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## BACK AND FORTH ON FREE TRADE & PROTECTIONISM

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It is over 200 years since nation states are devising strategies for economic growth based on the principle of free trade. Adam Smith, in the *Wealth of Nations* has advocated the concept of '*laissez faire*', that is markets must be free and left to regulate themselves by means of competition and self-interest. David Ricardo's theory of international trade notes that nations have comparative advantages in production of certain goods, and hence can achieve higher standards by trading in such goods.

With the dramatic increase in international trade, it became evident that international trade will not only need to be free, but also fair. The Indian Supreme Court in the case of *Reliance Industries*<sup>1</sup> has said that the purpose of trade remedial measures under Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) is not protectionism in the classical sense (as proposed by the German economist Friedrich List in his famous book '*National System of Political Economy*' published in 1841) but to prevent unfair trade practices, as an instrument of fair competition.

In the last decade, there has however, been a shift away from free trade, towards greater protectionism, owing to the aggressive domestic production and export policies of countries such as China. A prime example is the solar industry in China. The Chinese Government has over the last decade, subsidised its manufacturers and implemented incentives and tariffs to support the growth of its solar industry, to make China the leader in solar energy, with substantial economies of scale. As a consequence, solar cells, modules, or parts thereof, exported from China, attract anti-dumping, countervailing or safeguard duties in almost all large economies around the world, such as the EU, USA, India, Canada, etc.

India currently levies Countervailing Duty (CVD) on imports of textured tempered glass and EVA sheets for use in solar modules. India, further, proposes to increase the basic customs duty on solar modules from nil to 40%, and 25% on solar cells from April 1, 2022. Non-tariff barriers such as approvals from the Indian Government authorities for use of imported equipment have been introduced.

In Russia, import substitution is now a central tenet of Russian economic policy, including introduction of local content requirements for solar projects. The United States has banned import of materials used in solar panels from China, over alleged use of forced labour and human right abuses.

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<sup>1</sup> *Reliance Industries Vs Designated Authority* reported in 2006 (202) ELT 23 (SC)

Recently, the WTO Panel Report (*WT/DS562/R 2 September 2021*) approved the US Safeguard Measure on imports of crystalline Photovoltaic Products against China. The WTO Panel has held that a significant share of imports increased as a result of the expansion of Chinese-affiliated CSPV operations in other third countries, particularly Malaysia, Thailand, and Vietnam. The imposition of safeguard duty by the United States was held to be compliant with the WTO Agreement on Safeguards. Political compulsions and domestic interests coupled with an economic crisis brought on by the Covid pandemic has meant a more inward-looking approach, with greater emphasis on local manufacturing over imports. In late 2019, India's nodal tendering agency for renewable energy Solar Energy Corporation of India (SECI) issued a landmark project development tender for 12 GW of solar generation capacity which included a tied contract for 3 GW of domestic module manufacturing capacity. In April 2021, the Indian government introduced a Production-Linked Incentive (PLI) scheme for manufacturing solar PV cells, which offered financial incentives to manufacturers of high-efficiency solar PV modules. No doubt free trade has brought tremendous benefits in terms of economic growth; Controlled and undemocratic economies operate under different set of conditions, and in the absence of any mechanism to ensure compliance of rules, unfettered trade can result in market distortions, destroying existing industries and the possibility of establishment of new industries in market driven democratic economies. Trade remedial measures are generally a result of an application made by domestic producers; therefore, companies will have to be vigilant about their rights and will need to encourage their governments to take quick action against unfair imports. Conditions conducive for free and fair trade in the domestic and international markets must be created, so as to promote efficiencies, and to reward innovation.