUNTRIES"

(10.00am-4.00pm) **DATE & VENUE**

28th June 2023 Navi Mumbai
30th June 2023 Rajkot - TAC
01st July 2023 Gandhidham- TAC

ABOUT EVENT

The event aims to provide valuable insights into the benefits, procedures, and strategies involved in importing goods from FTA and PTA countries.

WHO SHOULD ATTEND?

- Exporters & Importers
- Business Owners
- Entreprenuers
- Int. Business Development Manager
- Legal Professional

EXCLUSIVE OFFERS

- Avail complimentary 1 year membership, which includes access to valuable legal Support..!!*
- Early Bird Registration (Prior 7 days of Event): 10% off
- Group Discounts (3 or more): 15%*

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Regd. Office Hilton Towers, 604, 6th Floor, Plot No. 66, Sector 11, CBD Belapur, Navi Mumbai, Maharashtra 400614. **Tel No.** 022-41271145/46

www.aecci.org.in
register@aecci.org.in

CA. RAJENDRA KARNMAL BHUTA

TRIGGERING OF AN INTERNATIONAL INVESTMENT DISPUTE

OBLIGATIONS UNDER INVESTMENT TREATIES

(1) THE OBLIGATION OF NON-DISCRIMINATION

Investment treaties generally contain obligations of nondiscrimination with respect to the treatment of protected investors and investments. There are two obligations of non-discrimination: “national treatment” and “most-favored-nation treatment”.

NATIONAL TREATMENT The obligation of national treatment requires the host economy to give protected investments and investors treatment that is no less favorable than the treatment that it accords to national investors/investments in like circumstances.

MOST-FAVORED-NATION TREATMENT The obligation of non-discrimination also requires the host economy to give protected investments and investors treatment that is no less favorable than the treatment that it accords to the investments and investors of any third state in like circumstances.

(2) THE OBLIGATION OF “FAIR AND EQUITABLE TREATMENT.

The “fair and equitable treatment” standard establishes a minimum level of treatment to be given to protected investors and their investments. Violations of the fair and equitable treatment standard are the most common type of treaty violation committed by governments. What constitutes “fair and equitable treatment” is determined by analyzing all of the circumstances of a particular case. Not all treaties are the same, however, so the way in which fair and equitable treatment is interpreted and applied may depend upon the exact wording of the treaty. That said, it is possible to identify a few circumstances that have been considered when determining whether there has been fair and equitable treatment. These include a. whether there has been a fundamental change in the host economy’s law that is contrary to the investor’s legitimate expectations; b. whether the host economy has gone back on specific representations made to the investor that the investor relied upon in making the investment decision; c. whether due process has been denied to the investor; d. whether there has been an absence of transparency in the legal process or actions of the host economy, whether there has been harassment, coercion, abuse of power or bad faith conduct by the host economy; and f. whether the actions of the host economy can be labeled as arbitrary, disproportionate, or inconsistent.

(3) THE OBLIGATION TO PROVIDE “FULL PROTECTION AND SECURITY”

The obligation to provide full protection and security generally requires the host economy to exercise vigilance and due diligence with regard to the physical protecton of investments and investors, taking into account the circumstances and resources of the host economy.

(4) THE PROTECTION AGAINST ILLEGAL EXPROPRIATION

Host governments are entitled to expropriate (i.e., take ownership of) the property of foreign investors, but only where the expropriation is: a. for a public purpose; b. done in accordance with due process; c. non-discriminatory; and d. accompanied by the payment of compensation, usually “market value” compensation. An expropriation that does not meet these conditions will violate the host economy’s obligations under international law It is important to understand that “expropriation” can refer to two types of situations:

A “DIRECT” EXPROPRIATION is The situation in which ownership of a protected investment is legally transferred from the investor to the government or the entities for which it is responsible

AN “INDIRECT” EXPROPRIATION The situation in which, even though legal ownership has not been transferred from the investor to the government, the government has taken measures that have the effect of depriving the investor of the economic use and enjoyment of the investment.

(5) THE OBLIGATION TO “OBSERVE UNDERTAKINGS”

Many investment treaties guarantee that the host economy will “observe undertakings” that it has assumed regarding an investment. These clauses are sometimes referred to as “umbrella clauses” because in a number of cases they have been interpreted as bringing the host economy’s contractual undertakings with the investor under the treaty’s protective umbrella. What this means, practically, is that in some cases when the government violates its contractual commitments regarding an investment, the violation of those contractual commitments may also amount to a violation of its umbrella clause obligation under an investment treaty.

(6) THE OBLIGATION TO ALLOW THE FREE TRANSFER OF FUNDS RELATED TO INVESTMENTS

Most investment treaties contain a general obligation that protectedinvestors be allowed to make transfers in and out of the host economy related to an investment or in connection with an investment.

The flows to which the guarantee of free transfer generally applies, include (but are not limited to):

1.profits, interest, dividends, and other current investment income.
2.funds necessary to finance an investment.
3.proceeds from the sale or liquidation, total or partial, of an investment.
4.payments under a contract, management fees, and royalties.
5.loan payments.
6.salaries and other remuneration received by the nationals of the economy of origin of the investment and who have obtained the necessary work permits in relation to an investment.

This will help them avoid violating international investment obligations and potentially triggering an international investment dispute.

International arbitration is a legal process for resolving disputes between parties from different countries, or between a party and a foreign entity. It involves an impartial third party, or arbitrator, who is chosen by the parties to make a decision or award on the dispute.

The process of international arbitration is generally considered to be faster, more flexible, and more confidential than traditional court litigation. It also provides a neutral forum for resolving disputes between parties from different legal systems and cultures.

The arbitration process begins with the parties agreeing to submit their dispute to arbitration, usually through a clause in a contract with reference to the treaty. The arbitrator or panel of arbitrators is then selected, and the parties present their arguments and evidence to the arbitrator(s). The arbitrator(s) then decides or award, which is typically binding on the parties.

INDIA-US TIES 2023: MODI TRIP REFOCUSES ATTENTION TO TRADE, TECH, DEFENSE

The India-US economic and strategic partnership has seen significant progress in recent years. In FY 2023, the US became India's largest trade partner for merchandise goods, resulting in a total bilateral trade value of US$128.78 billion. This partnership has been further enhanced by shared strategic policies spanning the Indo-Pacific to West Asia. Both countries prioritize technological advancement, innovation, resilient supply chains, and inclusive, sustainable growth.

Indian Prime Minister Modi's upcoming visit to the US, scheduled for June 21-23, 2023, is expected to facilitate crucial discussions over a wide range of topics, including defense and security cooperation, advancements in technology sectors such as telecom, semiconductors, and mobility, civil-nuclear cooperation, space exploration, collaboration in higher education, artificial intelligence, quantum technology, and counter-narcotics efforts.

In recent years, the India-US strategic partnership has consolidated further. The trade relations between the two have expanded exponentially, with bilateral trade hitting a record US$191 billion in two-way goods and services trade in 2022 and the US emerging as the top destination for India's merchandise exports in FY 2023.

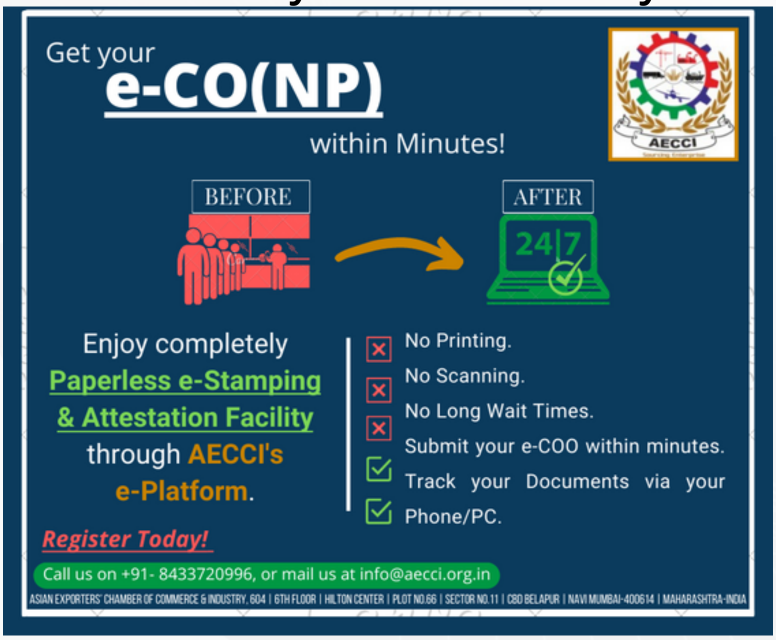
The year 2022 was rewarding for both democracies, which saw the forging of significant new partnerships, including the Indo-Pacific Economic Framework (IPEF), and the consolidation of existing ones, such as I2U2, Quad, etc. Tangible outcomes included the resolution of market access issues, the Quad focus on STEM, the signing of an Investment Incentive Agreement, the launch of Technology Innovation Hubs as a collaboration of the respective science agencies, a record level of trade and investments, etc. This year kicked off with the successful conclusion of the 13th Ministerial Meeting of the India-US Trade Policy Forum (TPF).

Source : India Briefing

24th June 2023

HEADLINES

- Experts and diplomats forecast that the future of India-US ties will determine the future of technology and innovation. With India holding the G20 presidency in 2023, the India-US partnership is further likely to intensify to achieve global growth.
- This year kicked off with the successful conclusion of the 13th Ministerial Meeting of the India-US Trade Policy Forum (TPF). It must be noted that this forum lay dormant for four years until a relaunch



- Although trade between the BBIN (Bangladesh, Bhutan, India and Nepal) countries grew six-fold between 2005 and 2019 (pre-COVID), the unexploited potential remains massive, estimated by the World Bank.
- One of the most important non-physical barriers affecting the region's integration through land transport is the delays at border crossings.
- The primary objectives of Prime Minister Modi's visit are to foster engagement with business leaders, connect with the Indian community, and interact with thought leaders from various fields.

DOES INDIA'S FOREIGN TRADE POLICY 2023 ADDRESS ITS EXPORT FRAGILITY?

FTP 2023 had the opportunity to align itself with India's socio-economic reality and the developmental priorities Starting with a positive trade surplus in the non-oil merchandise sector in early 2000s, India's non-oil trade deficit had ballooned to around $100 billion in 2021-22.

The effect of rising imports in this category could have been offset, had there been higher levels of exports and successive growth. The fact is that the growth of the Indian exports had drastically dropped from annual 3 years moving average of 18 per cent in the period 2000-2011 to 2.4 per cent in 2012-2018—well before the Covid-19 pandemic. In contrast, both levels and growth of the Indian imports have been higher, about 23 per cent in the period 2000-2011, and fallen thereafter along with India's exports.

The poor performance of exports cannot be overlooked as a temporary phenomenon. One needs to look at the foundational economic limitations which warrant much needed policy attention.

For any policy to be able to successfully address these limitations, it needs to acknowledge the fact that India's exports have been subdued in the last decade. While India has been import-dependent for meeting its crude oil requirements, the data shows an overdependence on imports for commodities which could be developed and produced domestically. Due to this, India has been stuck in a permanent tide of trade deficit since 2004 in non-oil trade category.

Not only has India not been able to cut reliance on imports for non-oil commodities, but the country is also not in the position to capitalise the high-tech manufacturing companies those are looking for diversifying their production base from China with rising geopolitical tensions.

To devise an effective trade policy, these issues needed to be answered by policymakers. However, FTP 2023 has failed to bring about fundamental changes in policy discourse by ignoring the problems. Given the increasing fragility in the Indian external sector and emerging challenges in the domestic economy, the FTP 2023 has not been able to devise an effective and time-bound policy trajectory for high-value-added and employment generating future of the Indian trade.

Source : KNN News

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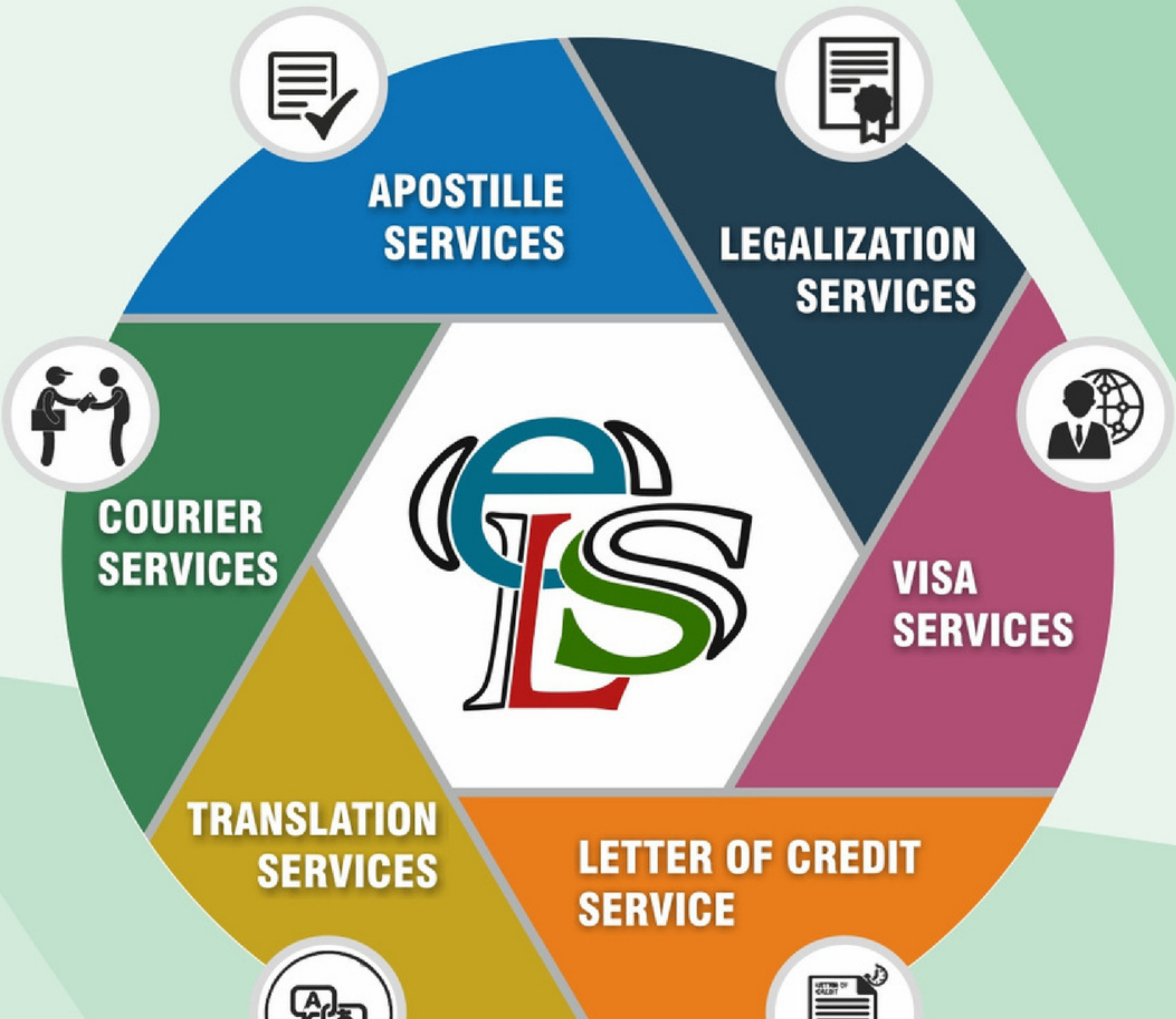

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Office no. 603, Hilton Centre, Sector-11, CBD Belapur, Navi Mumbai -400 614, Maharashtra, India, E-mail: elspl@rediffmail.com

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