

# Export subsidies face WTO challenge



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The Coronavirus pandemic played havoc with the economy of the country during the first half of last year. However, exports were beginning to look up in March — touching a record \$34 billion which was higher than \$33 billion in March 2019 — and signalling a sharp increase during the current fiscal. But now, the exporters face a triple whammy. First, they have not received export benefits worth approximately ₹35,000 crore under the Merchandise Export from India Scheme (MEIS). Under the MEIS, which was withdrawn on January 1 this year, exporters were eligible for duty credit scrip — a jargon to compensate for their loss on payment of duties — amounting to two-five per cent of the freight-on-board value of the shipment. Against a total approved amount of ₹55,000 crore, the Union Government has released just about ₹20,000 crore (mostly claims for 2019-20) thereby leaving a gap of ₹35,000 crore.

This has led to a liquidity crunch. And, with the Budget provision for export subsidy during 2021-22 being just ₹13,000 crore, the situation is unlikely to improve and will seriously impede the exporters' capacity to ramp up supplies to meet the resurgent demand from key global markets, particularly the US and EU.

Second, the Government has not yet notified the refund rates under the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme, which replaced the MEIS in January. Under the RoDTEP, exporters are eligible for reimbursement of various embedded taxes and levies paid on inputs consumed in exports — but not subsumed by the Goods and Services Tax (GST). A committee headed by former Commerce Secretary GK Pillai tasked with determining the refund rates, after an exhaustive exercise involving scrutiny of embedded levies on 8,000-9,000 tariff lines, had submitted its recommendations in March.

However, it will be some time before the Finance Ministry's Revenue Department — currently vetting the recommended tax remission rates — notifies them. The exporters need to factor in these while firming up contracts for supplies to importers. Although, eventually they will get the refunds retrospectively (from January 1) once the rates are notified, not knowing them in advance creates uncertainty with regard to their ability to decide what price to charge. If, the notified rate turns out to be lower than what the exporter has actually built into the offer price, he will be subjected to a loss.

The above two factors i.e. the delay in release of pending dues under the erstwhile MEIS and the delay in notification of refund rates under the RoDTEP, make for a deadly combination hampering the ability of exporters to sustain the tempo of revival in exports, buoyant demand conditions notwithstanding. Add to this a third factor which relates to the vulnerability of the Indian export subsidy regime to challenge at the World Trade Organisation (WTO). In early 2018, the US had challenged at least half a dozen of India's export subsidy schemes, including the MEIS. The US Trade Representative (USTR) argued that the schemes provide financial benefits to Indian exporters, creating an "uneven playing field", thereby enabling them to sell goods



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at a cheaper rate, which was detrimental to the interests of US manufacturers and workers. Even as export subsidies violate the WTO's rules, a limited exception was made for specified developing countries that may continue to provide export subsidies temporarily until they reach a defined economic benchmark of \$1,000 per capita gross national income (GNI). Further, developing countries that had a GNI of over \$1,000 per capita at the time when the WTO was set up in 1995, were allowed eight years to wind up their export promotion schemes.

India's GNI being below the \$1,000 per capita-mark, it initially availed of the exemption from no export subsidy obligation. But in 2015, it surpassed the threshold, thereby pushing it into the "no-exemption" zone. The USTR has accused India of not just continuing with subsidies, but further expanding their scope (the MEIS launched in 2015 was rapidly expanded to include more than 8,000 eligible products, nearly double the number of products covered at its inception).

Accordingly, it wanted India to withdraw the subsidies. But the latter insisted on a transition period of eight years that, too, from 2017 when the WTO notified the fact of its crossing the threshold. The Indian stance is anomalous.

India had ample opportunity to plan. It had 20 years available (1995 to 2015) to get adjusted to

a WTO-compatible scenario. That was not done and when the D-day arrived, it wanted more time, which was a totally illogical move. The leeway to withdraw subsisting export subsidies within the eight-year time frame was meant for those developing countries which in 1995 had GNI in excess of \$1,000 per capita. It can't be availed by India which falls in a different category.

The Indian position being untenable, the decision of the WTO Dispute Settlement Panel (DSP) has gone against New Delhi. We appealed against the DSP decision before the appellate authority of the WTO's Dispute Settlement Body (DSB) and a verdict is yet to come. Meanwhile, India has abolished the MEIS and launched RoDTEP. The official think tank may feel that the new scheme is "compliant" with the WTO's norms. But Damocles' sword still hangs over us as the US has already asked the Government to explain this scheme and its structure, and may even follow this up by challenging it at the WTO.

The confidence of Team Modi stems from the fact that the RoDTEP is a scheme only for the reimbursement of duties on exported products; hence, there is no financial support from the Government. The duties considered in fixing the refund rates include all the levies that are not subsumed by the GST. These are taxes on crude oil, natural gas,

petroleum products such as petrol, diesel, ATF, electricity, mandi tax, stamp duty, besides embedded central GST and compensation cess (under GST, the cess is levied on the so-called demerit products in the highest slab of 28 per cent and the proceeds thereof to be used for compensating the States for the shortfall in revenue).

Given the highly complex nature of these duties and the wide variations between the Centre and the States, it may not be easy to justify giving remission for each one of them. A better way of ensuring that exports are not hamstrung is to bring all the aforementioned products under the GST, besides abolishing all local taxes. The compensation cess will anyway go on March 31, 2022 — as per the extant law. As for the embedded central GST, mechanisms are available for its refund under the GST scheme which treats exports as zero rated. This will require a fundamental change in the extant approach of "first burdening exporters with taxes, then refunding" to one whereby "taxes are not levied in the first place or their burden is kept at a bare minimum." While, this transition may take some time, in the interregnum, remission rates under the RoDTEP should be notified without any further delay. All outstanding dues to exporters should be promptly cleared to enable them to ramp up supplies for catering to the resurgent demand.