TIGHTROPE WALK BETWEEN FAITH AND SCEPTICISM: INDIA'S "CONTINGENCY PLAN" FOR FREE TRADE

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ABSTRACT

The growing usage of the trade remedial measures has become a major bone of contention among nations. The Member countries, characterized by declining tariff barriers, often tend to protect their domestic interests against unfair trade practices (e.g., dumping) through the "contingency" measures, as permitted under World Trade Organization (hereinafter "WTO"). The Article analyses India's growing association with contingency measures and its implications for the global trade governance, as the country has emerged as a major user of the contingency measures, namely Anti-Dumping Agreement (ADA) and Safeguard (hereinafter "SFG") instruments. Meanwhile, Indian exports have also faced several Anti-Dumping (hereinafter "AD") and Subsidies and Countervailing Measures (hereinafter "ASCM") in partner countries. India's growing participation in the contingency universe is imperative, given the country's recent inclination to join regional trade agreements (hereinafter "RTAs"). The Article shows that India's tryst with the contingency instruments involves both RTA partners and other WTO Member countries. While the concerns over growing imports have guided the activism on AD and SFG front, the urge to boost competitiveness through export schemes brought

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Indian interventions under ASCM lenses. Given the continuing competitiveness-related challenges, as evident from India's Regional Comprehensive Economic Partnership (RCEP) negotiating experience, the interventions by the policymakers both on export and import fronts are expected in the coming future as well. The evolving dynamics further increase India's ever-growing association with contingency measures which, in turn, would remain a major issue within the WTO governance framework.

KEYWORDS: *WTO, contingency measures, ADA, Anti-Dumping, Subsidies and Countervailing Measures, India, RTA*

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I. INTRODUCTION

Since the inception of the World Trade Organization (hereinafter "WTO") in 1995, the tariff barriers have come down, but the use of several non-tariff measures (hereinafter "NTMs") simultaneously increased.[1] In particular, the growing usage of the trade remedial measures has become a major bone of contention among nations. The Member countries, characterized by declining tariff barriers, often tend to protect their domestic interests against unfair trade practices (e.g., dumping) through the "contingency" measures, as permitted under WTO.[2] Controlling the trade-distorting practices as well as disciplining the unnecessary governmental interventions citing three trade remedial measures, namely, Anti-Dumping Agreement (hereinafter "ADA"), Agreement on Subsidies and Countervailing Measures (hereinafter "ASCM") and the Agreement on Safeguards (hereinafter "ASG"), are equally crucial to promote "freer trade" within the WTO architecture.[3]

During the last decade, the world economy remains on a slower growth path[4], which has led to increasing recourse to contingency measures, particularly the anti-dumping (hereinafter "AD") provisions.[5] During January 1995-December 2018, a total of 5725 AD investigations have been initiated, while on 3805 occasions, final measures followed. The corresponding figures for countervailing and safeguard measures have been 541 and 285 and 347 and 172, respectively. While during mid-nineties the developed countries were the major users of these provisions, in recent

[1] For instance, an increasing trend in the number of NTM notifications can be clearly noted. *See generally* WORLD TRADE ORG. [hereinafter WTO], ANNUAL REPORT 2019 (2019), https://www.wto.org/english/res_e/booksp_e/anrep19_e.pdf; Roy Santana & Lee Ann Jackson, *Identifying Non-tariff Barriers: Evolution of Multilateral Instruments and Evidence from the Disputes (1948-2011)*, 11(3) WORLD TRADE REV. 462 (2012).

[2] *See generally* Derk Bienen et al., *Does Antidumping Address "Unfair" Trade?*, 28(3) INT'L TRADE J. 195 (2014); Thomas Cottier, *The Common Law of International Trade and the Future of the World Trade Organization*, 18(1) J. INT'L. ECON. L. 3 (2015).

[3] *See generally* David Palmeter, *Safeguard, Anti-dumping, and Countervailing Duty Disputes in the Transatlantic Partnership: How to Control "Contingency Protection" More Effectively*, *in* TRANSATLANTIC ECONOMIC DISPUTES: THE EU, THE US, AND THE WTO 141 (Ernst-Ulrich Petersmann & Mark A. Pollack eds., 2003); Youri Devuyst, *European Union Law and Practice in the Negotiation and Conclusion of International Trade Agreements*, 12(2) J. INT'L BUS. & L. 259 (2013); Debashis Chakraborty et al., *Doha Round Negotiations on Subsidy and Countervailing Measures: Potential Implications on Trade Flows in Fishery Sector*, 6(1) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 201 (2011); Yong-Shik Lee, *Are Retaliatory Trade Measures Justified Under the WTO Agreement on Safeguards?*, 22(3) J. INT'L ECON. L. 439 (2019).

[4] *See generally* WORLD BANK GROUP [hereinafter WBG], GLOBAL ECONOMIC PROSPECTS: HEIGHTENED TENSIONS, SUBDUED INVESTMENT (2019), http://documents.worldbank.org/curated/en/541011559679035492/pdf/Global-Economic-Prospects-June-2019-Heightened-Tensions-Subdued-Investment.pdf.

[5] *See generally* Dukgeun Ahn & Jieun Lee, *Countervailing Duty Against China: Opening a Pandora's Box in the WTO System?*, 14(2) J. INT'L ECON. L. 329 (2011).

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period developing countries are also catching up. The WTO-incompatibility of trade remedial measures adopted by both developed and developing countries have often been established at the dispute settlement body, leading to the withdrawal of key restrictive instruments like *zeroing methodology*, *Byrd Amendment*, etc.[6] The need to ensure greater transparency during the implementation of trade remedial measures has often been underlined.[7]

India, a leading developing country, adopted export-oriented growth policy in 1991 and since then relied on WTO-induced reforms for export promotion upto 2004. From 2005, the country started participating in several regional trade agreement (hereinafter "RTA") negotiations, looking for an alternative export route.[8] Subsequently, the country joined India-South Korea Comprehensive Economic Partnership Agreement (hereinafter "CEPA") and ASEAN–India Free Trade Agreement (hereinafter "FTA") in 2010 and India–Japan CEPA in India–Malaysia Comprehensive Economic Cooperation Agreement (CECA) in 2011.[9] It also started participating in the mega-RTA Regional Comprehensive Economic Partnership (hereinafter "RCEP") negotiations, involving fifteen partners from the Asia-Pacific region, from May 2013.[10] However, at the last round in November 2019, India decided not to join the RCEP bloc until its concerns, including the unsustainable trade deficit *vis-à-vis* negotiating partners,[11] are suitably addressed[12]. It also never expressed willingness to join the other mega-RTA Trans-Pacific Partnership (TPP), owing to perceived concerns over stringent reform (e.g., tariff, intellectual property rights) commitments.[13]

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[6] Thomas J. Prusa & Edwin Vermulst, *United States — Continued Existence and Application of Zeroing Methodology: The End of Zeroing?*, 10(1) WORLD TRADE REV. 45, 46 (2011); *see generally* Yoshitomo Ogawa & Yoshiyasu Ono, *The Byrd Amendment as Facilitating a Tacit International Business Collusion*, 19(5) REV. INT'L ECON. 877 (2011).

[7] For a detailed analysis on WTO-incompatibility of alleged provisions in disputes involving contingency measures, see Julien Chaisse & Debashis Chakraborty, *Normative Obsolescence of the WTO Anti-Dumping Agreement—Topography of the Global Use and Misuse of Initiations and Measures*, 6(2) ASIAN J. INT'L L. 233 (2016); *see generally* Chakraborty et al., *supra* note 3; Julien Chaisse et al., *Mastering a Two-edged Sword: Lessons from the Rules and Litigation on Safeguards in the World Trade Organization*, 13(4) RICHMOND J. GLOBAL L. & BUS. 563 (2015).

[8] *See generally* Sherzod Shadikhodjaev, *Checking RTA Compatibility with Global Trade Rules: WTO Litigation Practice and Implications from the Transparency Mechanism for RTAs*, 45(3) J. WORLD TRADE 529 (2011).

[9] *See generally* Julien Chaisse et al., *The Three-pronged Strategy of India's Preferential Trade Policy: A Contribution to the Study of Modern Economic Treaties*, 26 CONN. J. INT'L L. 415 (2011).

[10] Sanchita Chatterjee, *Regional Comprehensive Economic Partnership: Implications for India's Rules of Origin*, 49 ECON. & POL. WKLY. 27, 27 (2014).

[11] PIB Delhi, *Prime Minister to Participate in East Asia and RCEP Summit in Bangkok*, PRESS INFO. BUREAU, GOV'T INDIA (Nov. 4, 2019, 10:34 AM), https://pib.gov.in/PressReleseDetailm.aspx?PRID=1590228.

[12] Geeta Mohan, *India Decides to Not Join RCEP Agreement, Modi Says Deal Does Not Address Our Concerns*, INDIA TODAY (Nov. 4, 2019, 6:57 AM), https://www.indiatoday.in/india/story/india-pm-modi-decide-to-not-join-rcep-agreement-1615655-2019-11-04.

[13] *See generally* Harsha Vardhana Singh, *TPP and India: Lessons for Future Gains* (Brookings Inst. India Ctr., Working Paper No. 3, 2017).

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Over the last two decades, India has emerged as a major user of the contingency measures, namely ADA and Safeguard (hereinafter "SFG") instruments.[14] For instance, during January-June 2018, the country initiated twenty-eight new anti-dumping investigations.[15] On the other hand, Indian exports have faced several ADA and ASCM measures in partner countries. India's growing participation in the contingency universe is imperative, given the country's growing export-orientation in general and the recent inclination to join RTAs.

The Article intends to analyze India's growing association with contingency measures, which involve complex type of trade instruments that fundamentally combine economic and policy motivations. The main research question is whether the interventions by the policymakers both on export and import fronts can be expected to continue in the coming future as well. The Article explores this complex universe of measures by deploying a legal and economic analysis of the use of trade remedial measures by and against India over the last two decades. The Article is arranged along the following lines. The political economy of the contingency measures is briefly noted first (Section II), followed by an analysis of these measures in the Indian context (Section III). The recourse to the contingency measures is then evaluated considering the sectoral trade dynamics in India and policy perspective (Sections IV and V). Finally, in light of the observations, the policy conclusions are drawn (Section VI).

II. USE OF CONTINGENCY MEASURES: POLITICAL ECONOMY

As dumping may result either due to the co-existence of domestic market imperfections with competitive world market or price adjustments in the presence of exchange rate volatility,[16] dumping beyond only a critical margin (2% *ad valorem*) is considered WTO-incompatible. The AD mechanism is, however, susceptible to lobbying and open to interpretation.[17] Given the fact that AD investigations require injury to the majority of domestic production (i.e., more than 50%) as a pre-condition, scale-intensive large industries with high concentration and exposure to foreign competition

[14] *See generally* Harsha Vardhana Singh, *Trade Policy Reform in India Since 1991* (Brookings Inst. India Ctr., Working Paper No. 2, 2017).
[15] *See generally* WTO, *supra* note 1.
[16] *See generally* Michael P. Leidy & Bernard M. Hoekman, *Production Effects of Price- and Cost-Based Anti-Dumping Laws Under Flexible Exchange Rates*, 23(4) CANADIAN J. ECON. 873 (1990).
[17] *See generally* Joseph Michael Finger, *The Industry-Country Incidence of "Less than Fair Value" Cases in US Import Trade*, *in* EXPORT DIVERSIFICATION AND THE NEW PROTECTIONISM: THE EXPERIENCES OF LATIN AMERICA 260 (Werner Baer & Malcolm Gillis eds., 1981); Joseph M. Finger et al., *The Political Economy of Administered Protection*, 72(3) AM. ECON. REV. 452 (1982); Douglas Nelson, *The Political Economy of Antidumping: A Survey*, 22(3) EUR. J. POL. ECON. 554 (2006).

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often try to influence their governments to take recourse to this provision.[18] However, even less concentrated industries, facing growing import competition, may seek relief through this mechanism.[19] In other words, perceived import competition is quite important as a driver to AD activism. One potential danger of the misuse of the ADA is the emergence of "echoing protection",[20] where countries suffering from "undue AD activism" in their export markets may reciprocate and retaliate. The transformation of low cost developing countries like Argentina, China, India, South Africa and Turkey from "affected" (i.e., facing AD investigations) economies to "interested users" (i.e., conducting AD investigations) of this provision deserves mention in this context.[21] The increasing AD activism in effect reduces the market access created through the ongoing sectoral tariff reforms[22], both in developed countries like the European Union (hereinafter "EU")[23] and the United States (hereinafter "U.S.")[24] as well as developing countries[25].

Along similar lines, subsidies are not considered WTO incompatible *per se*. The ASCM classifies subsidies into three broad categories: i) prohibited; ii) actionable, and iii) non-actionable subsidies.[26] Non-actionable subsidies

[18] *See generally* Chad P. Bown, *The World Trade Organization and Antidumping in Developing Countries* (WBG, Working Paper No. 4014, 2006); Jørgen U. Nielsen, & Gert T. Svendsen, *EU Lobbying and Anti-Dumping Policy*, 46(1) J. WORLD TRADE 187 (2012).

[19] *See generally* Nandana Baruah, *Anti-Dumping Duty as a Measure of Contingent Protection: An Analysis of Indian Experience* (Ctr. for Dev. Stud., Trivendrum, India, Working Paper No. 377, 2005).

[20] *See generally* Jean-Christophe Maur, *Echoing Antidumping Cases: Regulatory Competitors, Imitation and Cascading Protection*, 21(6) WORLD COMPETITION 51 (1998).

[21] *See generally* Rachel Jafta, *Anti-dumping and Market Access: The Nature of the Beast in the New Millennium*, ECONEX (2006), https://econex.co.za/wp-content/uploads/2015/04/econex_research chnote_2.pdf; Joseph M. Finger & Julio J. Nogués, *Safeguards and Antidumping in Latin American Trade Liberalization* (WBG, Working Paper No. 4680, 2008); Michael O. Moore, *Argentina: There and Back Again?* (Geo. Wash. U., Inst. for Int'l Econ. Pol'y, Working Paper No. 2011-06, 2011); Dan Wei, *Antidumping in Emerging Countries in the Post-crisis Era: A Case Study on Brazil and China*, 16(4) J. INT'L ECON. L. 921 (2013).

[22] *See generally* Paul Brenton, *Anti-Dumping Policies in the EU and Trade Diversion*, 17(3) EUR. J. POL. ECON. 593 (2001); Ludo Cuyvers & Michel Dumont, *The Impact of Anti-Dumping Measures of the EU Against ASEAN Countries on Trade Flows* (Ctr. ASEAN Stud., Discussion Paper No. 45, 2004); Soonchan Park, *The Trade Depressing and Trade Diversion Effects of Antidumping Actions: The Case of China*, 20(3) CHINA ECON. REV. 542 (2009); Thomas J. Prusa, *The Trade Effects of U.S. Antidumping Actions*, *in* THE EFFECTS OF U.S. TRADE PROTECTION AND PROMOTION POLICIES 191 (Robert C. Feenstra ed., 1997).

[23] *See generally* Arastou Khatibi, *The Trade Effects of European Anti-dumping Policy* (Eur. Ctr. for Int'l Pol. Econ., Working Paper No. 07/2009, 2009).

[24] *See generally* Irene Brambilla et al., *Adjusting to Trade-Policy Changes in Export Markets: Evidence from U.S. Antidumping Duties on Vietnamese Catfish* (WBG, Working Paper No. 4990, 2009).

[25] *See generally* Michael O. Moore & Maurizio Zanardi, *Does Antidumping Use Contribute to Trade Liberalization in Developing Countries?* (Geo. Wash. Univ., Inst. for Int'l Econ. Pol'y, Working Paper No. 2008-01, 2008).

[26] *See generally* David Collins & Tae Jung Park, *Deafening Silence or Noisy Whisper: Omission Bias and Foregone Revenue Under the WTO Agreement on Subsidies and Countervailing Measures*, 51(6) J. WORLD TRADE 1069 (2017).

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are permissible on the grounds of an explicit reference in the legal text.[27] Conversely, actionable subsidies might be challenged only if they cause adverse trade consequences.[28] The provision of export subsidies may lead to serious trade diversion, resulting in subsidy and countervailing duty wars.[29] Several concern areas remain on the disciplining of subsidies. For instance, the sensitivity of ASCM with economic considerations has often been questioned.[30] The optimality of disciplining subsidies beyond the non-violation doctrine is also doubted.[31] Similarly, the development dimension is important, given the differential capabilities of developed and developing countries to augment the competitiveness of their local firms through supports.[32] Finally, as subsidies are often sector-specific and not often available in public domain, accessing detailed information on their nature and scope is complex in general[33], and more so for indirect subsidies (i.e., income foregone rather than budgetary transfers) in particular.[34] Under-reporting of subsidies data, therefore, leads to gross under-estimation of associated trade diversion.[35]

[27] This category unfortunately was applied only for a period of five years beginning with the entry into force of the WTO, since developing countries were afraid it would be excessively used by industrialised countries. Today efforts are under way to put it back, as the category is important for the promotion of small and medium-sized enterprises (SMEs) in developing countries as well. *See generally* Hyung-Jin Kim, *Reflections on the Green Light Subsidy for Environmental Purposes*, 33(3) J. WORLD TRADE 167 (1999); Sadeq Z. Bigdeli., *Resurrecting the Dead? The Expired Non-Actionable Subsidies and the Lingering Question of "Green Space"*, 8(2) MANCHESTER J. INT'L ECON. L. 2 (2011).

[28] The definition of a subsidy within the meaning of Articles 1 and 3 of the SCM Agreement (prohibited subsidies) was addressed by the Appellate Body in various cases, most prominently in Appellate Body Report, *U.S. — Tax Treatment for "Foreign Sales Corporations"*, ¶¶ 55-60, WTO Doc. WT/DS108/AB/R (adopted Mar. 20, 2000) as well as in Appellate Body Report, *Canada — Certain Measures Affecting the Automotive Industry*, ¶¶ 201, 208-15, WTO Doc. WT/DS139/AB/R, WT/DS142/AB/R (adopted June 19, 2000).

[29] *See generally* Renée Sharp & Ussif R. Sumaila, *Quantification of U.S. Marine Fisheries Subsidies*, 29(1) NORTH AM. J. FISHERIES MGMT. 18 (2009); Donald J. Boudreaux, *Do Subsidies Justify Retaliatory Protectionism?*, 31(3) ECON. AFF. 4 (2011).

[30] *See generally* PETROS C. MAVROIDIS ET AL., THE LAW AND ECONOMICS OF CONTINGENT PROTECTION IN THE WTO (2008).

[31] *See generally* Alan O. Sykes, *The Questionable Case for Subsidies Regulation: A Comparative Perspective*, 2(2) J. LEGAL ANALYSIS 473 (2010); Pierre Sauvé & Marta Soprana, *Disciplining Service Sector Subsidies: Where Do We Stand and Where Can We (Realistically) Go?*, 21(3) J. INT'L ECON. L. 599, 616 (2018).

[32] *See generally* ERICH SUPPER, IS THERE EFFECTIVELY A LEVEL PLAYING FIELD FOR DEVELOPING COUNTRY EXPORTS?, U.N. Doc. UNCTAD/ITCD/TAB/2, U.N. Sales No. E.00.II.D.22 (2001).

[33] *See generally Government Subsidies: Revealing the Hidden Budget*, PEW ECON. POL'Y GROUP (2018), http://www.subsidyscope.com/media/pdf/Subsidyscope%20Framing%20Paper.pdf.

[34] *See generally* Gao Liu & Dwight V. Denison, *Indirect and Direct Subsidies for the Cost of Government Capital: Comparing Tax-Exempt Bonds and Build America Bonds*, 67(3) NAT'L TAX J. 569 (2014).

[35] *See generally* CATCHING MORE BAIT: A BOTTOM-UP RE-ESTIMATION OF GLOBAL FISHERIES SUBSIDIES (Ussif R. Sumaila & Daniel Pauly eds., 2d ed. 2006).

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Though SFG measures are relatively infrequent *vis-à-vis* AD and SCM measures, they also can lead to serious trade diversions.[36] First, the measure has often been susceptible to political influences, both in developed and developing countries.[37] Second, RTAs sometime exclude regional partners from SFG investigations,[38] creating trade diversion.[39] Third, while SFG measures are important to facilitate the process of liberalisation,[40] the legal provisions like "significant cause of material injury" are open to interpretation, which enables countries to *unilaterally* undertake restrictive measures.[41] Fourth, SFG actions both explicitly and implicitly lead to a departure from MFN principles.[42] For instance, it has been noted that while calculating serious injury, the U.S. International Trade Commission (ITC) applied a higher standard for SFG *vis-à-vis* the same under AD and SCM cases.[43] Finally, the system of imposing tariff rate quotas, where licenses are often based on historical market shares in recent years, often discourage entry of new suppliers in the importing country.[44] The saving grace is that SFG actions are less discriminatory in nature as compared to the ADA actions.[45]

III. HOW IS INDIA PLACED IN GLOBAL CONTINGENCY CANVAS?

Table 1 summarizes India's position in the global canvas of contingency measures among the top ten players (initiations) in cumulative terms. The first set of columns reveals that several low-cost developing country

[36] *See generally* Chad P. Bown, *Why Are Safeguards Under the WTO So Unpopular?*, 1(1) WORLD TRADE REV. 47 (2002); James C. Hartigan, *Making Sense of Safeguards*, 19(5) REV. INT'L ECON. 809 (2011).
[37] *See generally* Lihu Chen & Yun Gu, *China's Safeguard Measures Under the New WTO Framework*, 25(5) FORDHAM INT'L L.J. 1169 (2001).
[38] *See generally* Committee on Safeguards, *Minutes of the Regular Meeting Held on 27 April 2012*, WTO Doc. G/SG/M/41 (July 16, 2012); Elías Baracat & Julio J. Nogues, *WTO Safeguards and Trade Liberalization: Lessons from the Argentine Footwear Case* (WBG, Working Paper No. 3614, 2005).
[39] *See generally* Paul Kruger et al., *Comparing Safeguard Measures in Regional and Bilateral Agreements* (Int'l Ctr. for Trade & Sustainable Dev., Issue Paper No. 22, 2009).
[40] *See generally* Robert Wolfe, *The Special Safeguard Fiasco in the WTO: The Perils of Inadequate Analysis and Negotiation*, 8(4) WORLD TRADE REV. 517 (2009).
[41] *See generally* Yong-Shik Lee, *Destabilization of the Discipline on Safeguards? Inherent Problems with the Continuing Application of Article XIX After the Settlement of the Agreement on Safeguards*, 35(6) J. WORLD TRADE 1235 (2001).
[42] *See generally* Chad P. Bown & Rachel McCulloch, *The WTO Agreement on Safeguards: An Empirical Analysis of Discriminatory Impact*, *in* EMPIRICAL METHODS IN INTERNATIONAL TRADE: ESSAYS IN HONOR OF MORDECHAI KREININ 145 (Michael G. Plummer ed., 2004).
[43] Robert E. Baldwin & Jeffrey W. Steagall, *An Analysis of ITC Decision in Antidumping, Countervailing Duty and Safeguard Cases*, 130(2) REV. WORLD ECON. 290, 306 (1994).
[44] *See generally* Chad P. Bown, *China's WTO Entry: Antidumping, Safeguards, and Dispute Settlement*, *in* CHINA'S GROWING ROLE IN WORLD TRADE 281 (Robert C. Feenstra & Shang-Jin Wei eds., 2010).
[45] Dennis Kitt, *What's Wrong with Volunteering? The Futility of the WTO's Ban on Voluntary Export Restraints*, 47(2) COLUM. J. TRANSNAT'L L. 359, 380 (2009).

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exporters (e.g., China, India, Indonesia, Thailand, Brazil) are currently getting affected by AD investigations, while among developed economies, South Korea, Japan and the U.S. also face these challenges. The presence of China and Russia in the list underlines the predicament for non-market economies.[46] India ranks fifth in the list, in terms of the challenges faced, thereby putting it as one of the most affected economies. On the other hand, in terms of cumulative AD initiations on imports, India ranks at the top, bypassing the traditional initiators like the EU and the U.S. Interestingly, there are five developing countries among the top ten initiators of the AD investigations, thereby underlining the growing usage of this provision therein.

The SCM intervention scenario in the world is observed from the next set of columns in Table 1. Like the case of AD, the developing countries dominate the list of exporters suffering from the initiations, with China and India collectively accounting for nearly 46% of the total cumulative initiations. Among developed economies, only the EU member states, South Korea and the U.S. get affected, by this provision. Conversely, the "quad", i.e., Australia, Canada, EU and the U.S. account for three-fourth of the total number of SCM initiations, though the growing use in developing countries can be understood from their ranks in the list. As an importer, India is one of the major developing country users of this provision. Finally, on SFG front, it is observed that the provisions are predominantly used by the developing countries, with India at the top position (12.39% of the cases).

Table 1 indicates that India, still a low-price exporter for several low and medium-tech product categories, is both a victim and a major initiator of the AD provisions. The underlying reason might emerge from the export and import basket composition of the country as well as its partner distribution. It is observed that the scale-intensive manufacturing sectors feature in both lists. Growing imports from China, which accounts for maximum number of AD actions, has been another driver.[47] Moreover, while the country is a modest user of SCM provisions on its imports, its exports have been majorly targeted by the trade partners. On SFG front, however, India's action can be understood in terms of its perceived threat to several key segments. Therefore, in the subsequent discussion, an attempt has been made to understand the sectoral perspective of India's contingency experiences.

[46] *See generally* NON-MARKET ECONOMIES IN THE GLOBAL TRADING SYSTEM: THE SPECIAL CASE OF CHINA (James J. Nedumpara & Weihuan Zhou eds., 2018).

[47] *See generally* Press Release, *One Hundred and Forty-Fifth Report on "Impact of Chinese Goods on Indian Industry"*, DEP'T-RELATED PARLIAMENTARY STANDING COMM. ON COM., PARLIAMENT INDIA (July 26, 2018), https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/Press_ReleaseFile/13/97/193P_2018_8_12.pdf.

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TABLE 1: India's Presence in the Contingency Measure Universe

Rank	Anti-Dumping Investigations (Jan. 1,1995-Dec. 31, 2018)				Subsidies and Countervailing Investigations (Jan. 1, 1995-Dec. 31, 2018)				Safeguard Investigations (Jan. 1, 1995-Dec. 31, 2018)	
	Major Exporters Suffering from Anti-Dumping Initiations		Major Imposers of Anti-Dumping Initiations		Major Exporters Suffering from Countervailing Initiations		Major Imposers of Countervailing Initiations		Major Imposers of Safeguard Initiations	
	Country	Incidence	Country	Incidence	Country	Incidence	Country	Incidence	Country	Incidence
1	China	1327 (23.18)	*India*	*919 (16.05)*	China	160 (29.57)	United States	243 (44.92)	*India*	*43 (12.39)*
2	South Korea	428 (7.48)	United States	694 (12.12)	*India*	*86 (15.90)*	European Union	81 (14.97)	Indonesia	29 (8.36)
3	Taipei, Chinese	302 (5.28)	European Union	510 (8.91)	South Korea	30 (5.55)	Canada	69 (12.75)	Turkey	25 (7.20)
4	United States	290 (5.07)	Brazil	417 (7.28)	Indonesia	24 (4.44)	Australia	31 (5.73)	Chile	20 (5.76)

5	*India*	*236 (4.12)*	Argentina	368 (6.43)	Thailand	19 (3.51)	*India*	*13 (2.40)*	Jordon	18 (5.19)
6	Thailand	230 (4.02)	Australia	344 (6.01)	United States	19 (3.51)	South Africa	13 (2.40)	Egypt	13 (3.75)
7	Japan	221 (3.86)	China	274 (4.79)	Turkey	18 (3.33)	Brazil	12 (2.22)	Philippines	13 (3.75)
8	Indonesia	211 (3.69)	Canada	241 (4.21)	European Union	15 (2.77)	China	12 (2.22)	Ukraine	13 (3.75)
9	Russia	167 (2.92)	South Africa	231 (4.03)	Viet Nam	14 (2.59)	Egypt	12 (2.22)	United States	12 (3.46)
10	Brazil	156 (2.72)	Turkey	227 (3.97)	Brazil	12 (2.22)	Peru	10 (1.85)	Czech Republic	9 (2.59)
Total		3568 (62.32)		4225 (73.80)		412 (73.18)		496 (91.68)		195 (56.20)

NOTE: Incidence indicates Number of cases initiated and Percentage share in the total number of cases in the parenthesis
SOURCE: Constructed by the authors from WTO AD, SCM and Safeguard databases

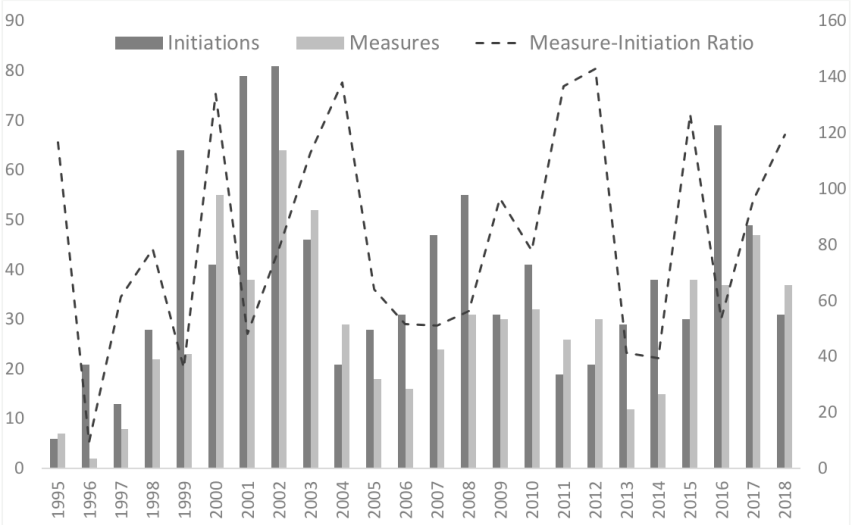
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Figures 1-5 show the annual movements in India's contingency investigations and final measures over 1995-2018. From Figure 1 it can be seen that AD protectionism by India increased during 1995-2002 simultaneously with the decline in the average tariff level, in line with the multilateral commitments. Use of AD, as a WTO-sanctioned cover to the industries, flourished simultaneously. Conversely, during 2001-04, with the progress of Doha Round negotiations, the AD activism remained relatively lower.[48] However, the 2007-08 recession fueled protectionism across countries with a simultaneous rise in tariff[49] and contingency measures[50] and, India has been no exception to this trend. A similar rise in contingency measures has been noticed during the 2014 and 2016 crisis as well. It is observed that the final AD measures expressed as a percentage of annual initiations for India increased over 2007-12, but declined afterward, barring an exception during 2015. Figure 2, on the other hand, shows an increase in AD actions against Indian exports over 2010-14, fueled by rise in post sub-prime crisis period protectionism.

[48] *See generally* Chakraborty et al., *supra* note 3.
[49] Chaisse et al., *supra* note 9, at 122.
[50] *See generally* Chad P. Bown, *The Global Resort to Antidumping, Safeguards, and Other Trade Remedies Amidst the Economic Crisis* (WBG, Working Paper No. 5051, 2009).

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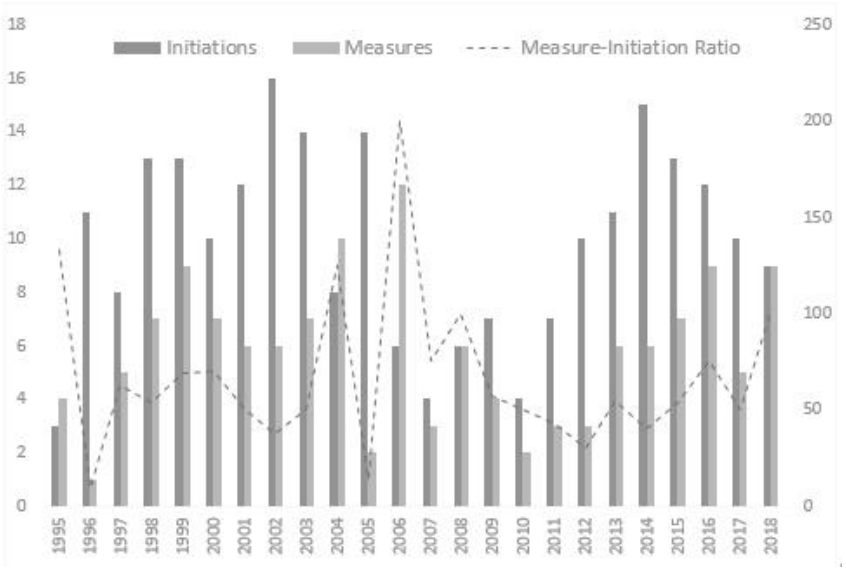
FIGURE 1: Presence of India in Anti-Dumping Universe—As Importer



SOURCE: Constructed by authors from WTO AD database

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FIGURE 2: Presence of India in Anti-Dumping Universe—As Exporter



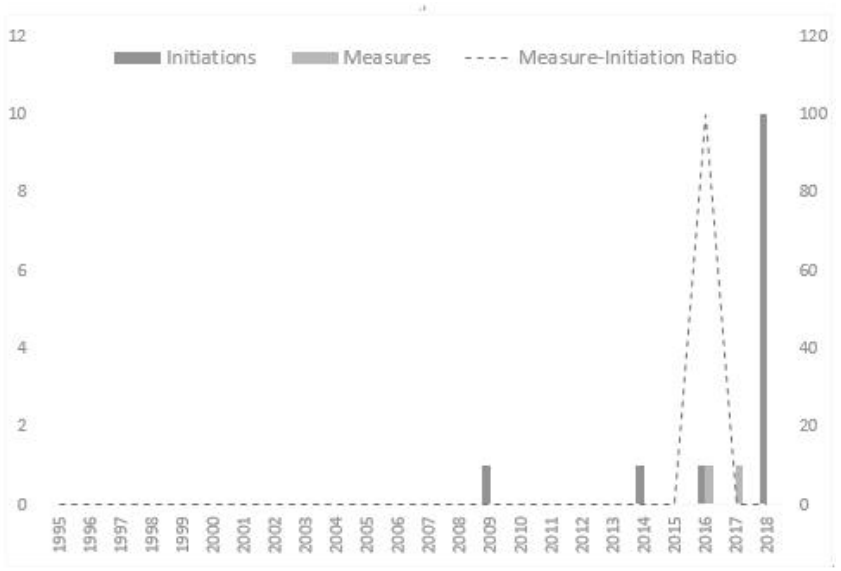
SOURCE: Constructed by authors from WTO AD database

Figure 3 shows that India's ASCM intervention is a recent phenomenon, showing a sharp upturn in 2018.[51] On the other hand, as an exporter, India faced rising ASCM investigations both during 1997-2003 and 2011-17. During the first period, India was new in the multilateral order, and the WTO-compatibility of several ongoing provisions were challenged. The second span is marked by deepened global recession on one hand and renewed export focus in the country on the other.

[51] *See generally* Kamala Dawar, *Government Procurement in the WTO: A Case for Greater Integration*, 15(4) WORLD TRADE REV. 645 (2016).

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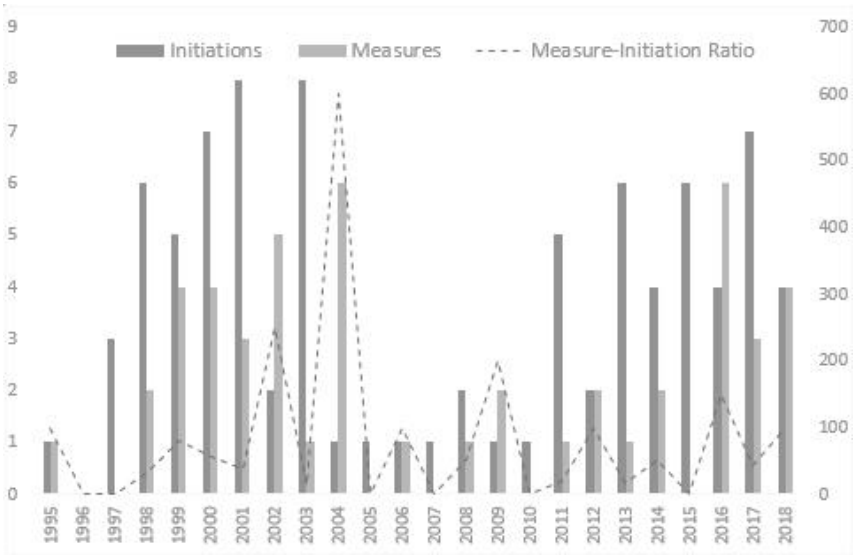
FIGURE 3: Presence of India in SCM Universe—As Importer



SOURCE: Constructed by authors from WTO SCM database

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FIGURE 4: Presence of India in SCM Universe—As Exporter



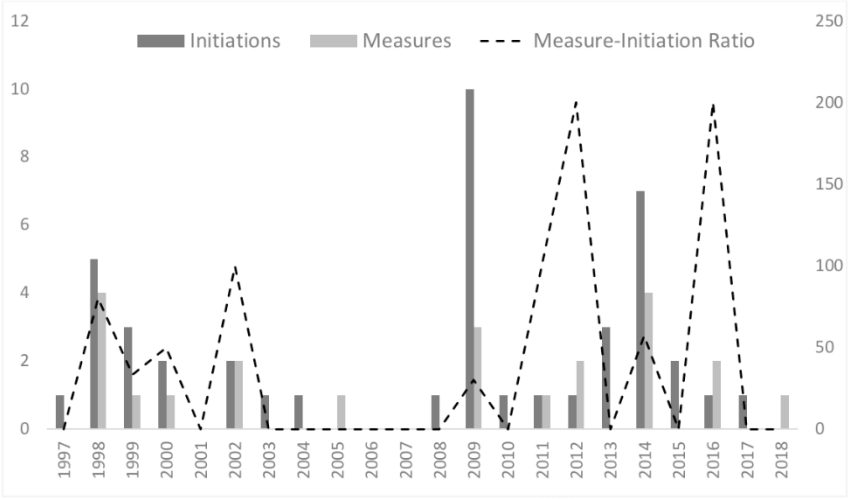
SOURCE: Constructed by authors from WTO SCM database

Figure 5 denotes that India's SFG initiations were moderate up to 2002 and declined in the following period. However, in 2009, the SFG activism reached a peak with ten initiations reported during that year. Over 2009-14, a moderately rising trend in SFG initiation has been noticed, with a sharp upturn during 2014. The pattern indicates that India's SFG activism increased in the post-recession period, in line with the corresponding global trend.[52]

[52] *See generally* Chaisse et al., *supra* note 7.

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FIGURE 5: Presence of India in Safeguard Universe—As Importer



SOURCE: Constructed by authors from WTO Safeguard database

The following argument can perhaps explain India's emergence as a major user of SFG provision like other developing countries. An importing country invoking SFG provisions (additional duties or quotas) needs to compensate the affected partner by allowing it to retaliate accordingly. However, as per Article 8.3 of WTO ASG, no retaliation is to be applied for three years since the implementation of the safeguard measure, which enables developing countries to enjoy a crucial breathing space.[53]

IV. INDIA'S CONTINGENCY PARTICIPATION: SECTOR AND COUNTRY PERSPECTIVES

The observations so far, particularly the presence of developed and developing countries among both affected and user groups in contingency activism, bring forward an important question: are the retaliation effects important in the Indian context? Table 2 attempts to analyze the "echo effect" of AD protectionism, concerning select major users of this provision.[54] The horizontal rows of the table depict the exporting countries while the vertical columns show the imposers of the AD investigations/measures. The

[53] Kitt, *supra* note 45, at 380.

[54] *See generally* Marc L. Busch & Krzysztof J. Pelc, *Law, Politics, and the True Cost of Protectionism: The Choice of Trade Remedies or Binding Overhang*, 13(1) WORLD TRADE REV. 39 (2014); Ning Meng et al., *Differences in the Determinants and Targeting of Antidumping: China and India Compared*, 48(43) APPLIED ECON. 4083 (2016).

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cumulative AD initiations are reported in the table, with AD measures shown in the parenthesis.

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TABLE 2: Global Anti-Dumping Usage Matrix—Initiations and Final Measures (Jan. 1, 1995-Dec. 31, 2018)

Exporting Country	Imposing Country: Argentina	Australia	Brazil	Canada	China	European Union	India	Indonesia	Japan	Korea, Republic of	Malaysia	Mexico	Russian Federation	South Africa	Taipei, Chinese	Thailand	Turkey	Ukraine	United States	Viet Nam	Total
Argentina	-	0 (0)	12 (5)	1 (0)	0 (0)	1 (1)	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	1 (1)	0 (0)	1 (0)	0 (0)	1 (1)	0 (0)	0 (0)	6 (7)	0 (0)	47 (24)
Australia	2 (1)	-	3 (0)	0 (0)	1 (0)	2 (2)	4 (3)	4 (1)	1 (1)	0 (0)	2 (1)	0 (0)	0 (0)	5 (3)	1 (1)	1 (0)	0 (0)	0 (0)	7 (3)	0 (0)	34 (16)
Brazil	63/42	4 (1)	-	9 (5)	2 (1)	7 (6)	10 (9)	0 (0)	0 (0)	2 (0)	0 (0)	6 (10)	1 (1)	10 (5)	1 (1)	1 (1)	2 (2)	1 (0)	17 (14)	0 (0)	156 (105)
Canada	1 (1)	6 (1)	3 (2)	-	2 (2)	1 (0)	6 (4)	1 (0)	0 (0)	3 (2)	1 (1)	1 (2)	0 (0)	0 (0)	0 (0)	0 (0)	1 (1)	0 (0)	21 (8)	0 (0)	48 (24)

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China	112 (82)	56 (26)	98 (72)	43 (32)	-	13 3 (9 8)	22 3 (1 84)	27 (1 4)	5 (5)	32 (2 6)	13 (1 0)	57 (4 2)	14 (1 1)	39 (2 1)	14 (8)	23 (1 7)	82 (7 7)	12 (9)	16 5 (1 29)	4 (3)	13 27 (9 86)	
European Union	1 (0)	0 (0)	9 (5)	0 (0)	29 (2 3)	-	67 (5 1)	2 (1)	0 (0)	0 (0)	3 (2)	1 (1)	1 (0)	0 (0)	0 (0)	1 (1)	1 (0)	0 (0)	0 (0)	0 (0)	12 8 (9 0)	
India	16 (11)	8 (1)	20 (11)	10 (5)	11 (9)	38 (21)	-	15 (9)	0 (0)	7 (5)	1 (0)	4 (4)	1 (1)	22 (12)	3 (2)	2 (1)	14 (11)	1 (0)	39 (23)	0 (0)	23 6 (1 39)	
Indonesia	8 (6)	27 (11)	6 (4)	5 (4)	6 (3)	16 (14)	40 (31)	-	1 (0)	8 (4)	13 (10)	1 (1)	0 (0)	9 (5)	3 (1)	5 (3)	9 (9)	0 (0)	22 (14)	1 (1)	21 1 (1 38)	
Japan	3 (5)	11 (8)	3 (2)	5 (5)	50 (39)	10 (8)	39 (31)	4 (2)	-	21 (18)	4 (1)	3 (2)	1 (0)	1 (1)	5 (2)	4 (2)	3 (0)	0 (0)	43 (27)	0 (0)	22 1 (1 60)	

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Korea, Republic of	16 (13)	36 (20)	23 (13)	18 (14)	40 (33)	31 (14)	68 (51)	19 (6)	3 (3)	-	15 (10)	6 (4)	1 (1)	16 (16)	10 (6)	12 (7)	14 (11)	1 (1)	53 (34)	2 (1)	42 8 (279)
Malaysia	4 (3)	20 (9)	3 (2)	3 (0)	7 (6)	18 (11)	36 (24)	11 (6)	0 (0)	7 (5)	-	0 (0)	0 (0)	8 (3)	1 (0)	2 (2)	8 (8)	0 (0)	7 (5)	1 (1)	15 2 (95)
Mexico	5 (3)	0 (0)	14 (9)	3 (3)	1 (1)	3 (3)	5 (4)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	27 (19)	0 (0)	81 (53)
Russian Federation	4 (2)	2 (1)	9 (6)	7 (3)	11 (9)	27 (22)	29 (21)	3 (3)	0 (0)	3 (3)	0 (0)	6 (6)	-	2 (2)	1 (1)	2 (2)	6 (7)	18 (15)	15 (8)	0 (0)	16 7 (126)
South Africa	10 (6)	6 (3)	9 (7)	5 (3)	2 (1)	4 (4)	14 (10)	0 (0)	1 (1)	0 (0)	0 (0)	0 (0)	1 (1)	-	0 (0)	1 (1)	0 (0)	0 (0)	18 (11)	0 (0)	78 (54)
Taipei, Chinese	11 (11)	21 (10)	19 (12)	13 (7)	19 (16)	27 (13)	64 (51)	14 (5)	1 (1)	7 (5)	9 (5)	5 (4)	4 (3)	11 (6)	-	8 (6)	11 (10)	0 (0)	36 (28)	1 (1)	30 2 (201)

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Thailand	7 (5)	31 (15)	11 (10)	5 (3)	9 (8)	21 (19)	52 (37)	10 (6)	0 (0)	7 (4)	10 (6)	0 (0)	0 (0)	5 (4)	1 (0)	-	14 (12)	0 (0)	17 (10)	0 (0)		23 0 (157)
Turkey	3 (3)	3 (0)	4 (1)	8 (6)	1 (1)	17 (3)	10 (7)	3 (1)	0 (0)	0 (0)	1 (0)	1 (1)	1 (1)	4 (2)	0 (0)	1 (1)	-	3 (2)	18 (11)	0 (0)		98 (54)
Ukraine	2 (2)	0 (0)	4 (4)	5 (5)	1 (1)	16 (13)	14 (8)	2 (2)	0 (0)	1 (1)	0 (0)	7 (7)	10 (9)	1 (1)	1 (1)	2 (1)	3 (4)	-	9 (8)	0 (0)		93 (78)
United States	17 (7)	13 (7)	43 (24)	19 (12)	50 (42)	17 (9)	41 (30)	2 (1)	0 (0)	15 (9)	1 (1)	31 (23)	1 (0)	10 (6)	0 (0)	0 (0)	4 (4)	2 (0)	-	0 (0)		29 0 (187)
Viet Nam	3 (2)	7 (3)	5 (4)	7 (4)	0 (0)	6 (4)	11 (10)	3 (2)	0 (0)	1 (1)	5 (3)	0 (0)	0 (0)	0 (0)	0 (0)	5 (4)	7 (7)	0 (0)	14 (10)	-		78 (58)
Total	36 (254)	84 (56)	41 (60)	24 (52)	27 (20)	51 (28)	91 (93)	13 (6)	13 (3)	14 (9)	90 (29)	15 (29)	47 (38)	23 (37)	46 (25)	82 (59)	22 (99)	65 (45)	69 (68)	9 (7)		57 25 (380)

SOURCE: Constructed by the authors from WTO AD database

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From the table, a strong regional AD "echo" pattern is emerging, e.g., within the Southern Common Market (MERCOSUR) (Argentina–Brazil)[55], East Asia (South Korea–China) and NAFTA (Canada–Mexico–U.S.).[56] Interestingly, a strong developed-developing country "echo" is noticed in general (U.S.–China), and involving India in particular (EU–India; U.S.–India). A similar but weaker "echo" for India can be noted involving developing countries like Brazil, China, Indonesia, South Africa and Turkey. AD activism by India on China or South Korea is more intense as compared to the corresponding actions by these countries on Indian exports. The data reveals that India is undertaking the AD actions against both developing (e.g., Brazil, China, Indonesia, Malaysia, Thailand) and developed (e.g., EU, Japan, Russia, Singapore, Taiwan, U.S.) countries. The urge to protect the local industries from low-cost suppliers is clear, as India presently imposes 26.55% of its final AD duties on Chinese imports. It is interesting to note a number of RTA partner's (e.g., Indonesia, Japan, Malaysia, South Korea, Thailand) presence in the list. Conversely, Indian exports have suffered in both developing (e.g., Brazil, Indonesia, South Africa, Turkey) and developed (e.g., EU, U.S.) countries. Overall, the "echo" effect for AD activism for India is more prevalent against the EU, Indonesia and the U.S.

[55] *See generally* Diego Acosta, *Global Migration Law and Regional Free Movement: Compliance and Adjudication: The Case of South America*, 111 AM. J. INT'L L. UNBOUND 159 (2017); Daniel Benoliel & Bruno Salama, *Towards an Intellectual Property Bargaining Theory: The Post-WTO Era*, 32(1) U. PA. J. INT'L L. 265 (2010).

[56] *See generally* Bruce D. Fisher, *NAFTA: Testing Ricardo's Theory of Comparative Advantage by Empirical Evidence Pre-and Post NAFTA*, 15 CHI.-KENT J. INT'L & COMP. L. 1 (2015); Ksenia Polonskaya, *Diversity in the Investor-State Arbitration: Intersectionality Must Be a Part of the Conversation*, 19(1) MELBOURNE J. INT'L L. 259 (2018).

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TABLE 3: Global Subsidies and Countervailing Duties Usage Matrix— Initiations and Final Measures (Jan. 1, 1995-Dec. 31, 2018)

Exporting Country	Imposing Country																		
	Argentina	Australia	Brazil	Canada	China	European Union	India	Indonesia	Japan	Korea, Republic of	Malaysia	Mexico	Russian Federation	South Africa	Taipei, Chinese	Thailand	Turkey	Ukraine	United States	Viet Nam	Total
Argentina	-	0 (0)	0 (0)	0 (0)	0 (0)	2 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	5 (3)	0 (0)	11 (6)
Australia	0 (0)	-	0 (0)	0 (0)	1 (0)	1 (1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	3 (1)
Brazil	0 (0)	0 (0)	-	3 (1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (4)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	8 (5)	0 (0)	12 (10)
Canada	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	12 (5)	0 (0)	12 (5)
China	0 (0)	17 (10)	1 (1)	26 (22)	-	12 (7)	8 (2)	0 (0)	0 (0)	0 (0)	0 (0)	1 (1)	0 (0)	1 (0)	5 (0)	2 (0)	0 (0)	0 (0)	82 (54)	0 (0)	16 0 (97)

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European Union	3 (3)	0 (0)	0 (0)	1 (1)	3 (2)	-	0 (0)	0 (0)	0 (0)	0 (0)	1 (1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	15 (12)
India	0 (0)	1 (1)	7 (3)	9 (5)	2 (1)	21 (14)	-	0 (0)	0 (0)	0 (0)	3 (2)	0 (0)	9 (4)	0 (0)	0 (0)	1 (1)	0 (0)	31 (18)	0 (0)	86 (49)
Indonesia	0 (0)	1 (0)	2 (1)	2 (1)	0 (0)	6 (2)	1 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	11 (6)	0 (0)	24 (10)
Japan	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Korea, Republic of	0 (0)	0 (0)	0 (0)	3 (1)	0 (0)	7 (2)	0 (0)	1 (1)	-	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	18 (10)	0 (0)	30 (14)
Malaysia	0 (0)	1 (1)	0 (1)	1 (0)	0 (0)	4 (2)	1 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	2 (0)	0 (0)	11 (4)
Mexico	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (1)	0 (0)	1 (1)
Russian Federation	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	1 (1)	1 (0)	0 (0)	3 (1)
South Africa	0 (0)	1 (0)	1 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	0 (0)	2 (2)	0 (0)	7 (4)
Taipei, Chinese	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	6 (3)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	0 (0)	23 (1)	0 (0)	10 (4)

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Thailand	0 (0)	0 (0)	1 (0)	3 (1)	0 (0)	5 (1)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	7 (1)	0 (0)	19 (3)
Turkey	0 (0)	1 (0)	0 (0)	3 (1)	0 (0)	2 (1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	11 (7)	0 (0)	18 (9)
Ukraine	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	0 (0)	2 (0)
United States	0 (0)	1 (1)	0 (0)	3 (0)	6 (5)	3 (1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	-	0 (0)	19 (10)
Viet Nam	0 (0)	2 (2)	0 (0)	3 (2)	0 (0)	1 (0)	2 (2)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	6 (3)	-	14 (5)
Total	3 (3)	31 (15)	12 (9)	69 (35)	12 (8)	81 (39)	13 (2)	0 (0)	1 (1)	0 (0)	0 (0)	6 (11)	1 (0)	13 (5)	5 (0)	0 (0)	3 (1)	2 (1)	243 (140)	0 (0)	541 (285)

SOURCE: Constructed by the authors from WTO SCM database

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The scenario for SCM initiations is reported in Table 3, while measures are shown in the parenthesis of the same table. The "echo" effect is noticed in this case as well (e.g., China–U.S.), through the evidence is relatively weaker. No strong "echo" involving India is, however, noticed on the SCM front, perhaps because proving more than 5% *ad valorem* subsidization in the partner markets is a complex exercise for many developing countries.[57] As a case in point, India so far has initiated eight investigations against China, but went for final measures only twice. However, on the export front, many SCM investigations against India has been originated in the developed countries, namely, Canada (10.20% of total measures against India), the EU (28.57%) and the U.S. (36.73%). Among major developing countries, South Africa (8.16%) has imposed several measures against India. In most of these cases, the WTO-compatibility of Indian export facilitating initiatives have come under lenses.

The fact that India is facing AD and SCM cases both in developed and developing countries requires a deeper look into the sectoral perspectives of the investigations. The sectoral composition of the contingency cases involving India and other leading economies are reported in Tables 4 and 5.

[57] *See generally* Bruce A. Blonigen & Wesley W. Wilson, *Foreign Subsidization and Excess Capacity*, 80(2) J. INT'L ECON. 200 (2010).

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The first set of columns in Table 4 shows the AD scenario for select user countries at the Harmonized System (hereinafter "HS") sectional level, where the actions of the EU, India, and the U.S. have been compared. It is observed from the table that India has intervened significantly on chemical products (46.17% of India's total number of final AD measures), plastic and rubber products (13.85%), textile (10.67%), base metals (9.37%) and machinery (9.66%). This observation is in line with the scenario in other developing countries, e.g., Brazil and China.[58] On the other hand, in the EU, the focus of AD activism is primarily on chemical products (19.51% of EU's total number of final measures), base metals (41.46%) and machinery (9.75%). The U.S. concentrated more on chemical products (9.75% of U.S.'s total number of final measures) and base metals (57.47%), though AD on other groups including primary products, is also noted. India, however, has not taken recourse to AD on primary products in any significant manner.

The next set of columns compare the SCM interventions of the EU, India, and the U.S. As noted earlier, India is a marginal player in this regard and has so far initiated only thirteen investigations, notably on chemical and base metals. Conversely, the EU and the U.S. are among the heavy users of this provision. The EU has undertaken SCM interventions on plastic and rubber products (23.07% of EU's total number of final measures), textile products (12.82%), base metals (30.76%) and machinery (12.82%). Finally, in the U.S., while SCM activism is quite high on base metals (57.85% of U.S.'s total number of final measures), focus on chemical products (10.00%), rubber and plastic products (7.14%) and machinery (5.71%) is also visible.

No clear sectoral trend, however, emerges from the SFG measure analysis, underlining the importance of country-specific domestic compulsions behind the interventions. For instance, in India, nearly 53.48% of the SFG investigations and 72.72% of the final measures are imposed on chemical products. On the other hand, Indonesia's SFG initiations have mainly been carried on base metals, where 41.37% of the investigations and 55.55% of the final measures are concentrated. On the other hand, the SFG actions in Turkey are spread across categories.

The sectoral analysis reveals that India has not been a major user of contingency measures on the primary products. Only a handful of such product groups have faced SFG investigations. Mineral products have, however, faced AD investigations and measures at times. Moreover, India at times imposed contingency measures on both low-tech (e.g., plastic and rubber, textile and garments, stone and cement) and high-tech (e.g., chemical, base metals, machinery) product groups. Interestingly, unlike the case of the EU and the U.S., simultaneous AD and SCM activism in base

[58] *See generally* Chaisse & Chakraborty, *supra* note 7.

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metals and machinery are not noticed in India, through these sectors receive subsidies (particularly energy and fuel related) in several partner countries.

Table 5 looks at the other side of the coin, i.e., the distribution of the sectors affected by contingency measures in select exporting countries. Six entities, namely Brazil, China, EU, India, Indonesia, and South Korea, are considered here for the analysis. As an exporter, India has faced a limited number of challenges in primary products, and the actions have concentrated both on low-tech (e.g., plastic and rubber, textile and garments) and high-tech (e.g., chemical, base metals, machinery) product groups. Interestingly, barring the exception of textile and garments, Indian sectoral exports generally faced both AD and SCM actions, which underline the hindrances to enhance export market access.

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TABLE 4: Sectoral Contingency Measure Usage Scenario for Select Importer Countries

HS Section	Description	Anti-Dumping Measures (Jan. 1, 1995-Dec. 31, 2018)				Subsidies and Countervailing Measures (Jan. 1, 1995-Dec. 31, 2018)				Safeguard Measures (Jan. 1, 1995-Dec. 31, 2018)			
		EU	India	U.S.	Total	EU	India	U.S.	Total	India	Indonesia	Turkey	Total
I	Live Animals; Animal Products	8 (4)	0 (0)	15 (11)	60 (31)	3 (2)	0 (0)	4 (1)	16 (6)	0 (0)	1 (0)	0 (0)	20 (9)
II	Vegetable Products	2 (2)	0 (0)	13 (10)	63 (38)	0 (0)	0 (0)	3 (1)	12 (9)	1 (1)	1 (1)	0 (0)	21 (13)
III	Animal or Vegetable Fats and Oils, Prepared Edible Fats, etc.	0 (0)	1 (0)	0 (0)	15 (3)	0 (0)	0 (0)	0 (0)	8 (5)	1 (0)	0 (0)	0 (0)	4 (1)

IV	Prepared Foodstuffs; Beverages, Spirits; Tobacco, etc.	2 (1)	0 (0)	10 (10)	80 (49)	0 (0)	0 (0)	12 (4)	37 (17)	0 (0)	2 (1)	0 (0)	27 (14)
V	Mineral Products	6 (6)	16 (7)	8 (3)	92 (52)	6 (1)	0 (0)	5 (4)	12 (6)	0 (0)	0 (0)	1 (1)	6 (2)
VI	Products of the Chemical or Allied Industries	97 (64)	392 (320)	92 (59)	1145 (810)	6 (2)	3 (0)	29 (14)	57 (27)	23 (16)	1 (0)	3 (3)	53 (33)
VII	Plastics and Articles Thereof; Rubber and Articles Thereof	36 (20)	129 (96)	67 (37)	755 (471)	17 (9)	2 (0)	23 (10)	59 (23)	3 (1)	3 (0)	2 (1)	19 (4)
VIII	Raw Hides and Skins, Leather products, etc.	4 (2)	0 (0)	0 (0)	5 (2)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)

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IX	Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork	9 (9)	15 (14)	5 (5)	107 (62)	0 (0)	0 (0)	6 (4)	7 (5)	2 (0)	0 (0)	0 (0)	7 (2)
X	Pulp of Wood; Paper and Paperboard and Articles thereof	2 (2)	20 (12)	21 (15)	279 (161)	1 (1)	0 (0)	12 (8)	18 (10)	2 (0)	2 (1)	2 (1)	13 (5)
XI	Textiles and Textile Articles	43 (23)	94 (74)	19 (14)	404 (283)	13 (5)	0 (0)	5 (3)	27 (9)	2 (0)	3 (3)	2 (1)	19 (9)
XII	Footwear, Headgear; Prepared Feathers and Articles Made therewith	9 (7)	1 (1)	0 (0)	35 (23)	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	1 (1)	7 (3)
XIII	Articles of Stone, Plaster, Cement, Ceramic Products; Glass and Glassware	13 (7)	29 (22)	6 (5)	234 (155)	4 (2)	0 (0)	1 (1)	5 (3)	0 (0)	3 (2)	3 (0)	30 (14)

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XIV	Gems and Jewelry	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
XV	Base Metals and Articles of Base Metal	198 (136)	108 (65)	383 (269)	1774 (1222)	22 (12)	7 (1)	123 (81)	237 (143)	8 (3)	12 (10)	1 (0)	83 (43)	
XVI	Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof, etc.	58 (32)	96 (67)	39 (23)	445 (290)	7 (5)	1 (1)	13 (8)	29 (18)	1 (1)	0 (0)	4 (3)	20 (11)	
XVII	Vehicles, Aircraft, Vessels and Associated Transport Equipment	10 (8)	8 (7)	10 (2)	64 (40)	2 (0)	0 (0)	5 (0)	13 (3)	0 (0)	0 (0)	1 (1)	7 (3)	
XVIII	Optical, Photographic, Cinematographic, Measuring, Checking, Precision,	1 (2)	7 (6)	0 (0)	64 (40)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)	3 (2)	4 (2)	

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	Medical or Surgical Instruments, etc.												
XIX	Arms and Ammunition; Parts and Accessories thereof, etc.	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
XX	Miscellaneous Manufactured Articles	12 (3)	3 (2)	6 (5)	103 (73)	0 (0)	0 (0)	2 (1)	3 (1)	0 (0)	1 (0)	1 (1)	6 (3)
XXI	Works of Art, Collectors' Pieces and Antiques, etc.	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
	TOTAL	510 (328)	919 (693)	694 (468)	5725 (3805)	81 (39)	13 (2)	243 (140)	541 (285)	43 (22)	29 (18)	25 (16)	347 (172)

SOURCE: Constructed by the authors from WTO AD, SCM and Safeguard databases

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TABLE 5: Sectoral Contingency Measure Barrier Scenario on Select Exporter Countries

HS Section	Description	Anti-Dumping Measures (Jan. 1, 1995-Dec. 31, 2018)						Subsidies and Countervailing Measures (Jan. 1, 1995-Dec. 31, 2018)					
		China	India	Indonesia	South Korea	Taipei, Chinese	Total	China	India	Indonesia	South Korea	Thailand	Total
I	Live Animals; Animal Products	2 (3)	1 (1)	0 (0)	0 (0)	0 (0)	60 (31)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)	16 (6)
II	Vegetable Products	9 (10)	4 (2)	3 (1)	0 (0)	0 (0)	63 (38)	0 (0)	0 (0)	0 (1)	0 (0)	0 (0)	12 (9)
III	Animal or Vegetable Fats and Oils, Prepared Edible Fats, etc.	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	15 (3)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	8 (5)

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IV	Prepared Foodstuffs; Beverages, Spirits; Tobacco, etc.	6 (5)	1 (0)	2 (0)	2 (0)	0 (0)	80 (49)	1 (0)	1 (0)	1 (0)	0 (0)	1 (0)	37 (17)
V	Mineral Products	17 (9)	0 (0)	4 (3)	2 (2)	1 (1)	92 (52)	1 (0)	0 (0)	2 (0)	0 (0)	0 (0)	12 (6)
VI	Products of the Chemical or Allied Industries	241 (202)	51 (30)	30 (26)	78 (54)	54 (45)	1145 (810)	18 (12)	16 (8)	2 (1)	0 (0)	4 (0)	57 (27)
VII	Plastics and Articles Thereof; Rubber and Articles Thereof	108 (74)	39 (28)	32 (19)	89 (52)	51 (34)	755 (471)	14 (6)	17 (9)	2 (1)	1 (0)	4 (1)	59 (23)
VIII	Raw Hides and Skins, Leather products, etc.	5 (2)	0 (0)	0 (0)	0 (0)	0 (0)	5 (2)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)

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IX	Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork	23 (18)	0 (0)	7 (4)	0 (0)	0 (0)	107 (62)	4 (3)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	7 (5)				
X	Pulp of Wood; Paper and Paperboard and Articles thereof	34 (20)	3 (2)	34 (19)	24 (12)	7 (4)	279 (161)	7 (5)	1 (1)	6 (3)	1 (0)	2 (0)	1 (0)	18 (10)				
XI	Textiles and Textile Articles	106 (80)	27 (16)	27 (18)	44 (33)	0 (0)	404 (283)	5 (2)	8 (3)	4 (1)	0 (0)	2 (0)	2 (1)	27 (9)				
XII	Footwear; Headgear; Prepared Feathers and Articles Made therewith	22 (16)	2 (0)	3 (3)	0 (0)	1 (1)	35 (23)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)				
XIII	Articles of Stone, Plaster, Cement, Ceramic Products; Glass and Glassware	89 (64)	6 (3)	21 (13)	0 (0)	7 (1)	234 (155)	3 (3)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	5 (3)				

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XIV	Gems and Jewelry	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
XV	Base Metals and Articles of Base Metal	399 (296)	84 (47)	32 (22)	138 (97)	104 (66)	1774 (1222)	81 (53)	36 (26)	7 (4)	19 (9)	6 (2)	237 (143)	
XVI	Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof, etc.	150 (107)	14 (7)	9 (6)	45 (26)	25 (19)	445 (290)	15 (11)	6 (2)	0 (0)	7 (5)	0 (0)	29 (18)	
XVII	Vehicles, Aircraft, Vessels and Associated Transport Equipment	36 (20)	0 (0)	1 (2)	2 (1)	5 (3)	64 (40)	8 (1)	0 (0)	0 (0)	0 (0)	0 (0)	13 (3)	

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XVIII	Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments, etc.	19 (13)	2 (1)	0 (0)	3 (1)	2 (1)	64 (40)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
XIX	Arms and Ammunition; Parts and Accessories thereof, etc.	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
XX	Miscellaneous Manufactured Articles	61 (47)	2 (2)	6 (2)	1 (1)	7 (6)	103 (73)	3 (1)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	3 (1)

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XXI	Works of Art, Collectors' Pieces and Antiques, etc.	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
	TOTAL	1327 (986)	236 (139)	211 (138)	428 (279)	302 (208)	5725 (3805)	160 (97)	86 (49)	24 (10)	30 (14)	19 (3)	541 (285)	

SOURCE: Constructed by the authors from WTO AD, SCM and Safeguard databases

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V. INDIA ON THE CONTINGENCY PLANE: SECTORAL DRIVERS

The analysis reveals that while India has emerged as a major user of AD and SFG provisions, it has also been a victim of the AD and SCM interventions abroad. There is a need to understand the drivers behind this development. The demand for contingency measures often arises from the perceived threat by the domestic industry in the aftermath of tariff reforms as well as growing familiarity with WTO provisions.[59] For instance, in 2011 Indonesia justified the upward movement in its SFG notifications on the ground of growing "awareness" of their domestic industry to seek protection through contingency channels from the "negative effects of trade liberalization."[60]

To understand the underlying drivers of contingency measures in India, an analysis on the country's tariff and trade scenario, for sectors witnessing a higher degree of AD measures, is provided next. Table 6 shows the sectoral (at HS 2-digit level) tariff scenario in India during 2001-04 (reliance on multilateral reforms), 2005-09 (inclination towards RTA participation), 2010-13 (deepened RTA participation) and 2014-18 (RCEP negotiation phase), as obtained from the WITS data.[61] First, a declining linear trend is noted both in simple and weighted average effective applied tariffs across sectors. Second, a relatively lower weighted average tariff further underlines the openness of India's import regime.[62] The demand for contingency measures may increase due to the declining tariff cover over the period, as evident from the table.[63]

The evolving focus of the policymakers towards reform can be observed from another angle, namely—domestic and international peak tariffs[64], as well. For comparability across countries, imposition of tariff in excess of 15% (a fixed benchmark) at the HS 6-digit level of tariff classification is noted as an international peak tariff. Hence presence of HS 6-digit tariff lines with tariff rates above 15% (i.e., international tariff peaks) within a HS 2-

[59] *See generally* Edwin Vermulst & Folkert Graafsma, *WTO Dispute Settlement with Respect to Trade Contingency Measures*, 35(2) J. WORLD TRADE 209 (2001); Julien Chaisse, *Deconstructing the WTO Conformity Obligation: A Theory of Compliance as a Process*, 38(1) FORDHAM INT'L L. J. 57 (2015).

[60] *See generally Indonesia, Ukraine Lead Safeguard Notifications to the WTO*, WTO (May 2, 2011), http://www.wto.org/english/news_e/news11_e/safe_02may11_e.htm; Patricia Tovar, *Preferential Trade Agreements and Unilateral Liberalization: Evidence from CAFTA*, 11(4) WORLD TRADE REV. 591 (2012).

[61] WORLD INTEGRATED TRADE SOLUTION, https://wits.worldbank.org/ (last visited Feb. 6, 2020).

[62] *See generally* Douglas A. Irwin, *Trade Restrictiveness and Deadweight Losses from US Tariffs*, 2(3) AM. ECON. J.: ECON. POL'Y 111 (2010).

[63] Eric V. Edmonds et al., *Trade Adjustment and Human Capital Investments: Evidence from Indian Tariff Reform*, 2(4) AM. ECON. J.: APPLIED ECON. 42, 45 (2010).

[64] *See generally* André M. Nassar et al., *Tariff Spikes and Tariff Escalation, in* HANDBOOK ON INTERNATIONAL TRADE POLICY 222 (William A. Kerr & James D. Gaisford eds., 2007).

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digit product group indicate a protectionist regime. On the other hand, the domestic tariff peaks are used to understand whether in the national context a sector is more or less protectionist and hence, the national aggregate average tariff is considered as the benchmark (a number that can vary every year). Suppose the average tariff for Country A is 6%. If a tariff line at HS 6-digit level faces a tariff above three times the aggregate average tariff (say, applied tariff is 20%, i.e., above 18 (6×3)%), it can be considered as a domestic peak tariff. If more number of domestic peak tariffs exist within a HS 2-digit product group, this indicate a protectionist regime.

In the current context, the mere presence of domestic and international peak tariffs in a sector for any year has been considered as a protectionist inclination. Table 6, which summarizes the domestic and international peak tariff related data on India as obtained from WITS database (World Bank), reports the period during which protectionist intent was revealed for each sector separately in the last two columns. If the entry in a row reads "No", then the sector has not witnessed high tariff spikes, either in international or domestic benchmarks, over 2001-18 period. Conversely, presence of peak tariff on either count, if any, has been clearly specified by indicating the relevant years under the appropriate columns. The data reveals that most of the sectors reported here are not highly protected through tariffs. For instance, barring the exception of rubber products (2005-18) and man-made staple fibers (HS 55), domestic tariff peaks have not been observed in the other sectors since 2010, i.e., during India's journey towards deeper RTA integration. On the other hand, it is seen from the table that international tariff peaks have been noticed in several sectors throughout the period, e.g., organic chemicals (HS 29), rubber products (HS 40), cotton (HS 52). However, in a wide range of sectors, e.g., garments (HS 61-62), base metals (HS 72-83) and machinery (HS 84-85), the country has not imposed an international peak tariff after 2006. The absence of tariff peaks may necessitate a demand for protection through contingency measures from the industries losing out from trade (i.e., who are witnessing a growing trade deficit).

Table 7 reports sectoral import growth and trade balance scenario for four periods: 2001-02 to 2004-05 (reliance on multilateral reform), 2005-06 to 2008-09 (inclination to RTA participation), 2009-10 to 2012-13 (deepened RTA participation) and 2013-14 to 2017-18 (RCEP negotiation phase), with Trade Map[65] data. It is observed from the table that India's import growth has been significantly higher during 2005-06 to 2008-09 and 2009-10 to 2012-13 periods, underlining the trade effects of India's reforms. It may also be noted that since 2008 India introduced the Duty Free Quota Free (DFQF) tariff preference for the Least Developed Countries (LDCs), as a result of

[65] TRADE MAP, http://www.trademap.org/ (last visited Feb. 6, 2020).

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which the imports from low-cost exporters like Vietnam significantly increased.[66] At the same time, the trade balance has worsened considerably against RTA partners, e.g., Association of Southeast Asian Nations (hereinafter "ASEAN") and RCEP negotiating partners (particularly, China).[67] The import growth rate decline during 2013-14 to 2017-18 period can be explained by the higher import base as well as the global recession effect.[68] However, for all the product groups like chemicals (HS 28-29), plastic and rubber (HS 39-40), textile and garments (HS 51-63), stone and cement (HS 68), base metals (HS 72-83) and machinery (HS 84-85), the sectoral import growth rate has been higher than the corresponding aggregate import growth rate. As a result, the import threat perception for these industries has been quite strong.[69] It is further observed from the table that the growing negative trade balance[70] in several sectors indicates mounting pressure on domestic industries, and the perceived need for protection. Only a handful of sectors, e.g., pharmaceuticals (HS 30), dyeing products (HS 32), essential oils (HS 33), carpets (HS 57), garments and made up textile articles (HS 61-63) and ceramics (HS 69), have shown a rising trade balance in recent period.

The political-economic undercurrent behind Indian contingency measures has often been noted.[71] The declining tariff cover, and the associated import growth and trade balance worsening can be considered as a major driver behind India's contingency activism. The contraction of the industrial sector in the recent period poses another challenge.[72] The demand for protection has been influenced by the industrial structure as well. In India, though the industrial concentration has come down over the years, it is relatively higher for capital-intensive (and consequently characterized by higher industrial concentration) sectors like electrical and machinery,

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[66] *See generally* Murali Kallummal et al., *Utilising India's Duty Free Preference Scheme for LDCs: Analysis of the Trade Trends* (Ctr. for WTO Stud., Indian Inst. of Foreign Trade, Working Paper No. CWS/WP/200/10, 2013).

[67] *See generally* Debashis Chakraborty et al., *Is It Finally Time for India's Free Trade Agreements? The ASEAN "Present" and the RCEP "Future"*, 9(2) ASIAN J. INT'L L. 359 (2019).

[68] The export and import growth decline for India continued in 2019 as well. For details, see *Exports Decline 6 Per Cent to $26.13 Billion; Trade Deficit Narrows*, ECON. TIMES (Sept. 14, 2019, 6:20 AM), https://economictimes.indiatimes.com/news/economy/indicators/exports-decline-6-per-cent-to-26-13-billion-trade-deficit-narrows/articleshow/71115357.cms; *see generally* Jonathan Eaton et al., *Trade and the Global Recession*, 106(11) AM. ECON. REV. 3401 (2016).

[69] *See generally* Katja B. Kleinberg & Benjamin O. Fordham, *Trade and Foreign Policy Attitudes*, 54(5) J. CONFLICT RESOL. 687 (2010).

[70] *See generally* Mohamed Arouri et al., *Oil Prices and Trade Balance: A Frequency Domain Analysis for India*, 34(2) ECON. BULL. 663 (2014).

[71] *See generally* Robert M. Feinberg, *Trends and Impacts of India's Antidumping Enforcement* (U.S. Int'l Trade Comm'n, Working Paper No. 2010-10A, 2010).

[72] BS Web Team & Agencies, *Industrial Output Shrinks 4.3% in Sep, in Weakest Showing Since Apr 2012*, BUS. STANDARD (Nov. 11, 2019, 7:34 PM), https://www.business-standard.com/article/economy-policy/industrial-output-contracts-for-second-straight-month-down-4-3-in-sep-119111101046_1.html.

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garments, chemical, iron and steel, plastics and rubber.[73] In other words, it might be easier for these industries to mobilize support for AD-SFG intervention.[74] The dynamics of AD activism within the chemical sector, as noted from Tables 4, 6 and 7, has come to the forefront at times.[75]

One major reason behind the perceived demand for protection might be the manufacturing sector slowdown in the aftermath of the continued global recession.[76] Given the relatively higher growth in imports, the stagnating industry is often exposed to steeper foreign competition, thereby raising the suspicion of price undercutting. It deserves mention that the demand for tariff protection in the face of rising cheap imports since the launch of RCEP negotiations has often been witnessed from a wide range of sectors,[77] namely: copper,[78] iron and steel,[79] aluminum,[80] cement,[81] sugar[82] etc. In a number of instances, AD actions have been undertaken in these sectors, characterized by gradual tariff reforms in the preceding period.[83] Concerns over zero duty imports of final goods through the RTA route and emergence of the inverted duty structure that reduces the operating margin of domestic

[73] *See generally* Alokesh Barua et al., *Entry, Competitiveness and Exports: Evidence from the Indian Firm Data*, 12(3) J. INDUSTRY COMPETITION & TRADE 325 (2012).

[74] *See generally* Leïla Choukroune, *EU and Developing Asia Trade Dispute Settlement: Assertive Legalism for Political Autonomy*, *in* HANDBOOK ON THE EU AND INTERNATIONAL TRADE 333 (Sangeeta Khorana & María García eds., 2018).

[75] Nirupam Banerjee, *Review Anti-dumping Duty on Cheap Rubber Chemicals, Gujarat High Court Directs Centre*, DNA INDIA (July 29, 2019, 6:35 AM), https://www.dnaindia.com/ahmedabad/report-review-anti-dumping-duty-on-cheap-rubber-chemicals-gujarat-high-court-directs-centre-2776823.

[76] Crina Viju & William A. Kerr, *Protectionism and Global Recession: Has the Link Been Broken?*, 45(3) J. WORLD TRADE 605, 605 (2011).

[77] *See generally* R. V. Anuradha, *Liberalization of Trade in Services Under RCEP: Mapping the Key Issues*, 8(2) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 401 (2013).

[78] Vikas Dhoot, *As Cheaper Imports Increases Copper Industry Sends SOS to Government*, ECON. TIMES (Oct. 14, 2015, 3:46 AM), https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/as-cheaper-imports-increases-copper-industry-sends-sos-to-government/articleshow/49344924.cms.

[79] Rakhi Mazumdar, *Government Hikes Import Duty on Steel Imports from China and South East Asia*, ECON. TIMES (June 18, 2015, 4:43 AM), https://economictimes.indiatimes.com/industry/indl-goods/svs/steel/government-hikes-import-duty-on-steel-imports-from-china-and-south-east-asia/articleshow/47708297.cms?from=mdr.

[80] Rakhi Mazumdar, *Budget 2016: Hike in Customs Duty Will Help Check Imports, Says Nalco CMD*, ECON. TIMES (Feb. 29, 2016, 7:37 PM), https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/budget-2016-hike-in-customs-duty-will-help-check-imports-says-nalco-cmd/articleshow/51197067.cms?from=mdr.

[81] *CMA Seeks Import Duty on Cement*, GLOBAL CEMENT (Apr. 15, 2015), http://www.globalcement.com/news/item/3531-cma-seeks-import-duty-on-cement.

[82] Shreya Jai, *Sugar Industry Wants Import Duty to Be Increased to 30 Percent*, ECON. TIMES (May 13, 2013, 5:00 AM), https://economictimes.indiatimes.com/markets/commodities/Sugar-industry-wants-import-duty-to-be-increased-to-30-pc/articleshow/20021562.cms?from=mdr.

[83] *See generally* Pallavi Kishore, *India's Experience with the Anti-Dumping Mechanism*, 2014(4) INT'L BUS. L.J. 317 (2014).

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players have been raised since the launch of the RCEP negotiations.[84] Empirical estimates reveal that Indian AD measures generally end up reducing Chinese export value and quantity,[85] apart from providing relief to the domestic players.[86] However, the contingency measures often targeted the intermediate products as well, which in the long run can negatively influence India's export performance.[87] For instance, SFG measures on the steel sector may lower the competitiveness of Indian players in the world market.[88]

On the subsidy front, India is among the major affected economies. The country over the period has removed a number of the support policies, in response to the concerns raised by the WTO Members. The measures so far questioned by the partners have targeted both the initiatives on domestic consolidation as part of development objectives or direct export-boosting incentives as part of foreign trade policies.[89] For instance, the Indian initiatives under Merchandise Exports from India Scheme (MEIS)[90] for supporting exports of cotton fabrics, both woven and knitted, and made-ups were objected by U.S. on the ground that the export share of India has already achieved competitiveness in these categories.[91] As India's share in these products crossed 3.25%, the U.S. earlier objected to their inclusion in market-linked focus product scheme (ML-FPS).[92] Some of the discords eventually reached the WTO dispute process. For instance, in the solar cells

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[84] Dilasha Seth, *FTAs Killing Manufacturing, DIPP Seeks Rectification of Inverted Duty Structure*, ECON. TIMES, (June 9, 2014, 4:00 AM), https://economictimes.indiatimes.com/news/economy/policy/ftas-killing-manufacturing-dipp-seeks-rectification-of-inverted-duty-structure/articleshow/36262822.cms?from=mdr.

[85] *See generally* Hylke Vandenbussche & Christian Viegelahn, *The Trade Impact of Indian Antidumping Measures Against China: Evidence from Monthly Data*, 48(1) FOREIGN TRADE REV. 1 (2013).

[86] *See generally* Aradhna Aggarwal, *Trade Effects of Anti-dumping in India: Who Benefits?*, 25(1) INT'L TRADE J. 112 (2011).

[87] Vermulst & Graafsma, *supra* note 59.

[88] *Steel User Industry Urges Government Not to Hike Import Duty*, HINDU BUSINESSLINE (July 13, 2019), https://www.thehindubusinessline.com/economy/steel-user-industry-urges-govt-not-to-hike-import-duty/article28419727.ece.

[89] *See generally* Arpita Mukherjee et al., *SEZs in India: Evolution, Policy Framework and Current Status*, *in* SPECIAL ECONOMIC ZONES IN INDIA 51 (Arpita Mukherjee et al. eds., 2016).

[90] A.V. Nageswara Rao, *Effectiveness of Merchandise Export India Scheme (Meis) in Export Promotion: A Case of Select Registered Exporters from Noida, Delhi-NCR Region*, 13(4) I-MANAGER'S J. MGMT. 40, 42 (2019).

[91] Kirtika Suneja, *US Opposes India's Latest Round of Incentives to Boost Textile Exports*, ECON. TIMES (Nov. 20, 2015, 4:39 AM), https://economictimes.indiatimes.com/industry/cons-products/garments-/-textiles/us-opposes-indias-latest-round-of-incentives-to-boost-textile-exports/articleshow/49852527.cms; *see generally* Reeti Gupta, *Dynamics of India's Commercial Service Exports Since 1991*, 1(2) AM. INT'L J. SOC. SCI. 44 (2012); Chaisse et al., *supra* note 9.

[92] Amiti Sen, *US Moves WTO Accusing India of Giving Fresh Export Subsidies to Textile Industry*, ECON. TIMES (Oct. 30, 2012, 6:27 AM), https://economictimes.indiatimes.com/industry/cons-products/garments-/-textiles/us-moves-wto-accusing-india-of-giving-fresh-export-subsidies-to-textile-industry/articleshow/17012826.cms.

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case, the U.S. objected to the policy of domestic content requirement (hereinafter "DCR") that the solar power producers were required to satisfy in order to access the "guarantee" of purchase of the energy produced by the government.[93] The DCR introduced by India was an important component of fulfilling a major target of the mission: "To create favourable conditions for solar manufacturing capability, particularly solar thermal for indigenous production and market leadership".[94] India had to discontinue the measure after its defeat at the Dispute Settlement Body (DSB). Interestingly, in the aftermath of the dispute, India challenged certain U.S. measures in the renewable energy sector.[95] While the dispute settlement panel found U.S. measures to be inconsistent with Article III:4 of the GATT 1994,[96] they preferred to exercise judicial economy[97] regarding India's claims under ASCM[98] Articles 3.1(b) and 3.2.[99]

[93] For details, see generally Appellate Body Report, *India — Certain Measures Relating to Solar Cells and Solar Modules*, WTO Doc. WT/DS456/AB/R (adopted Oct. 14, 2016); Anshuman Sahoo & Gireesh Shrimali, *The Effectiveness of Domestic Content Criteria in India's Solar Mission*, 62 ENERGY POL'Y 1470 (2013).

[94] For details, see generally MINISTRY NEW & RENEWABLE ENERGY, GOV'T INDIA, JAWAHARLAL NEHRU NATIONAL SOLAR MISSION: TOWARDS BUILDING SOLAR INDIA (2017), https://mnre.gov.in/sites/default/files/uploads/mission_document_JNNSM.pdf; Gireesh Shrimali & Anshuman Sahoo, *Has India's Solar Mission Increased the Deployment of Domestically Produced Solar Modules?*, 69 ENERGY POL'Y 501 (2014).

[95] *See generally* Joanna I. Lewis, *The Rise of Renewable Energy Protectionism: Emerging Trade Conflicts and Implications for Low Carbon Development*, 14(4) GLOBAL ENVTL. POL. 10 (2014).

[96] *See generally* Donald H. Regan, *Regulatory Purpose and "Like Products" in Article III:4 of the GATT (with Additional Remarks on Article II:2)*, 36(3) J. WORLD TRADE 443 (2002).

[97] *See generally* Marc L. Busch & Krzysztof J. Pelc, *The Politics of Judicial Economy at the World Trade Organization*, 64(2) INT'L ORG. 257 (2010).

[98] Dawar, *supra* note 51.

[99] For details, see the finding of the panel on DS510 (Panel Report, *United States — Certain Measures Relating to the Renewable Energy Sector*, WTO Doc. WT/DS510/R (circulated June 27, 2019)); *see generally* Fulvio M. Palombino, *Judicial Economy and Limitation of the Scope of the Decision in International Adjudication*, 23(4) LEIDEN J. INT'L L. 909 (2010).

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TABLE 6: Import and Tariff Scenario in India

HS Code	Product Groups	Effective Applied Tariff (Simple Average)				Effective Applied Tariff (Weighted Average)				Domestic Peaks	International Peaks
		2001-04	2005-09	2010-13	2014-18	2001-04	2005-09	2010-13	2014-18		
28	Inorganic Chemicals	29.51	10.66	6.87	6.53	24.94	9.22	6.13	5.72	No	2001-04
29	Organic Chemicals	28.90	10.78	7.02	6.46	25.12	10.19	6.21	5.69	No	2001-18
30	Pharmaceuticals	28.84	11.67	9.48	8.83	29.55	11.89	9.85	9.34	No	2001-04
31	Fertilizers	15.11	7.92	5.96	5.57	22.13	9.04	6.73	5.84	No	2001-04
32	Tanning or dyeing extracts	29.10	11.39	8.42	7.55	28.29	11.48	8.73	7.78	No	2001-04
33	Essential oils and resinoids	34.75	18.16	12.16	12.09	33.90	18.38	11.92	11.82	2001-08	2001-18
34	Soap and washing preparations	29.85	11.62	9.06	8.34	29.28	11.52	8.65	7.21	No	2001-04, 2018
35	Albuminoidal substances	29.93	17.85	13.67	12.76	29.97	15.12	12.73	11.65	No	2001-18

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36	Pyrotechnic products	30.00	11.99	9.99	9.57	30.00	12.00	10.00	9.95	No	2001-04
37	Photographic or cinematographic goods	25.75	11.73	9.59	8.31	25.59	11.96	9.89	8.64	No	2001-04
38	Miscellaneous chemical products	29.21	11.88	8.28	7.15	27.88	11.81	8.29	7.03	No	2001-18
39	Plastics and articles thereof	29.90	11.20	8.52	8.13	29.91	10.37	7.27	6.92	No	2001-04
40	Rubber and articles thereof	29.86	12.08	9.90	9.00	29.72	13.12	9.92	10.01	2005-18	2001-18
50	Silk	29.25	14.10	10.51	8.88	30.55	19.68	11.73	8.29	No	2001-10, 2015-18
51	Wool and animal hair	19.05	13.59	6.92	7.90	16.20	10.45	5.07	7.48	2006	2001-08, 2016
52	Cotton	25.86	12.75	8.82	7.66	12.90	11.20	3.02	1.50	2006	2001-18
53	Other vegetable textile fibres	29.60	12.46	9.01	7.41	27.30	11.79	8.69	4.08	No	2001-18
54	Man-made filaments	22.17	14.99	8.60	8.08	20.72	14.10	8.60	7.87	2006	2001-04, 2006

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55	Man-made staple fibres	24.66	13.79	8.49	8.16	22.03	12.03	8.44	8.05	2005-16	2001-06
56	Wadding, felt and nonwovens	24.03	11.87	9.58	8.18	23.30	11.42	9.43	7.45	No	2001-04
57	Carpets, etc.	30.00	13.05	9.52	8.31	30.00	14.26	9.62	6.27	No	2001-04, 2006
58	Special woven fabrics	28.26	15.43	9.53	7.93	26.76	15.16	9.62	8.59	2006	2001-04, 2006
59	Impregnated, coated, covered or laminated textile fabrics	27.56	11.95	9.57	8.69	26.18	11.99	9.72	9.15	No	2001-04
60	Knitted or crocheted fabrics	29.46	11.48	9.50	8.06	28.45	11.57	9.54	8.71	2006	2001-04, 2006
61	Articles of apparel and clothing accessories, knitted or crocheted	29.69	13.53	9.69	7.09	29.41	13.34	9.81	6.89	2006	2001-04, 2006
62	Articles of apparel and clothing accessories, not	29.69	16.10	9.63	6.58	29.08	15.61	9.66	3.40	2006	2001-04, 2006

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	knitted or crocheted												
63	Other made-up textile articles	29.19	11.72	9.23	8.20	26.75	11.02	8.91	7.57	No	2001-04, 2006
68	Articles of stone, plaster, cement, asbestos, mica or similar materials	30.00	11.86	9.58	8.49	29.99	11.67	9.70	8.94	No	2001-04
69	Ceramic products	28.56	11.14	8.56	7.47	27.25	10.17	7.48	7.42	No	2001-04
70	Glass and glassware	29.78	11.74	9.54	8.86	29.69	11.78	9.67	8.76	No	2001-04
72	Iron and steel	37.82	11.14	5.09	7.04	38.15	11.08	5.02	4.86	No	2001-05, 2007
73	Articles of iron or steel	29.93	11.82	9.62	8.63	29.84	11.71	9.74	8.36	No	2001-04
74	Copper and articles thereof	27.51	9.86	6.39	5.70	27.50	8.56	5.27	3.11	No	2001-04
75	Nickel and articles thereof	14.35	7.27	2.34	1.18	13.81	7.29	2.36	1.20	No	2001
76	Aluminium and articles thereof	18.19	9.88	6.03	6.56	17.54	8.56	3.29	4.82	No	2001-04

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78	Lead and articles thereof	26.25	8.63	5.24	4.26	26.25	8.45	4.82	3.13	No	2001-04
79	Zinc and articles thereof	27.50	9.26	5.28	4.79	27.50	8.97	4.92	2.90	No	2001-04
80	Tin and articles thereof	18.07	9.72	6.46	5.12	17.82	8.85	4.43	1.39	No	2001
81	Other base metals	29.73	10.16	6.97	6.04	29.60	9.86	6.16	5.93	No	2001-04
82	Tools and parts thereof of base metal	30.00	11.91	9.65	8.64	30.00	11.89	9.73	7.73	No	2001-04
83	Miscellaneous articles of base metal	29.97	11.87	9.59	8.56	30.00	11.97	9.74	8.92	No	2001-04
84	Machinery and equipment	25.04	10.19	6.78	6.24	22.15	8.55	5.75	5.25	No	2001-04
85	Electrical machinery and equipment	24.18	8.65	6.53	6.33	19.63	4.79	3.90	3.19	No	2001-04

SOURCE: Constructed by the authors from WITS data

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TABLE 7: Import and Trade Balance Scenario in India

HS Code	Product Groups	Import Growth Rate (%)				Trade Balance (USD Million)			
		2001-02 to 2004-05	2005-06 to 2008-09	2009-10 to 2012-13	2013-14 to 2017-18	2001-04	2005-09	2010-13	2014-18
28	Inorganic Chemicals	22.25	14.75	13.75	8.20	-862.66	-2278.52	-3183.86	-4033.78
29	Organic Chemicals	30.75	14.25	19.75	7.20	-262.61	-828.26	-3179.84	-4714.38
30	Pharmaceuticals	24.00	30.50	12.25	4.60	1219.48	3115.11	7391.15	11120.96
31	Fertilizers	49.25	67.50	2.25	4.00	-493.06	-5267.77	-7104.59	-5484.38
32	Tanning or dyeing extracts	22.50	14.75	16.25	8.00	295.12	433.34	662.23	980.54
33	Essential oils and resinoids	10.75	20.75	17.50	13.00	152.66	405.39	803.88	880.76
34	Soap and washing preparations	16.50	14.50	18.25	10.80	-52.96	-67.87	6.00	-181.25
35	Albuminoidal substances	30.50	16.50	17.75	10.40	20.18	53.67	0.56	-130.02
36	Pyrotechnic products	21.25	30.75	3.50	-4.40	12.46	40.36	71.46	89.63
37	Photographic or	7.00	3.50	-1.25	-3.80	-192.34	-242.14	-251.14	-203.13

	cinematographic goods										
38	Miscellaneous chemical products	24.25	22.25	13.25	9.40	-108.32	-326.14	-844.46	-1280.11		
39	Plastics and articles thereof	36.50	21.00	19.00	9.00	133.94	-1170.52	-3584.55	-6670.54		
40	Rubber and articles thereof	26.25	22.75	25.00	2.40	128.77	-39.94	-904.94	-531.91		
50	Silk	31.00	-0.75	-11.50	-1.60	83.07	-32.13	-90.20	-117.05		
51	Wool and animal hair	20.75	-3.00	17.00	0.60	-142.38	-178.79	-210.48	-193.44		
52	Cotton	3.50	3.00	19.00	7.60	1813.94	3148.19	8023.34	6643.78		
53	Other vegetable textile fibres	30.00	16.75	22.50	4.40	77.60	65.54	102.55	68.14		
54	Man-made filaments	19.00	3.25	11.00	4.00	428.32	823.90	1711.90	1394.03		
55	Man-made staple fibres	19.50	12.50	23.50	9.60	482.84	902.11	1509.40	1369.62		
56	Wadding, felt and nonwovens	24.50	4.50	20.00	14.20	7.76	29.62	138.75	110.58		
57	Carpets etc.	35.25	11.00	14.25	11.00	648.87	1085.46	1344.97	1653.62		
58	Special woven fabrics	37.25	6.00	11.00	5.20	100.36	93.14	150.85	183.72		
59	Impregnated, coated,	30.25	7.50	12.50	3.60	-114.51	-352.56	-530.09	-515.36		

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	covered or laminated textile fabrics								
60	Knitted or crocheted fabrics	26.25	15.00	25.50	8.80	-5.86	-42.64	-112.56	-208.94
61	Articles of apparel and clothing accessories, knitted or crocheted	11.75	33.75	39.50	23.60	2301.85	4046.59	5582.69	7521.19
62	Articles of apparel and clothing accessories, not knitted or crocheted	18.25	22.75	40.75	20.40	3384.00	5492.60	7356.50	8527.35
63	Other made-up textile articles	15.75	27.75	13.00	6.00	1330.75	2211.10	3513.92	4318.98
68	Articles of stone, plaster, cement, asbestos, mica or similar materials	35.25	22.00	20.50	15.00	293.82	597.00	659.17	658.98
69	Ceramic products	42.50	17.00	15.50	1.80	3.42	-198.13	-254.55	464.47
70	Glass and glassware	22.75	11.00	15.75	12.80	31.68	-48.08	-136.87	-320.12
72	Iron and steel	53.75	15.75	6.75	4.80	460.65	-2079.20	-3669.32	-2030.18
73	Articles of iron or steel	39.50	29.25	7.75	6.80	860.76	1545.68	3091.43	2704.47
74	Copper and articles	38.75	9.00	31.50	13.40	157.25	1035.81	1088.91	-1130.35

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	thereof									
75	Nickel and articles thereof	22.75	14.25	31.50	-1.20	-196.38	-463.54	-607.10	-506.40
76	Aluminum and articles thereof	29.75	18.75	23.75	12.40	33.31	-320.68	-1187.25	-676.61
78	Lead and articles thereof	41.75	26.00	9.00	11.20	-81.72	-280.60	-399.13	-385.51
79	Zinc and articles thereof	24.75	13.50	7.75	28.00	-104.30	30.11	326.03	-1.35
80	Tin and articles thereof	24.25	23.50	31.75	0.20	-13.30	-54.63	-157.77	-182.94
81	Other base metals	24.00	15.75	11.75	13.40	-53.95	-134.49	-194.15	-287.41
82	Tools and parts thereof of base metal	31.75	13.50	23.75	5.40	128.93	87.25	-0.31	-156.00
83	Miscellaneous articles of base metal	36.50	23.75	21.25	9.00	83.98	54.44	-125.32	-247.09
84	Machinery and equipment	33.00	18.75	8.75	6.60	-3907.00	-14942.75	-22083.44	-19509.80
85	Electrical machinery and equipment	39.00	22.25	5.50	12.40	-3866.30	-12573.31	-18689.62	-31673.47

SOURCE: Constructed by the authors from Trade Map data

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Apart from the supports granted through foreign trade policies, contingency policy interventions in India sometimes followed in response to demand from the industry. For instance, in 2015 the Cabinet Committee on Economic Affairs (CCEA)[100] decided to extend a three percent interest subsidy to pre and post-shipment export credit[101] for five years, which came into effect from Apr. 1, 2015 onwards to counter falling exports.[102] In addition, the Indian policies relating to Special Economic Zone (SEZ) and Electronic Hardware Technology Parks (EHTP)[103] embody several fiscal and non-fiscal incentives for both developers and operating units.[104] To qualify for the incentives, the export-oriented units (EOUs)[105] need to be net foreign exchange-earners within a period of five years, and this exclusive export contingent element is arguably inconsistent with WTO ASCM provisions.[106] Indian exports have also attracted ASCM investigations abroad citing provisions of duty-free imports under the Export Promotion Capital Goods (EPCG) Scheme.[107] Subsequently, several WTO members initiated SCM measures on India questioning the benefits conferred through the policy framework. U.S. noted that as India's Gross National Product (hereinafter "GNP") per capita has crossed the USD $1000 threshold consistently in the recent past, the country has moved beyond permissible exemption for the provision of subsidies, and therefore should, "end all of its export subsidies in all sectors of its economy."[108] India, on the other hand,

[100] *See generally* Abhinav Chandrachud, *The Emerging Market for Corporate Control in India: Assessing (and Devising) Shark Repellents for India's Regulatory Environment*, 10(2) WASH. U. GLOBAL STUD. L. REV. 187 (2011).

[101] *See generally* Klaus Vorpeil, *Bank Payment Obligations: Alternative Means of Settlement in International Trade*, 2014(1) INT'L BUS. L.J. 41 (2014).

[102] Press Trust of India, *Government Announces 3% Interest Subsidy to Boost Exports*, ECON. TIMES (Nov. 18, 2015, 4:57 PM), https://economictimes.indiatimes.com/news/economy/finance/government-announces-3-interest-subsidy-to-boost-exports/articleshow/49831591.cms; *see generally* D. Maithra, *Foreign Direct Investment and Economic Growth in India*, 3(5) INT'L J. APPLIED RES. 308 (2017).

[103] *See generally* Har Govind, *Important Changes in Indirect Taxes Through the Finance Act 2006*, 34(10) INTERTAX 502 (2006).

[104] *See generally* Sherzod Shadikhodjaev, *International Regulation of Free Zones: An Analysis of Multilateral Customs and Trade Rules*, 10(2) WORLD TRADE REV. 189 (2011).

[105] *See generally* Sumeet Jain, *You Say Nano, We Say No-No: Getting a Yes Instead for Special Economic Zones in India*, 32(1) NW. J. INT'L L. & BUS. 1 (2011).

[106] *See generally* Arpita Mukherjee et al., *Trade, Trade Agreements and Subsidies: The Case of the Indian Apparel Industry* (Indian Council Res. Int'l Econ. Rel., Working Paper No. 365, 2018); Fabian Bohnenberger, *The Language of World Trade Politics: Unpacking the Terms of Trade*, 18(2) WORLD TRADE REV. 359 (2019).

[107] Dawar, *supra* note 51; *see generally* Anwarul Hoda & Rajeev Ahuja, *Agreement on Subsidies and Countervailing Measures: Need for Clarification and Improvement*, 39(6) J. WORLD TRADE 1009 (2005).

[108] *U.S. Files WTO Challenge over India Export Subsidy Schemes*, 22(10) BRIDGES WKLY. 25, 26 (2018), https://www.ictsd.org/bridges-news/bridges/news/us-files-wto-challenge-over-india-export-subsidy-schemes.

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proposed extension of the subsidy phase-out period, without success.[109] In response to the U.S. complaint, the dispute settlement panel concluded that, "the United States had demonstrated the existence of prohibited export subsidies, inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement."[110]

As another case in point, subsidies on marketing and promotion services for the export of raw sugar was increased in 2014 from Rs. 3300 to Rs. 3371 per tonne.[111] Next year the level of subsidy was increased Rs. 4000 per tonne to tackle the glut in the domestic market.[112] While the direct supports have since then been reformed, in 2019 several WTO Members have questioned WTO-compatibility of the domestic price support measures extended to sugar and sugarcane sector in the country.[113] On the other hand, since 2018 India has become more vigilant on subsidized import flows from ASEAN[114] and China,[115] reflected in a rise in SCM investigations on these partners (Table 3).

Guided by the perceived import threat, India has also taken recourse to SFG measures in recent years. Even during the recent rounds of RCEP negotiations, India called for including a special SFG provision to counter any unanticipated import surge from China.[116] However, RCEP partners, as well as existing RTA allies, have approached India for policy rethink on this front.[117] The spread of SFG duties on key intermediate products and parts

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[109] *Id.* at 25.

[110] For details, see Panel Report, *India — Export Related Measures*, WTO Doc. WT/DS541/R (circulated Oct. 31, 2019) [hereinafter *India — Export Related Measures* Panel Report]. India has subsequently moved to the Appellate Body, challenging certain aspects of the Panel verdict.

[111] Madhvi Sally, *Sugar Export Subsidy Raised to Rs 3,371 Per Tonne*, ECON. TIMES (Aug. 11, 2014, 12:25 AM), https://economictimes.indiatimes.com/news/economy/foreign-trade/sugar-export-subsidy-raised-to-rs-3371-per-tonne/articleshow/40020140.cms?from=mdr.

[112] *Govt Approves Rs 6,268 Crore Subsidy to Promote Sugar Exports*, BUS. TODAY (Aug. 28, 2019, 8:57 PM), https://www.businesstoday.in/current/economy-politics/modi-govt-approves-rs-6268-crore-subsidy-to-export-60-lakh-metric-tonnes-of-sugar/story/375913.html.

[113] Apart from the Agreement on Agriculture (AoA), violations under several ASCM provisions has been cited. For details, see Constitution of the Panel Established at the Request of Australia, *India — Measures Concerning Sugar and Sugarcane*, WTO Doc. WT/DS580/8 (Oct. 29, 2019); Constitution of the Panel Established at the Request of Guatemala, *India — Measures Concerning Sugar and Sugarcane*, WTO Doc. WT/DS581/9 (Oct. 29, 2019).

[114] Press Trust of India, *India May Impose Anti-Subsidy Duty on Imports of Copper Wire Rods from 4 Nations*, ECON. TIMES (Nov. 7, 2019, 2:17 PM), https://economictimes.indiatimes.com/news/economy/foreign-trade/india-may-impose-anti-subsidy-duty-on-imports-of-copper-wire-rods-from-4-nations/articleshow/71953039.cms?from=mdr.

[115] B. L. Chandak, *Chinese Imports Are Undermining "Make in India"*, HINDU BUSINESSLINE (Oct. 25, 2018), https://www.thehindubusinessline.com/opinion/chinese-imports-are-undermining-make-in-india/article25324776.ece.

[116] Kirtika Suneja, *India for Safeguards to Counter Import Surge*, ECON. TIMES (Sept. 12, 2019, 5:24 PM), https://economictimes.indiatimes.com/news/economy/foreign-trade/india-for-safeguards-to-counter-import-surge/articleshow/71089419.cms.

[117] Amiti Sen, *Review Safeguard Duties on Solar Cell Imports, Japan Tells India*, HINDU BUSINESSLINE (May 1, 2019), https://www.thehindubusinessline.com/economy/review-safeguard-duties-on-solar-cell-imports-japan-tells-india/article27003929.ece.

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and components (e.g., imported solar panels) can reduce the country's domestic production and in turn export competitiveness.[118] Interestingly, while the demand for SFG measures from the industry continues,[119] the Directorate General of Trade Remedies (hereinafter "DGTR") is recently being more cautious in taking recourse to this measure.[120] For instance, the DGTR recently turned down the steel industry's demand for re-imposition of SFG duty on imports of various hot-rolled coil (HRC) products and sheets, citing non-fulfilment of necessary preconditions.[121]

In line with Chaisse and Chakraborty (2016), a brief analysis is conducted with the WTO disputes on contingency measures involving India. As complainant, India has so far successfully challenged both the procedural and implementation-related AD measures in partner countries: Article 5.4 (application "by or on behalf of the domestic industry"), Article 6 (evidence), Article 18.1 (imposition of no specific action in disagreement with GATT 1994), Article 18.4 (adoption of "all necessary steps" to conform with the ADA) and Annex II (determination on the basis of best information available when collecting direct evidence is a problem).[122] On ASCM front, India has so far been able to establish WTO-incompatibility of the following provisions: Article 1.1 (definition of a subsidy), Article 11.4 (application "by or on behalf of the domestic industry"), 14 (calculation of the amount of a subsidy in terms of the benefit to the recipient), Article 15 (determination of injury), Article 22.1 (sufficient evidence to justify initiation of an investigation), Article 22.2 (public notice of initiation), Article 32.1

[118] Shreya Jai & Subhayan Chakraborty, *Safeguard Duty Drags India's Solar Target Down This Year as Imports Fall*, BUS. STANDARD (Dec. 7, 2019, 2:44 AM), https://www.business-standard.com/article/economy-policy/safeguard-duty-drags-india-s-solar-target-down-this-year-as-imports-fall-119120400290_1.html.

[119] Twesh Mishra, *Steel Firms Move Trade Remedy DG Seeking 25% Safeguard Duty on Imports*, HINDU BUSINESSLINE (June 14, 2019), https://www.thehindubusinessline.com/economy/steel-firms-move-trade-remedy-dg-seeking-for-25-safeguard-duty-on-imports/article27942962.ece.

[120] *Creation of Directorate General of Trade Remedies (DGTR) in Department of Commerce*, BUS. STANDARD (May 11, 2018, 9:04 AM), https://www.business-standard.com/article/news-cm/creation-of-directorate-general-of-trade-remedies-dgtr-in-department-of-commerce-118051100125_1.html.

[121] Surya Sarathi Ray, *Steel Imports: DGTR Against Safeguard Duty Reimposition*, FIN. EXPRESS (Aug. 14, 2019, 12:47 AM), https://www.financialexpress.com/economy/steel-imports-dgtr-against-safeguard-duty-reimposition/1674843/.

[122] For details, see the DSB verdicts: Panel Report, *United States — Anti-Dumping and Countervailing Measures on Steel Plate from India*, WTO Doc. WT/DS206/R (adopted July 29, 2002) [hereinafter *US — Antidumping* Panel Report]; Appellate Body Report, *United States — Continued Dumping and Subsidy Offset Act of 2000*, WTO Doc. WT/DS217/AB/R, WT/DS234/AB/R (adopted Jan. 27, 2003) [hereinafter *US — Dumping* Appellate Body Report]; Appellate Body Report, *United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WTO Doc. WT/DS343/AB/R, WT/DS345/AB/R (adopted Aug. 1, 2008).

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(imposition of no specific action in disagreement with GATT 1994) and Article 32.5 (annual review of implementation operation).[123]

On the other hand as respondent, the Indian provisions related to ASCM has been found to be WTO-inconsistent on the following grounds: Article 3.1 (coverage of prohibition), Article 3.2 (removal of subsidies mentioned under Article 1), Article 27 (special and differential treatment) and Annex VII(b) (provisions for countries reaching GNP per capita greater than US$ 1000 per anum).[124] Similarly on safeguard front, several Indian interventions has been spotted for their incompatibility with Article 2.1 (condition for imposing safeguard measures), Article 3.1 (opportunity to exporters to respond and publication of the findings), Article 4.2 (evaluation of all relevant factors during investigation), Article 4.1 (definition of serious injury and threat of serious injury), Article 12.2 (notification of evidence to Committee on Safeguards), Article 12.3 (opportunity for consultations before applying or extending safeguard measures) and Article 12.4 (provisional safeguard measure).[125]

The observations indicate that over the last two decades India has become quite adept with the intricacies of WTO contingency instrument architecture. On one hand, it has increasingly complied with the multilateral provisions relating to tariff reforms, while simultaneously learning how to extend support to its domestic players through contingency channels on the other. India's activism on AD-SFG front over the recent period can be attributed to its "learning-from-trading", as during the early years of WTO it suffered from abuse of contingency provisions in trade partners on several occasions, some of which it was able to challenge successfully.[126] The experience of fighting WTO disputes have also enabled India to effectively identify the potential WTO-incompatibilities in other countries and accordingly protect the national interest. The Indian complaint at the WTO against the U.S. on the DCR in force in the renewable energy sector in several American states, after conceding defeat against U.S. in the solar panel case, is a notable case in point.[127]

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[123] For details, see the DSB verdicts: *US — Dumping* Appellate Body Report, *supra* note 122; *US — Antidumping* Panel Report, *supra* note 122; also see Appellate Body Report, *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WTO Doc. WT/DS436/AB/R (adopted Dec. 19, 2014).

[124] For details, see *India — Export Related Measures* Panel Report, *supra* note 110.

[125] For details, see the DSB verdict: Panel Report, *India — Certain Measures on Imports of Iron and Steel Products*, WTO Doc. WT/DS518/R (circulated Nov. 6, 2018).

[126] For details, see *US — Dumping* Appellate Body Report, *supra* note 122; *US — Antidumping* Panel Report, *supra* note 122; Appellate Body Report, *European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WTO Doc. WT/DS141/AB/R (adopted Mar. 12, 2001). *See generally* Jože P. Damijan & Črt Kostevc, *Learning from Trade Through Innovation*, 77(3) OXFORD BULL. ECON. & STAT. 408 (2015).

[127] Sahoo & Shrimali, *supra* note 93.

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Given the continuous rise in imports from China and ASEAN partners in several low-tech product groups including intermediate products and the slow recovery of the index of industrial production (IIP) in the country, it is expected that Indian players may continue to seek government intervention on imports through contingency route.[128] India's AD activism "echo" is already visible in case of China and Indonesia. The Sino-Indian AD "echo" may continue in future for multiple reasons, including: "(1) more Indian and/or Chinese industries discovering the benefits of antidumping laws; (2) China deciding to take a more aggressive retaliatory stance; and/or (3) both countries becoming increasingly reliant on antidumping laws, even when it is no longer needed for retaliation purposes".[129]

VI. CONCLUSION

Almost three decades have passed since India embraced export-oriented growth policies in 1991. The import policy reform has, however, been slower and followed after conceding defeat in several WTO disputes over patent[130] and investment regimes,[131] import restrictions[132] etc., in the late nineties. While in the initial years, the country maintained a cautious approach and relied only on the multilateral trade reforms for export promotion, from 2005 onwards, it started participating in RTA negotiations.[133] The Indian confidence to join RTAs with East and Southeast Asian partners originated from the growing sophistication of the manufacturing sector,[134] which improved the country's participation in Asian International production networks (hereinafter "IPN").[135] As a result, the country engaged with

[128] *See generally* Salam Shantikumar Singh et al., *Time Series Analysis of Index of Industrial Production of India*, 12(3) IOSR J. MATHEMATICS 1 (2016).
[129] *See generally* Mark Wu, *Antidumping in Asia's Emerging Giants*, 53(1) HARV. INT'L L.J. 1 (2012).
[130] *See* Appellate Body Report, *India — Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WTO Doc. WT/DS50/AB/R (adopted Jan. 16, 1998); Panel Report, *India — Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WTO Doc. WT/DS79/R (adopted Jan. 16, 1998).
[131] *See* Appellate Body Report, *India — Measures Affecting the Automotive Sector*, WTO Doc. WT/DS146/AB/R, WT/DS175/AB/R (adopted Apr. 5, 2002).
[132] *See* Appellate Body Report, *India — Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WTO Doc. WT/DS90/AB/R (adopted Sept. 22, 1999).
[133] *See generally* Debashis Chakraborty, *Picking the Right Alternative: Should India Participate in TPP Instead of RCEP?*, *in* PARADIGM SHIFT IN INTERNATIONAL ECONOMIC LAW RULE-MAKING: TPP AS A NEW MODEL FOR TRADE AGREEMENTS? 501 (Julien Chaisse et al. eds., 2017).
[134] *See generally* Isabelle Joumard et al., *Challenges and Opportunities of India's Manufacturing Sector* (OECD Econ. Dep't, Working Papers No. 1183, 2015).
[135] *See generally* Biswajit Nag, *Emerging Production Network Between India and ASEAN: An Analysis of Value Added Trade in Select Industries*, *in* TRADE, INVESTMENT AND ECONOMIC DEVELOPMENT IN ASIA: EMPIRICAL AND POLICY ISSUES 41 (Debashis Chakraborty & Jaydeep Mukherjee eds., 2016); Fukunari Kimura & Ayako Obashi, *Production Networks in East Asia: What*

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ASEAN, Japan and South Korea through a deeper trade arrangement and subsequently joined RCEP negotiations. The unilateral as well as regional reforms undertaken since late nineties marked a general embrace of free trade policies in the country.[136]

The unilateral, as well as RTA liberalizations, also alerted India to the need for improving manufacturing competitiveness. It is observed that the imported value content in several Indian industrial export categories has shown a rise from China and other Asian RTA partners.[137] On the other hand, despite entering into the RTA, India's penetration in Asian IPNs remained modest so far,[138] which can be partially attributed to the pending reforms to improve ease of doing business.[139] The growing competition through the RTA route and the widening sectoral trade deficit, as observed from Table 6, have motivated the Indian industry to call for protection since 2014 at regular intervals.[140] Interestingly, the National Manufacturing Policy was launched in 2011 (in the aftermath of India-ASEAN FTA launch in 2010) to facilitate industrial growth,[141] followed by the Make in India policy in 2014 (in the aftermath of the RCEP negotiation launch in 2013).[142] One of the major focuses of these policies has been to encourage the domestic manufacturing sector through the enhanced operations of the Indian players as well as relocation by global giants, many of whom are operational in East and Southeast Asia. The export facilitation measures under the Foreign

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We Know So Far, *in* PRODUCTION NETWORKS AND ENTERPRISES IN EAST ASIA: INDUSTRY AND FIRM-LEVEL ANALYSIS 33 (Ganeshan Wignaraja ed., 2016).

[136] *See generally* ARVIND PANAGARIYA, INDIA'S TRADE REFORM (2004), https://www.brookings.edu/wp-content/uploads/2016/07/2004_panagariya.pdf.

[137] *See generally* Anushree Chakraborty & Debashis Chakraborty, *Economic and Political Cooperation Between India and East Asia: The Emerging Perspective*, 4(2) J. ECON. & POL. ECON. 144 (2017).

[138] DAVID DOLLAR ET AL., GLOBAL VALUE CHAIN DEVELOPMENT REPORT 2019: TECHNOLOGICAL INNOVATION, SUPPLY CHAIN TRADE, AND WORKERS IN A GLOBALIZED WORLD 14 (David Dollar et al. eds., 2019).

[139] *See generally* KHAITAN & CO. & U.S.-INDIA BUS. COUNCIL, EASE OF DOING BUSINESS REFORMS IN INDIA: RECOMMENDATIONS FROM THE LEGAL PERSPECTIVE, https://www.usibc.com/wp-content/uploads/2019/07/USIBC-KCO-Ease-of-Doing-Business.pdf (last visited Jan. 30, 2020).

[140] *See* Mansi Taneja, *Extend Anti-Dumping Duty to All Stainless Steel Products: Ficci to Govt*, BUS. STANDARD (Jan. 2, 2014, 6:05 PM), https://www.business-standard.com/article/economy-policy/extend-anti-dumping-duty-to-all-stainless-steel-products-ficci-to-govt-114010200681_1.html; Press Trust of India, *Budget 2016: Raise Import Duty on Steel to 25%, Says Ficci*, ECON. TIMES (Feb. 22, 2016, 2:36 PM), https://economictimes.indiatimes.com/news/economy/foreign-trade/budget-2016-raise-import-duty-on-steel-to-25-says-ficci/articleshow/51090093.cms?from=mdr; Steelguru, *FICCI Call upon Government to Implement Safeguards on Aluminium Imports* (June 19, 2019), http://ficci.in/ficci-in-news-page.asp?nid=17671.

[141] *See generally* DEP'T OF INDUSTRIAL POLICY & PROMOTION, MINISTRY OF COMMERCE & INDUSTRY, GOV'T OF INDIA, NATIONAL MANUFACTURING POLICY (Nov. 4, 2011), https://meity.gov.in/writereaddata/files/National%20Manufacturing%20Policy%20(2011)%20(167%20KB).pdf.

[142] For detailed sectoral coverage and investment policies under the scheme, see MAKE IN INDIA, http://www.makeinindia.com/ (last visited Jan. 30, 2020).

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Trade Policy (2015-20) complemented these measures.[143] The emerging policy inclination, motivated to facilitate domestic manufacturing sector consolidation, however, might have a potential conflict with both multilateral and regional reforms as well as the realization of acquired competitiveness. The experience of the information and communication technology (hereinafter "IT") and telecom product segment is a case in point. For instance, to promote indigenous manufacturing of mobile handsets and accessories, supports through countervailing duty on imports under the phased manufacturing program (PHP) has recently been introduced.[144] India's share in global information and communication technology (ICT) product exports nevertheless still remains modest.[145] On the other hand, the Indian tariff structure on IT and telecom products have been challenged by both RTA partners[146] and non-partner[147] countries at the WTO dispute settlement forum, in light of the country's zero duty commitments under Information Technology Agreement (ITA).

To conclude, a major expectation of India from the Asian RTAs has been promotion of inward foreign investment under the Make in India scheme from partner countries (e.g., Japan, South Korea) and export growth therein.[148] While the foreign investments in India have reached a plateau in recent times,[149] the widening trade deficit[150] and the consequent threat to the domestic industries continued to be a major concern for the policymakers. The RCEP pullout underlines the country's lower confidence in coping with the commitment level demanded and the competitiveness of partner countries within the bloc.[151] The domestic reaction post-pullout indicates a

[143] *See generally* Preeti Chhillar, *Current Highlights of Foreign Trade Policy (2015-2020)*, 2(12) INT'L J. RES. 1276 (2015).
[144] For details, see FILE NO.4(8)/2016-IPHW NOTIFICATION, https://meity.gov.in/writereaddata/files/Notification_PMP_Cellular%20Mobile%20Handsets_28.04.2017.pdf.
[145] *See generally* WORLD TRADE ORGANIZATION, 20 YEARS OF THE INFORMATION TECHNOLOGY AGREEMENT: BOOSTING TRADE, INNOVATION AND DIGITAL CONNECTIVITY (2017).
[146] *See* Request for Consultation by Japan, *India — Tariff Treatment on Certain Goods*, WTO Doc. WT/DS584/1 (May 10, 2019).
[147] *See* Request for Consultation by the European Union, *India — Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WTO Doc. WT/DS/582/1 (Apr. 2, 2019); Request for Consultation by Chinese Taipei, *India — Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WTO Doc. WT/DS588/1 (Sept. 2, 2019).
[148] *See generally* Bryan Mercurio, *Trade Liberalisation in Asia: Why Intra-Asian Free Trade Agreements Are Not Utilised by the Business Community*, 6(1) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 109 (2011).
[149] In 2017-18 and 2018-19, the FDI equity inflows to India has been USD 44.85 and USD 44.36 Billions respectively. *See Investment Under Make in India*, PRESS INFO. BUREAU, GOV'T INDIA (July 3, 2019, 4:58 PM), https://pib.gov.in/PressReleseDetail.aspx?PRID=1576862.
[150] Biswajit Dhar, *India in No Shape to Benefit from RCEP*, HINDU BUSINESSLINE (Sept. 16, 2019), https://www.thehindubusinessline.com/opinion/india-in-no-shape-to-benefit-from-rcep/article29432168.ece.
[151] Renu Kohli, *What the RCEP Retraction Foretells*, TELEGRAPH INDIA (Nov. 19, 2019, 3:12 AM), https://www.telegraphindia.com/opinion/what-india-s-rcep-retraction-foretells/cid/1720177.

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shift away from freer trade in the country, and industry lobbying in coming future for interventions through contingency route cannot be ruled out.[152] The policy re-think towards future RTA negotiations and the associated costs is also evident.[153] The interventions by India in the contingency sphere on imports since 2014 needs to be viewed in this broader context. The current analysis also reveals that India's participation in the contingency universe, influenced by domestic compulsions, involves both RTA partners (e.g., ASEAN) and other WTO Member countries (e.g., the EU, U.S.). While the concerns over growing imports have guided the activism on AD and SFG front, the urge to boost competitiveness through export schemes brought Indian interventions under ASCM lenses. Given the continuing competitiveness-related challenges, as evident from the RCEP negotiating experience, the interventions by the policymakers both on export and import fronts are expected in the coming future as well. The "echo" effect noticed in Tables 2 and 3 concerning certain ASEAN members (e.g., Indonesia), China and other developed country markets (e.g., the EU, U.S.) pose a warning signal. Therefore, India needs to maintain a tightrope walk for balancing between domestic compulsions and multilateral commitments in coming future.

[152] Press Trust of India, *Experts Laud Decision to Avoid RCEP, Say It Will Protect Industry, Farmers*, BUS. STANDARD (Nov. 4, 2019, 11:51 PM), https://www.business-standard.com/article/pti-stories/not-joining-rcep-will-protect-interests-of-indian-industry-farmers-trade-experts-11911040 1508_1.html.

[153] *See generally* V. K. SARASWAT ET AL., NOTE ON FREE TRADE AGREEMENTS AND THEIR COSTS (2018), https://niti.gov.in/writereaddata/files/document_publication/FTA-NITI-FINAL.pdf.

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