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INTERNATIONAL TRADE & CUSTOMS

2022 In-Review and Outlook for 2023

PREFACE

India's role in global trade experienced significant highs in 2022 compared to recent years, buoyed by a post-COVID recovery in key sectors.

With the world economy still struggling to bounce back from the effects of COVID-19 and the Ukraine conflict, the Indian economy witnessed key developments on the regulatory and economic front.

Significant progress was also seen in bilateral and multilateral negotiations, the conclusion of several FTAs as well as important trade policy measures adopted by India.

In this retrospective, ELP examines prominent trade issues from an Indian viewpoint, reflecting on the key trends in international trade in 2022 and their implications for India and the world. Finally, our analysis also includes insight into how these developments may progress with a forward-facing outlook. We hope you will find it to be an interesting read.

TRADE STATISTICS

In 2022, India witnessed a tremendous growth in exports (14%) and imports (26%).

In order to promote trade, the Government of India introduced policies such as the Production Linked Incentive (PLI) scheme, and RoDTEP and executed Free Trade Agreements (FTA) with the UAE and Australia.

The trade deficit in merchandise trade has widened to USD 274 billion in the year 2022 as the imports continue to pick up and oil prices remain high.

Trade Trajectory

Particulars	CY 2019	CY 2020	CY 2021	CY 2022
Exports of Merchandise (in Billion USD)*	324	276	395	450
Export YoY Growth Rate (%)		-15%	43%	14%
Import of Merchandise (in Billion USD)*	486	373	573	723
Import YoY Growth Rate (%)		-23%	54%	26%
Total Trade (in Billion USD)	810	650	969	1,173
Net Trade of Merchandise Surplus/(Deficit) (in Billion USD)	(162)	(97)	(178)	(274)
GDP (in Billion USD)**	2,807	2,601	3,096	3,257
Share of Merchandise Trade in Total GDP (in Billion USD)	29%	25%	31%	36%
Share of Merchandise Exports in Total GDP (in Billion USD)	12%	11%	13%	14%

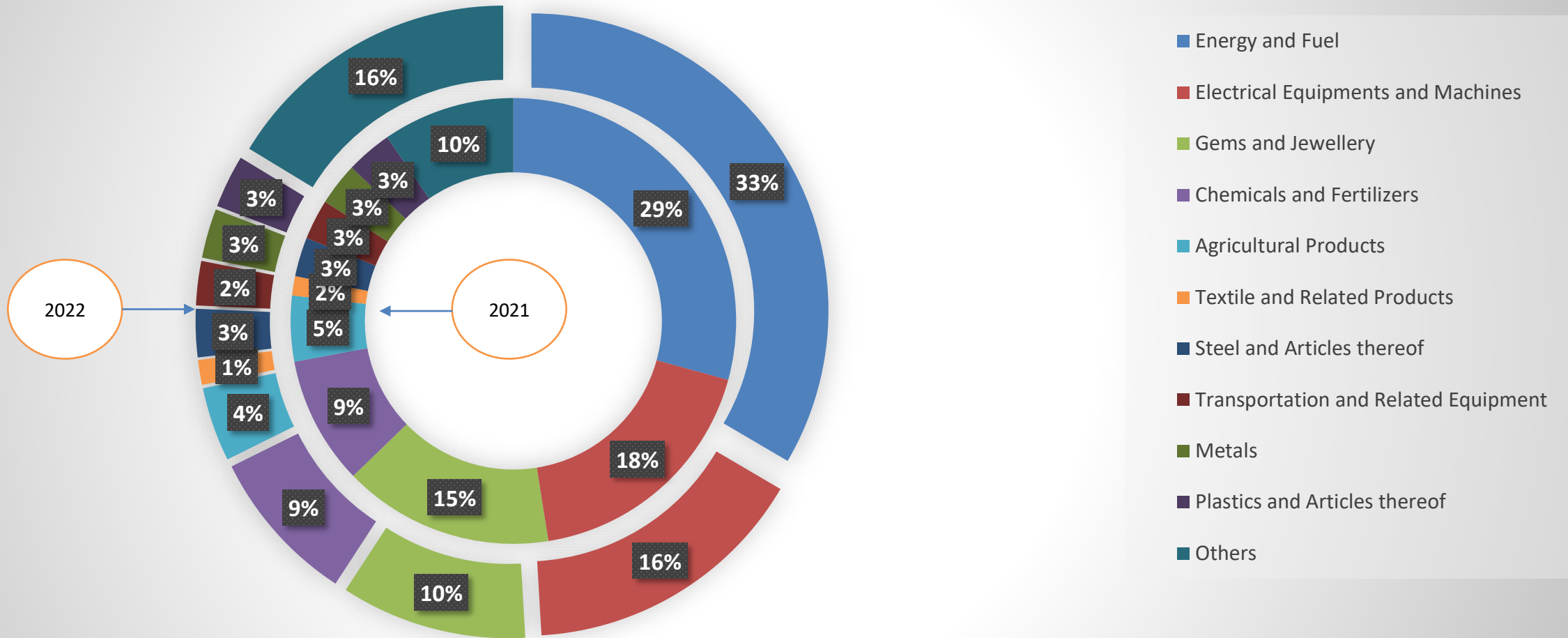
Source: Trade statistics from commerce.gov.in; and GDP statistics from US Federal Reserve Economic Data

Note:

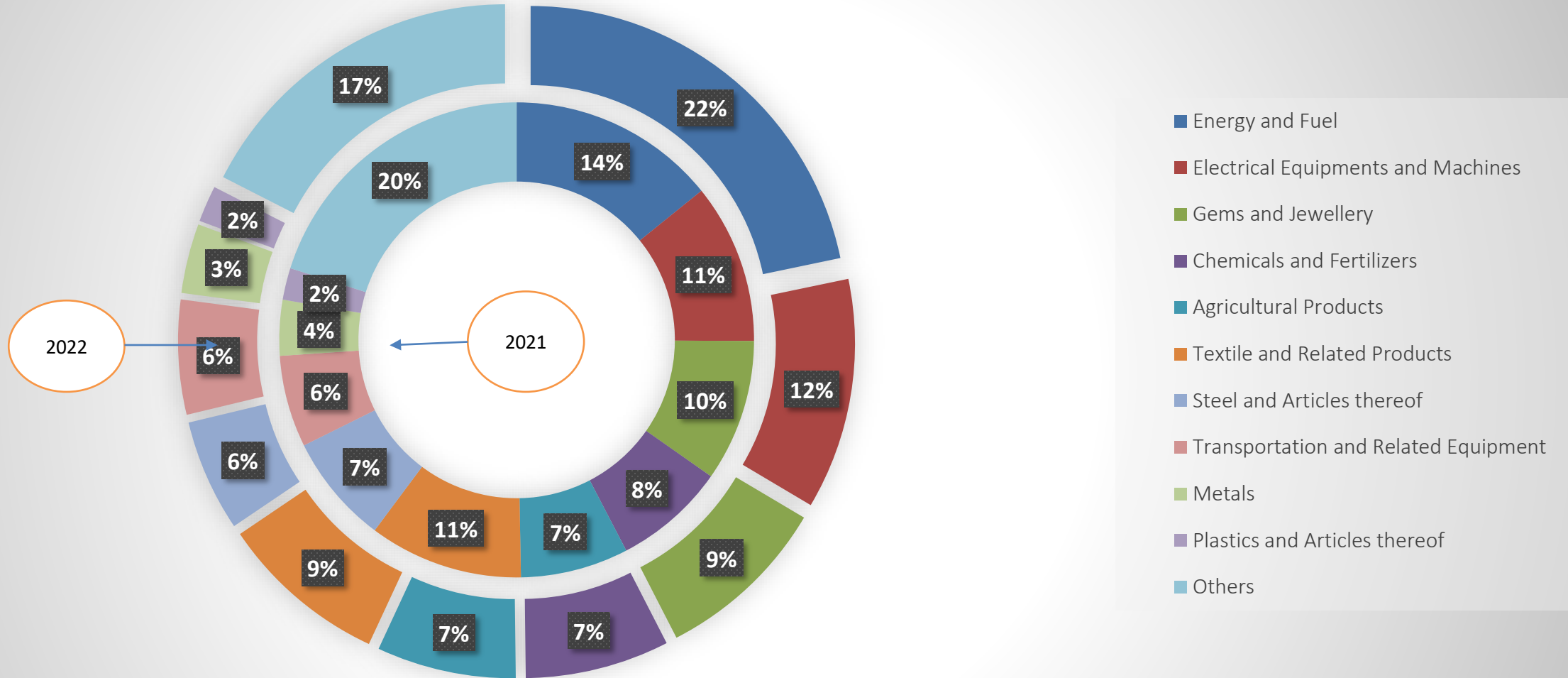
*: Figures for the month of December 2022 have been proportionately extrapolated

** : GDP for Q4 (Oct to Dec 2022) been derived on the basis of estimated GDP growth % indicated by RBI

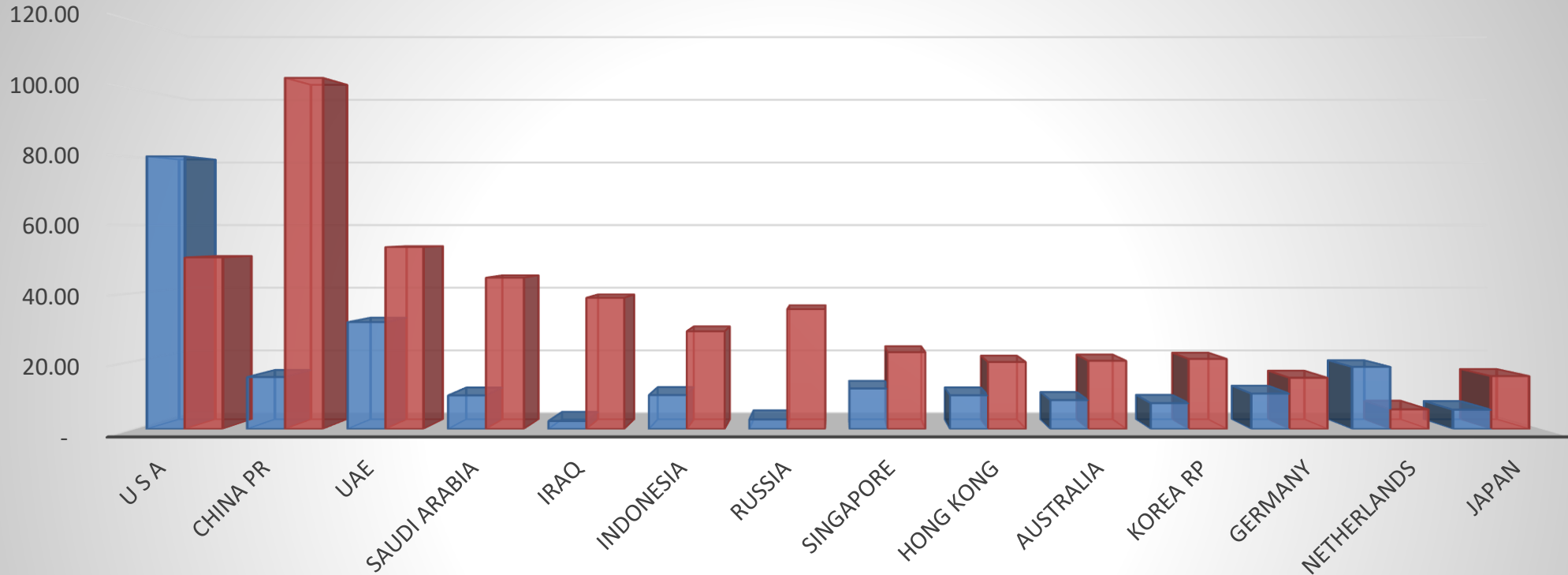
Sectoral Distribution of Imports of Goods



Sectoral Distribution of Exports of Goods



Top Trading Partners



	U S A	CHINA PR	UAE	SAUDI ARABIA	IRAQ	INDONESIA	RUSSIA	SINGAPORE	HONG KONG	AUSTRALIA	KOREA RP	GERMANY	NETHERLANDS	JAPAN
■ Exports (In Billion USD)	80.22	15.30	31.44	9.89	2.37	10.02	2.82	11.92	9.92	8.50	7.61	10.44	18.29	5.70
■ Imports (In Billion USD)	50.49	103.29	53.53	44.52	38.62	28.76	35.26	22.61	19.71	20.07	20.63	15.07	5.81	15.59

■ Exports (In Billion USD) ■ Imports (In Billion USD)

Source: Commerce.gov.in (Figures for the month of December 2022 have been proportionately extrapolated)

Outlook for 2023

- Global trade has rebounded from record lows induced by the COVID-19 pandemic.
- Amid growing apprehensions of global recession, geopolitical tensions, and a high level of inflation, global trade is likely to soften from the levels of the year 2022.
- However, India is expected to increase its share in global trade with export-focused initiatives taken by the Government of India. It is also expected to leverage the China+1 strategy being adopted by countries to tap into the increasing domestic demand.

Contribution by : Akshay Jain and Mitul Kaushal

TRADE REMEDIES

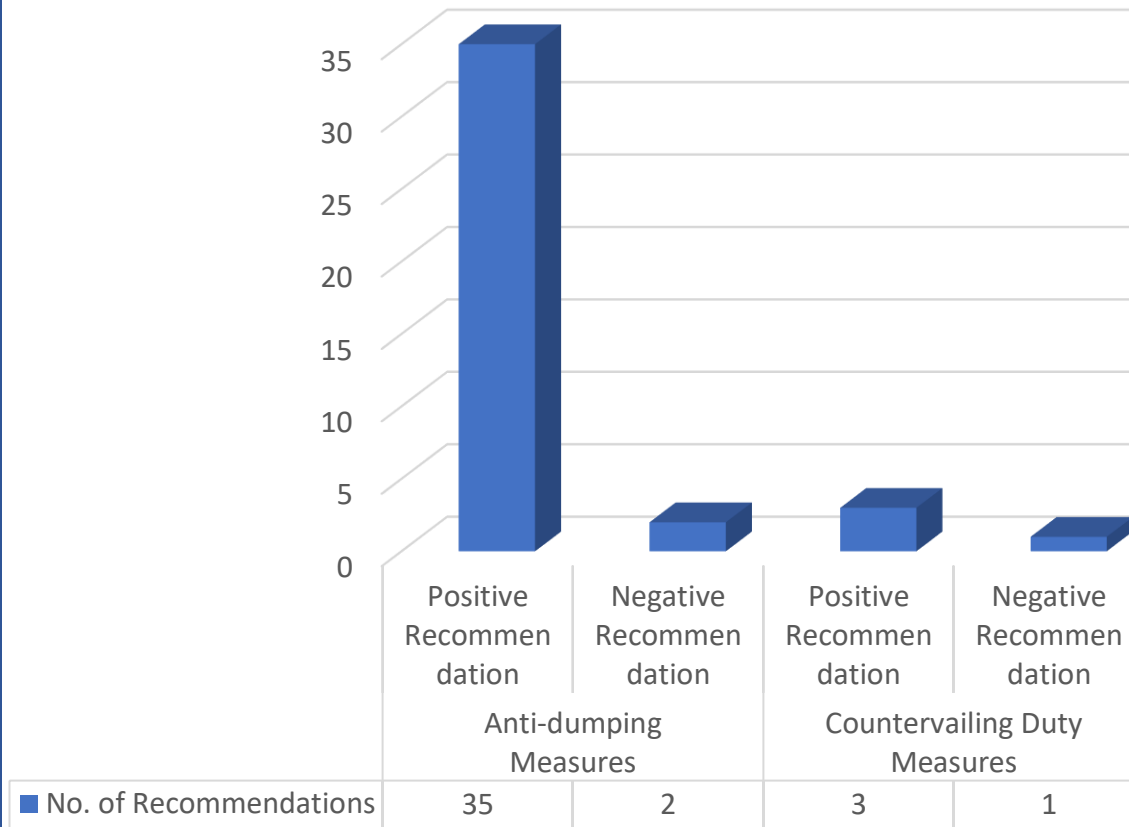
The number of measures initiated and concluded by India's investigating body, the Directorate General of Trade Remedies (DGTR), has seen a decline despite record merchandise imports. This can be attributed to the commodity prices being at an all time high, which boosted financial performance of the Indian industry.

The trends in trade remedies should be viewed in the broader context of several key factors such as, commodity prices, increased exports, and pent-up demand where the domestic industry has performed well.

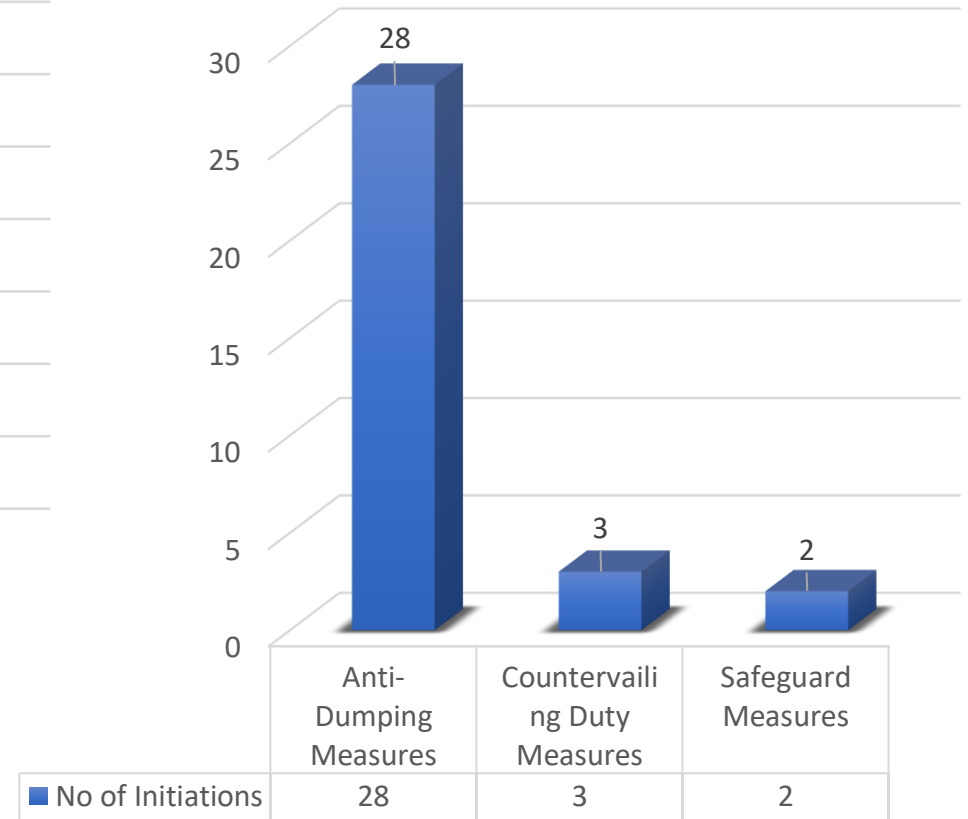
China PR continues to be the most prominent target of the trade remedial actions by the Indian industry, followed by Korea RP.

Trade Remedy Actions

No. of Measures Recommended



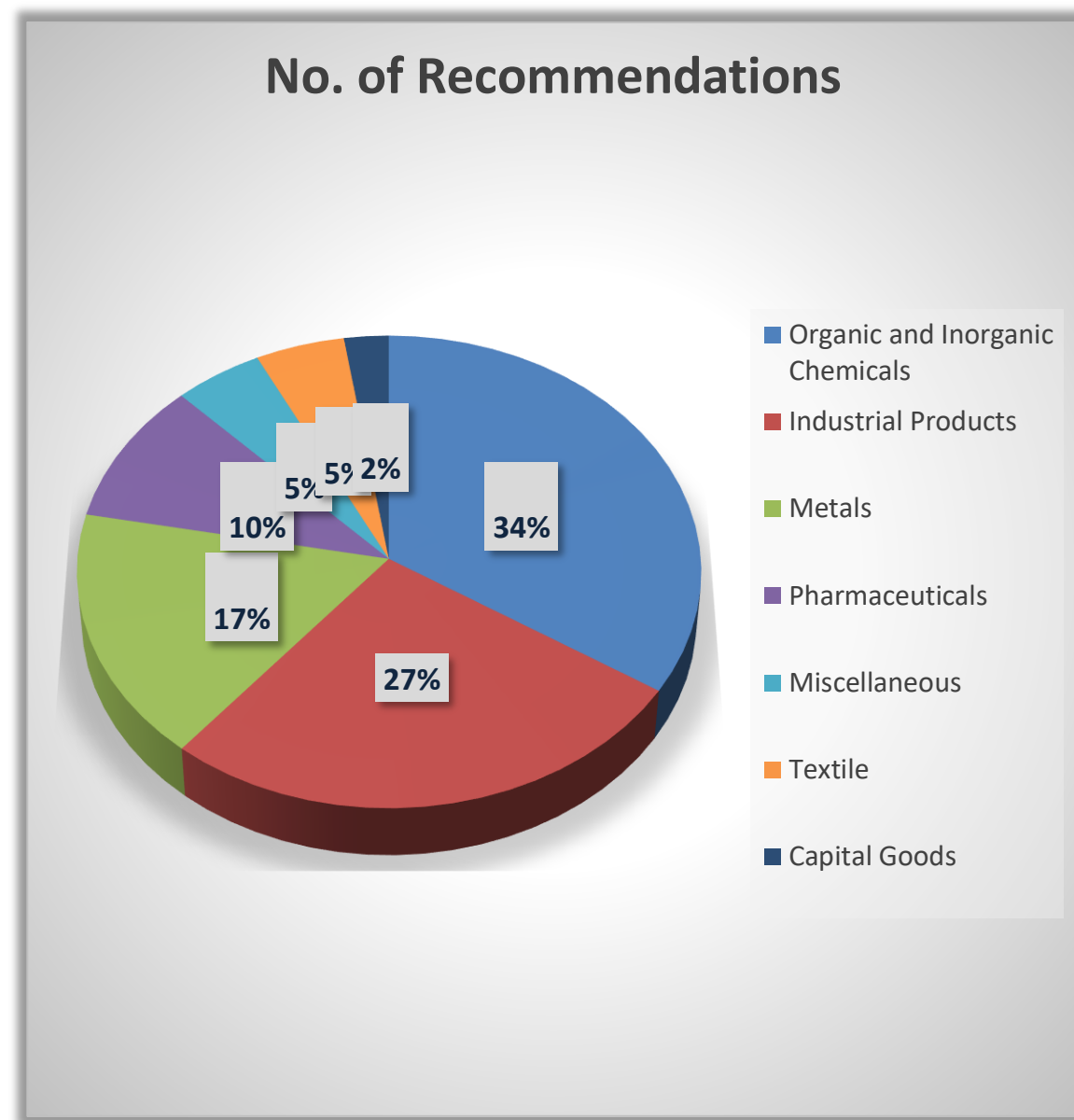
No. of Cases Initiated



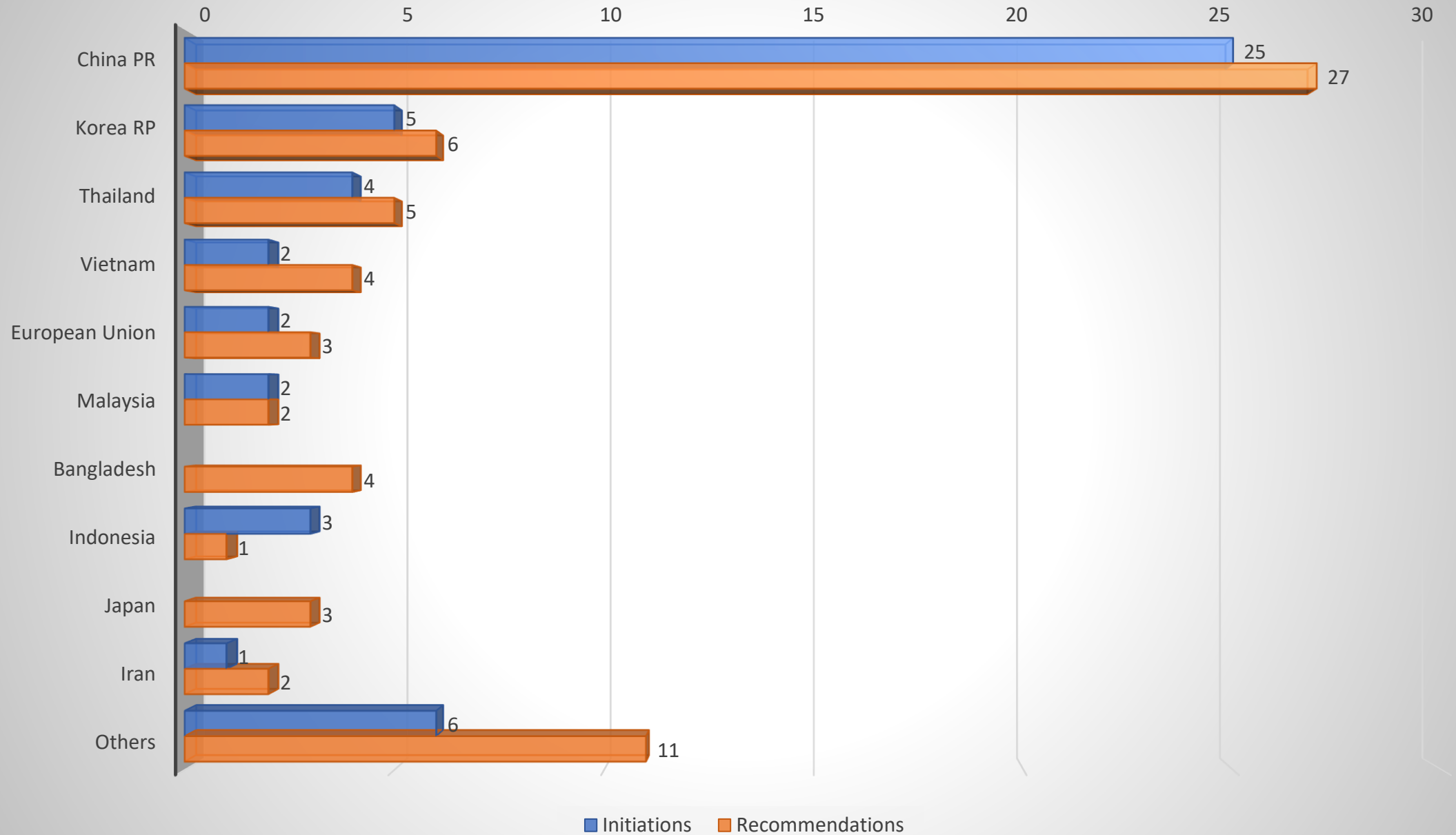
Positive Recommendation: Findings where the applicant received a positive recommendation i.e., duties, or an extension of duties etc
 Negative Recommendation: Findings where the applicant received a negative recommendation i.e., termination of investigation

Sectors Impacted by Trade Remedy Recommendations in India

- India's organic and inorganic chemical sector was the biggest user of the trade remedial actions.
- The organic and inorganic chemical sectors accounted for 34% of the measures recommended by the DGTR followed by the Industrial products sector, which accounted for 27% of the trade remedial actions.

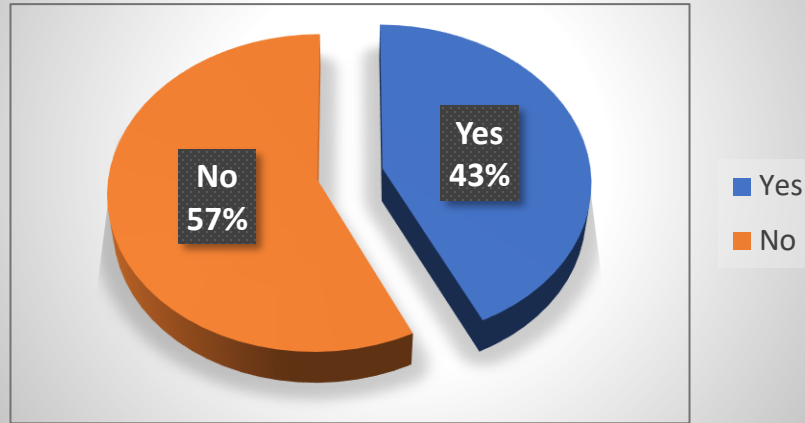


Country-wise Impact of Trade Remedy Recommendations in India

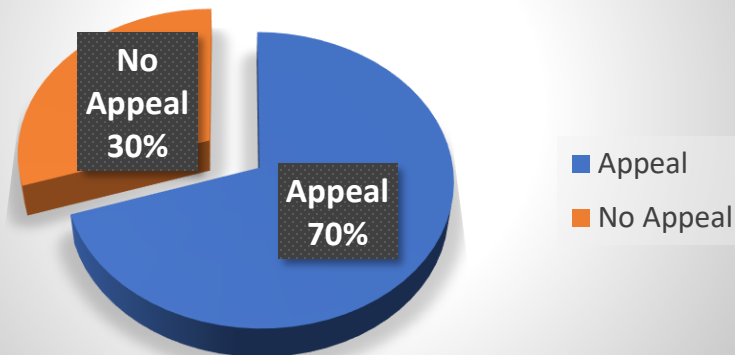


Implementation of Recommendations and Subsequent Litigation

No. of Measures Enforced



Cases where Decision of MoF was Appealed



- The Ministry of Finance has imposed duties only in 15 out of 35 recommendations (43%).
- The decision of the Ministry of Finance (MoF) not to impose the duties is believed to be on account of larger public interest and inflation-related concerns.
- The aggrieved Indian industry have preferred appeals against the MoF before the High Courts and the appellate tribunal. See the section on Trade Remedy Litigation for more details.

Outlook for 2023

- The Indian industry filed fewer trade remedial cases in 2022 compared to 2021. That said, we anticipate that the investigations will rise in 2023 due to the ongoing geopolitical scenario, along with the inflationary effects, thereby leading to protectionist measures being applied globally.
- The decision of the Supreme Court/High Court with regard to the legality of the powers of the Ministry of Finance is also expected to have an effect on the use of trade remedial instruments.

Contribution : Akshay Jain, Harika Bakaraju and Prashant Sharma

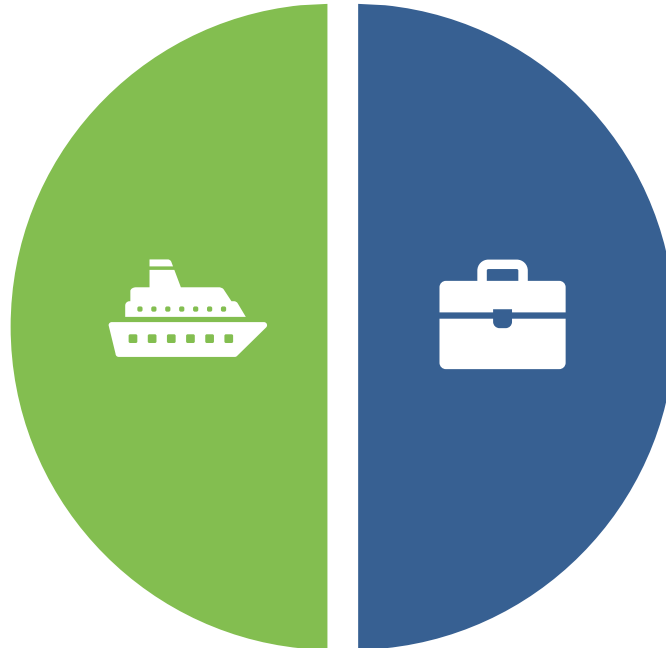
The background of the slide is a complex, 3D-rendered maze of white walls on a light gray floor, creating a sense of depth and complexity.

KEY TRADE REMEDIAL MEASURES AGAINST INDIA

Indian Exports of Products Impacted by Actions by the USA

ANTI-DUMPING

- ✓ Sodium Nitrate
- ✓ Steel Nails
- ✓ Granular Polytetrafluoroethylene Resin
- ✓ Raw Honey
- ✓ Organic Soybean Meal



ANTI-SUBSIDY

- ✓ Barium Chloride
- ✓ Granular Polytetrafluoroethylene Resin
- ✓ Organic Soybean Meal

Trade Remedy Measures against India imposed by United Kingdom

In the aftermath of Brexit, the Secretary of State (in June 2022) adopted the Trade Remedy Authority's recommendation to extend the safeguard measures on 15 steel product categories till 2024.

To provide additional context, the WTO found that the original EU steel safeguard measures were not compliant with WTO law in April 2022.

The Secretary of State recognized that the action is a departure from the UK's international obligations, but stated that the decision has been made keeping national interests in mind.

Notably, in September 2022, India informed the WTO that it would impose retaliatory measures up to USD 247.7 million annually on imports from the UK. Impacted products would include whisky, gold and silver, and auto parts.

Outlook for 2023

- The world continues to use trade remedial measures as an instrument for protectionism. Given the current geopolitical tensions and the state of the global economy, similar trend of aggressive utilization of antidumping and countervailing measures can be expected in 2023.
- The protectionist nature of the measures is compounded by the WTO Appellate Body crisis, which does not allow complainants to enforce compliance of panel reports by violating parties.

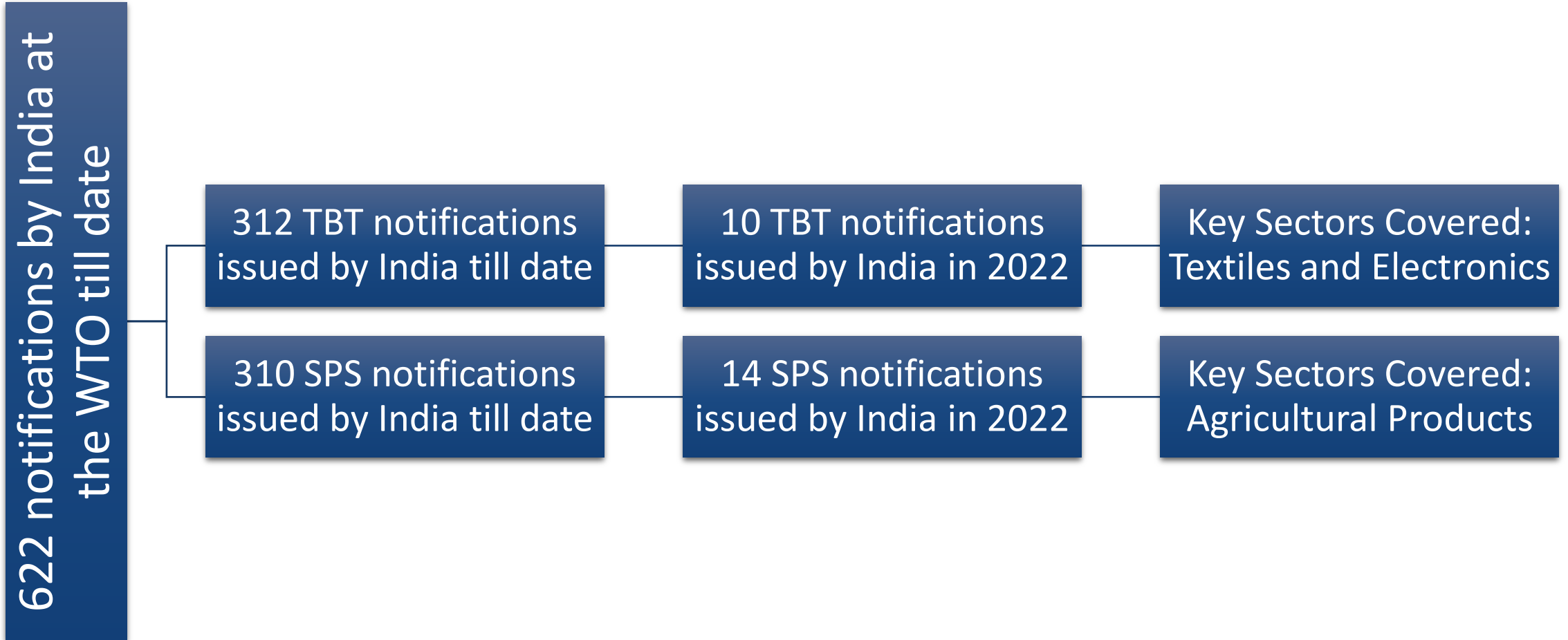
Contribution : Divyashree Suri

NON-TARIFF BARRIERS

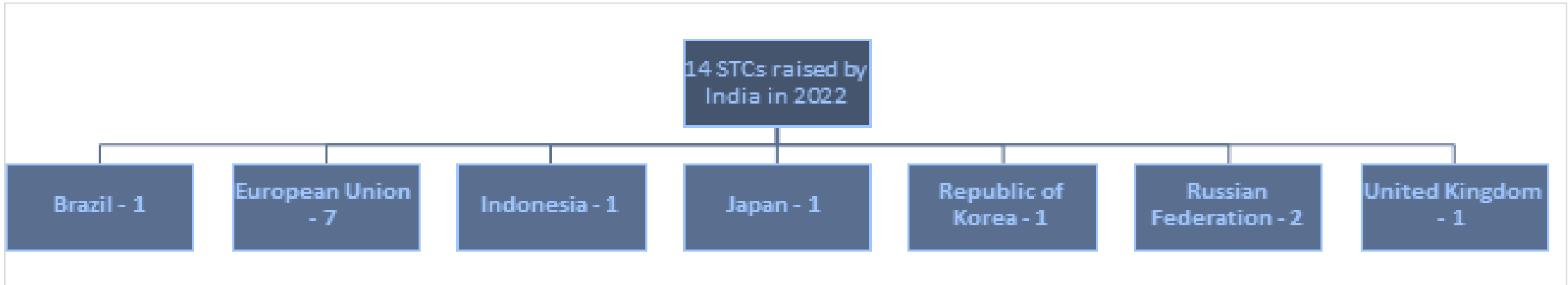
Non-tariff barriers have been rising globally as tariffs reduce. India operates a scheme of Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) measures within its regulatory framework.

In the recent past, the Bureau of Indian Standards (BIS) i.e., India's national standard setting body, has become particularly important as mandatory certification as per the BIS issued standards and adherence to conformity assessment procedures have been put in place for various products. These are actioned through the issuance of "Quality Control Orders" (QCO) by various Indian Ministries.

SPS/TBT Measures Notified at the WTO



Specific Trade Concern (STC) statistics



Source : <https://tradeconcerns.wto.org/en/stcs>

Sector-wise Breakdown of Newly Introduced BIS Standards



Note: 359 New Standards Issued

Outlook for 2023

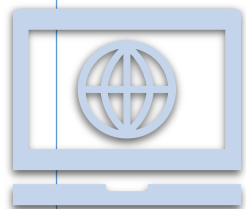
- The Government of India has already embarked to introduce standards on a whole host of products – both, as a measure to curb imports, and as a measure to protect the Indian Industry.
- QCOs have been subject to increased scrutiny by other countries in recent times. Trading partners may raise disputes at the WTO, or may negotiate better terms to facilitate compliance under the FTA.

Contribution : Kamlesh Mewada and Mitul Kaushal

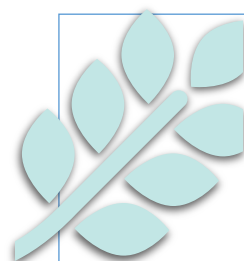


WORLD TRADE ORGANIZATION UPDATES

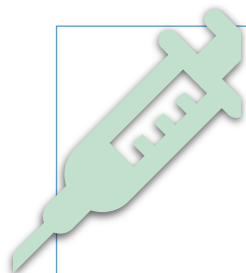
Twelfth Ministerial Conference



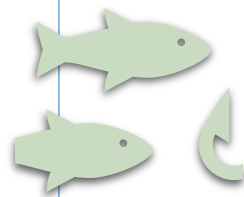
Members agreed to maintain their current practice of not imposing customs duties on electronic transmissions until MC-13, which is expected to be held by December 31, 2023.



Members formally adopted the Draft Ministerial Declaration on Emergency Responses to Food Insecurity and Draft Ministerial Declaration on World Food Programme Food Purchases Exemption from Export Prohibitions or Restrictions.



A decision was reached on the TRIPS waiver for COVID-19 vaccines through a Draft Ministerial Decision on the TRIPS Agreement.



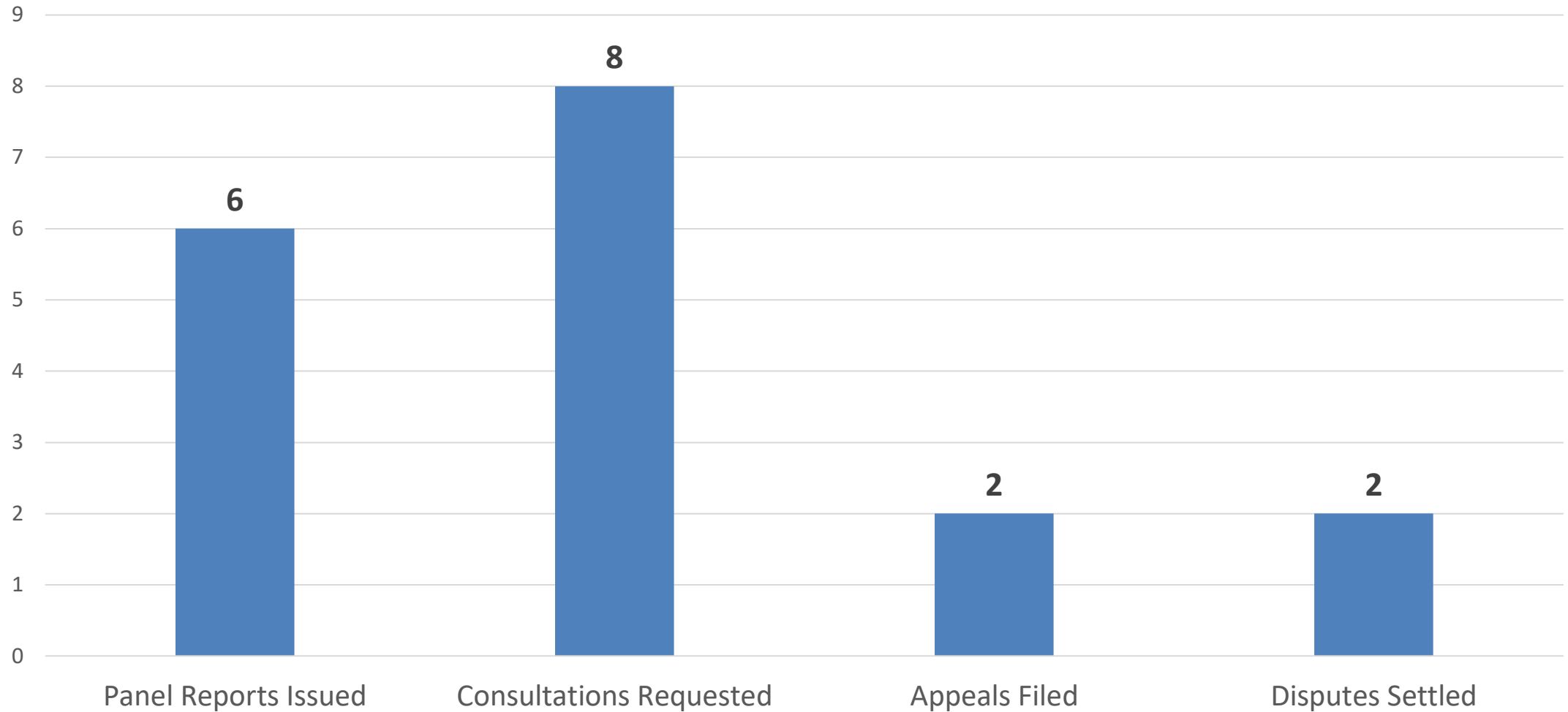
Members arrived at an agreement on the longstanding negotiations relating to the fisheries subsidies aimed at eliminating subsidies on illegal, unregulated and unreported fishing activities.

Outlook for 2023

- The Indian Government has expressed its satisfaction with the outcome of MC-12 negotiations, having played a key role in pushing negotiations through.
- India has successfully navigated the issue relating to food security and patent waivers for vaccines and is reported to have been instrumental in pushing through a conclusion on fisheries as well.
- The Members have set out a number of objectives which are to be resolved before the MC-13, scheduled for 2024. Examples include issues concerning WTO reform, the e-commerce moratorium, a comprehensive Fisheries Subsidies Agreement, special and differential treatment, trade in services, climate change, and global food shortages.
- While there is apprehension that diversified opinions across the globe might make decision-making a tough feat to achieve, MC-12 is proof that the WTO Members are willing to come together on multilateral issues.

Contribution by : Naghm Ghei and Divyashree Suri

Disputes at the WTO



Source: World Trade Organization

EU – Safeguard Measures on Steel (Turkey)

- This dispute concerns a provisional safeguard measure and a definitive safeguard measure adopted by the European Union on imports of certain steel products. The Panel found that the European Commission was unable to establish that the increase in imports had taken place “as a result of” the unforeseen developments. The Panel also found that the European Commission's finding of a threat of serious injury was not “based on facts” as required by law. Accordingly, the measures were found to be inconsistent with the WTO Law.

United States - Origin Marking

- A US law that imported goods produced in Hong Kong, China must carry a mark indicating that their origin is “China”. The Panel, in examining the challenge to this law, found that the origin marking requirement is a 'mark of origin'. It found that having products from Hong Kong marked with a mark of origin indicating the name of another WTO Member (China), constituted a difference in treatment since such a requirement was not imposed on other countries. The difference in treatment modified the conditions of competition to the detriment of products of Hong Kong. The Panel found that the human rights situation in Hong Kong, could not be considered an 'emergency in international relations'. Therefore, the USA could not use 'national security' as a justification.

Indonesia - Raw Materials

- This dispute concerns Indonesia's imposition of (a) a prohibition on the exportation of nickel ore and; (b) a domestic processing requirement (DPR) for all nickel ore, that the European Union claimed as preventing the export of nickel ore. The Panel found that the export ban and DPR were in violation of the WTO law. The Panel also found that the export ban and DPR are highly trade-restrictive measures and did not comply with Indonesia's domestic law relating to environmental regulation.

Costa Rica — Avocados (Mexico)

- This dispute concerns certain measures imposed by Costa Rica on the importation of fresh avocados from Mexico. The Panel found that the imposition of phytosanitary requirements was in violation of Costa Rica's obligations under the SPS Agreement.

United States — Safeguard Measure on Washers

- The dispute concerns certain definitive safeguard measures imposed by the US on imports of large residential washers and their parts. The Panel found that the report on the basis of which safeguard measures were imposed did not contain a reasoned explanation of 'unforeseen developments.' It also found that the report did not provide a reasoned and adequate explanation in support of its finding on increased imports and serious injury

United States – Steel and Aluminium Products (China)

- This dispute concerns duties and related measures imposed by the US on steel and aluminium imports under Section 232 of the Trade Expansion Act of 1962. The Panel found that the measures were inconsistent with the principles of most-favoured nation treatment and exceeded the bound tariff rates in the US' WTO Schedule of Concessions. The Panel found that the measures were not in the nature of safeguards. The Panel also found that the measures were not “taken in time of war or other emergency in international relations” and were, therefore, not justifiable as measures imposed in the interest of national security.

Colombia - Frozen Fries

- The dispute concerns anti-dumping measures applied by Colombia on imports of frozen fries from Belgium, Germany and Netherlands. The Panel found that the anti-dumping investigation and measures were inconsistent with the WTO law. The parties selected arbitrators for the dispute. The Arbitrators upheld the findings of the Panel. Notably, this is the first arbitration proceeding based on the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) to which both Colombia and the European Union are participants.

Turkey — Pharmaceutical Products (EU)

- This dispute concerns certain measures introduced by Turkey with regard to pharmaceutical products. The Panel found that since the localization requirement is designed to create a financial incentive for consumers to select domestically produced pharmaceutical products over imported products, the measure was violative of Turkey's national treatment obligation under the GATT. The Panel also found that by virtue of prioritizing the review of applications for inclusion of domestic pharmaceutical products in the list of products covered by the reimbursement scheme, over the review of the applications of like imported products, Turkey was in violation of its national treatment obligations.

Outlook for 2023

- The continued suspension of the Appellate Body leaves it unclear as to how enforcement of the WTO dispute settlement system will play out. Given that the complainants may not be able to enforce compliance (if they were to prevail before the Panel) owing to the Appellate Body crisis, the possibility of countries adopting unilateral retaliatory measures cannot be completely ruled out.
- However, the issuance of the first MPIA report in 2022 is a critical step in the dispute settlement mechanism. To recall, the US and the EU had in 2021 arrived at a settlement of the steel tariff disputes in return for reciprocal concessions. Hence, the possibility of arriving at a mutually agreeable solution to pending disputes may remain open.

Contribution by : Naghm Ghei and Divyashree Suri



FREE TRADE AGREEMENTS



India-UAE CEPA came into force on 1st May 2022

India has received concessions on 97% of UAE's tariff lines



India has provided tariff concessions on over 80% of tariff lines

It is a comprehensive FTA covering trade in goods, services, product-specific rules of origin, and an Annex on mutual cooperation in trade of pharmaceutical goods

**India-UAE Comprehensive
Economic Partnership
(CEPA)**

Duty-Free Sectors for Indian Exports under the India-UAE CEPA



Gems & Jewellery



Textiles



Leather & Footwear



Sports Goods



Plastics



Furniture & Wood



Agricultural Products



Engineering Products



Pharmaceuticals and Medical devices



Automobiles

A separate Annex on Pharmaceuticals has been incorporated to facilitate access of Indian pharmaceuticals products, especially automatic registration, and marketing authorization in 90 days for products approved by developed country regulators

CEPA has stringent product specific rules of origin that reflect the requirement for substantial processing. The rules of origin are a combination of value addition requirement and change in customs classification.

India has made the UAE agree to the condition of “melt and pour” as product specific rules for steel products. This means that raw steel would need to be melted into the liquid state and then poured into the first solid state in UAE for them to be of UAE-origin.

Duty-Free Sectors for UAE Exports under the India-UAE CEPA



Prepared Food



Chemicals



Pharmaceuticals



Glass & Glassware



Plastics



Iron & Steel



Mineral Fuel



Metals



India-Australia ECTA came into force on 29th December 2022

India has received tariff concessions on 100% of Australia's tariff lines

India has provided tariff concessions on over 70% of tariff lines



It is planned to be expanded into a Comprehensive Economic Cooperation Agreement, as aspects such as Product Specific Rules (PSRs) have not been fully negotiated.

**India-Australia Economic
Cooperation and Trade
Agreement (ECTA)**

Duty-Free Sectors for Indian Exports under the India-Australia ECTA



Gems & Jewellery



Textiles



Leather & Footwear



Furniture & Wood



Agricultural Products



Engineering Products



Medical devices

Tariff Concessions on Wines have been given by India through a specific annex where the amount of concession depends on the CIF value of the wine. There is also an annex on cooperation in pharmaceutical products.

India has not provided any duty concessions to Australia on agricultural and dairy products, which is important to note as Australia had never signed an agreement without concessions on the aforementioned products before the India-Australia ECTA.

The India-Australia ECTA has stringent rules of origin that reflect the requirement for substantial processing. The rules of origin are a combination of value addition requirement and change in customs classification.

Duty-Free Sectors for Australian Exports under the India-Australia ECTA



Coal



Wine



Iron & Steel



Mineral Ores

Outlook for 2023

- As a result of the momentum of the India-UAE CEPA, a possible FTA with the Gulf Cooperation Council (GCC) may be seen in the future. In fact, there is a provision for the same in the India-UAE CEPA for the accession of any country, group of countries or customs union to accede to this agreement, leaving a clear path for the GCC to potentially join the existing India-UAE CEPA framework.
- In 2022, India restarted negotiations with the European Union and Canada with great vigour. Negotiations with the UK are ongoing as well and are expected to wrap up by 2023.
- India will have to deliberate its position on several emerging issues such as labour, climate, gender, and data, since these are critical issues in the negotiations with the European Union and United Kingdom.

Contribution by : [Harika Bakaraju](#) and [Mitul Kaushal](#)

IMPORT AND EXPORT POLICY

India's Import and Export Policy

Free

All goods/services, which have not been marked as restricted or prohibited, are 'free' to be exported or imported.



Restricted

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard



Prohibited

Any goods /service, the export or import of which is 'Prohibited' may not be exported or imported



The above lists have undergone several changes in 2022

Changes in Prohibited and Restricted Lists

Change in Import Policy

Free to Restricted

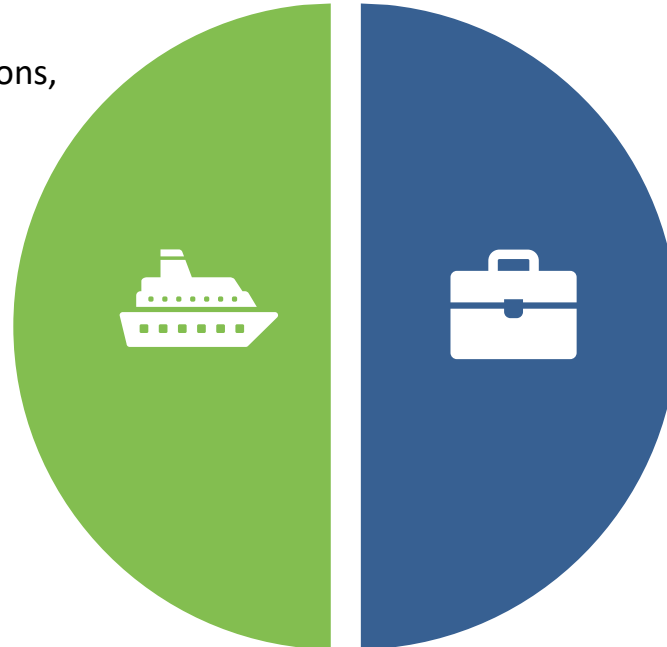
Waste and scrap of precious metal, Hydrofluorocarbons, Paper (with the introduction of the Paper Importing Monitoring System)

Restricted to Free

Artemia Cyst, Malonylurea, drone_components, certain television components

Prohibited

Human Embryo



Change in Export Policy

Free to Restricted

Sugar, Hydrofluorocarbons, certain mixtures containing halogenated derivatives of methane, ethane or propane, human hair, enoxaparin, wheat flour

Restricted to Free

Remdesivir, Amphotericin, Enoxaparin, syringes

Free to Prohibited

Broken rice, durum white

Prohibited to Restricted

Onion Seeds

Outlook for 2023

- The applicability of the Foreign Trade Policy 2015-20 (FTP) has been extended for the fifth time up until 31st March 2023. The FTP was extended on account of volatile geo-political and economic conditions across the globe. A new Foreign Trade Policy is expected to be released in the coming financial year 2023-24. The new Foreign Trade Policy is expected to include new export incentive schemes, which are compliant with India's obligations at the WTO.

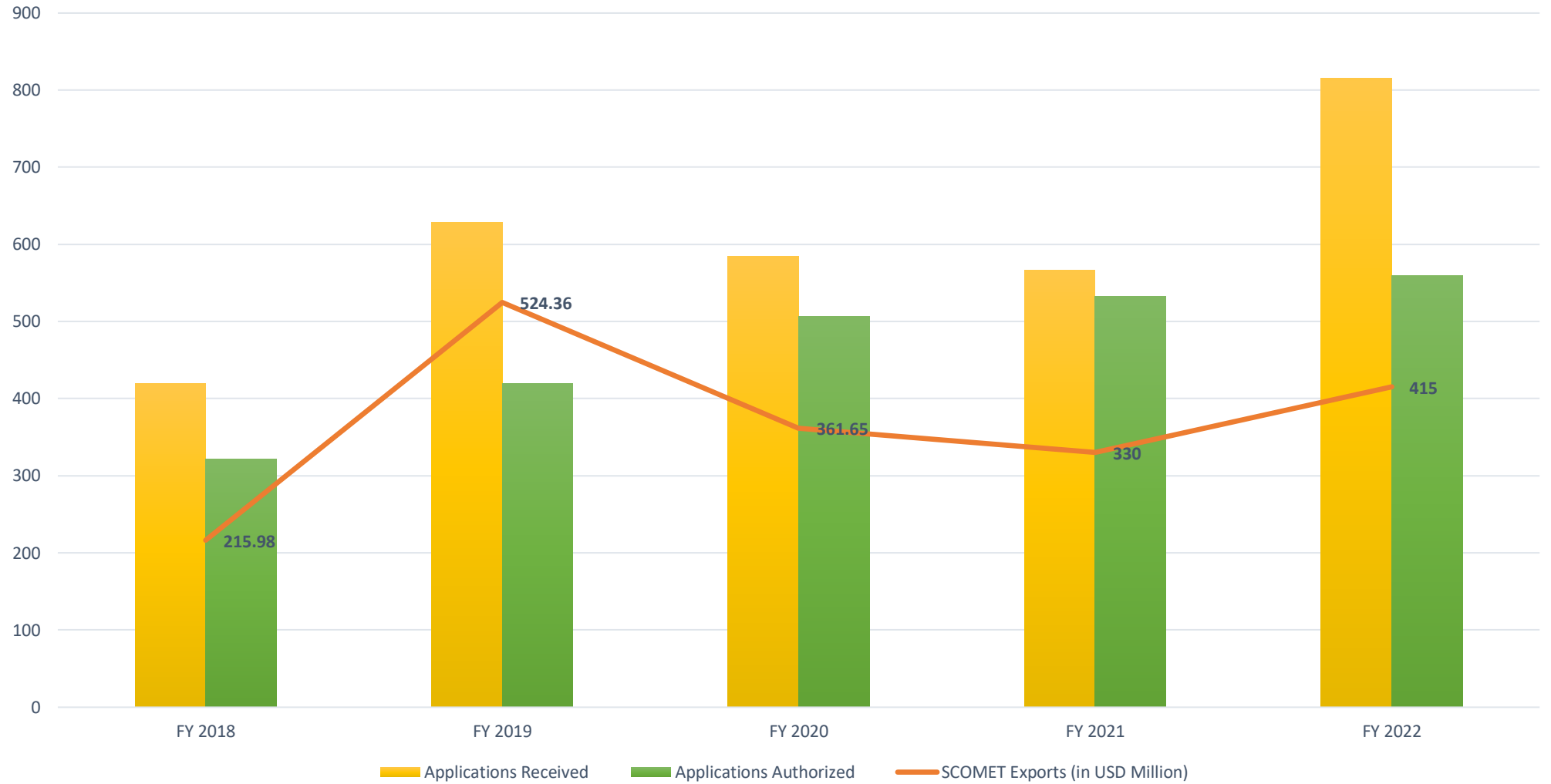
Contribution by : Divyashree Suri



EXPORT CONTROL

Export Control Licenses (SCOMET)

SCOMET Exports and Authorization Trend



Source: NASSCOM



Global Authorization for Intra-Company Transfers (“GAICT”) Policy

- The DGFT amended Para 2.79F of the Handbook of Procedures, 2015-2020 to liberalize the procedure for issuance of general authorization for intra-company transfer of SCOMET items.
- Prior to the amendment, only companies *re-exporting* certain imported SCOMET items to their foreign parent and/or subsidiaries of foreign parents were eligible to apply for the general authorization. Post amendment, any Indian company intending to *export/re-export* certain SCOMET items to its foreign subsidiary or foreign parent/another subsidiary of a foreign parent in certain countries can apply for general authorization.

Expansion of the scope of items falling under the SCOMET list

- The Government of India has expanded the scope of SCOMET items falling under Category 6: Munitions List and Category 8: Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion.

Outlook for 2023

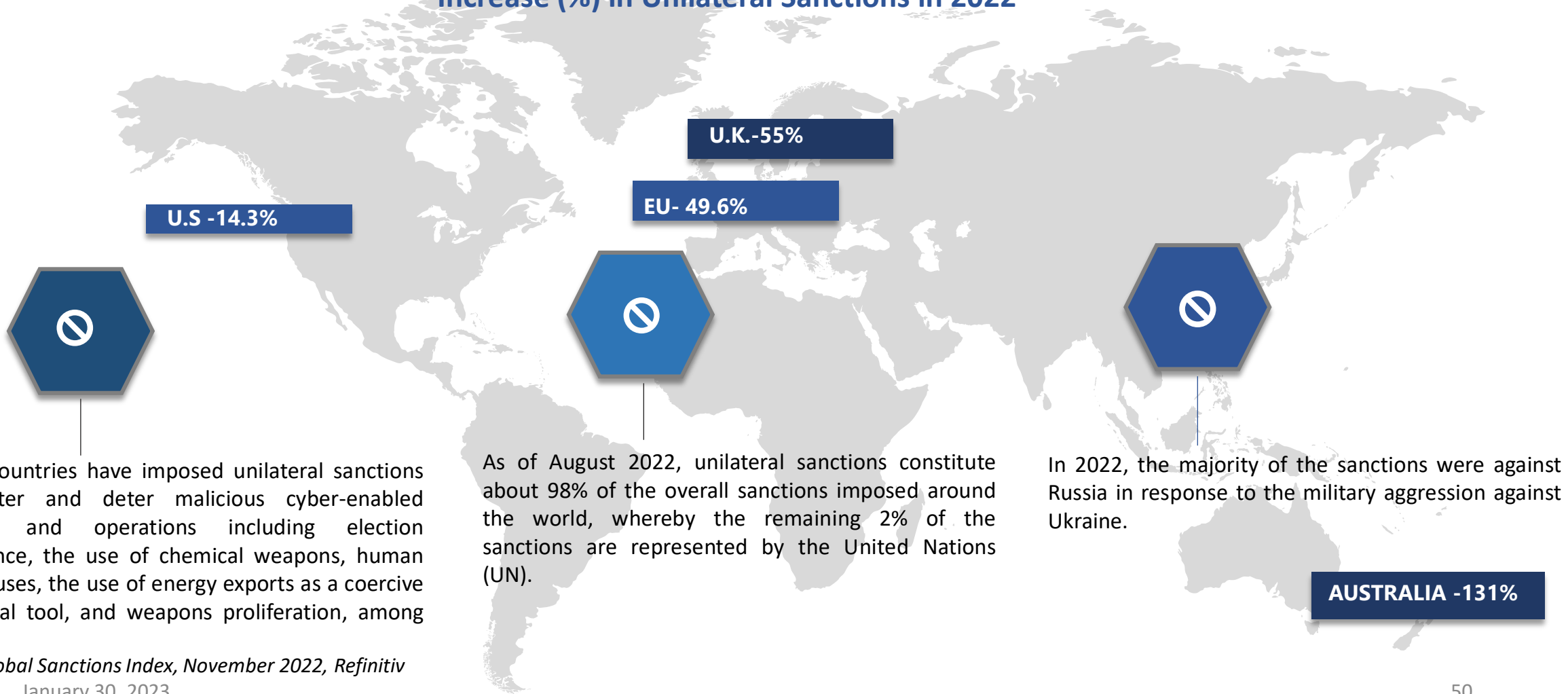
- India is well known globally for its services industry and is marching ahead in the IT and ITES technologies, and manufacturing hubs in the areas of chemicals and defence sectors.
- The liberalization of the GAICT policy is expected to provide further impetus to this sector for increasing and facilitating timely exports within the four corners of the regulations concerning export control. This in turn is expected to help the Government of India (GOI) achieve its domestic policy for global exports to be made under the “AatmaNirbhar Bharat”.

Contribution by : Harika Bakaraju

SANCTIONS

Global Sanction Regime (Slide 1 of 2)

Increase (%) in Unilateral Sanctions in 2022



Global Sanction Regime (Slide 2 of 2)



- Unlike other countries, US sanctions laws have an extra-territorial application.
- A few instances where the US has sanctioned Indian entities on account of their business with sanctioned countries/entities are:
 - An Indian entity involved in brokering the sale of Iranian petrochemical to customers in China and rest of east Asia was sanctioned
 - An Indian national was sanctioned for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEK for an animation project

Outlook for 2023

- The Russia-Ukraine conflict has led to a tumultuous period in global economics, catalyzed by a strong suite of sanctions deployed by various countries, particularly the US, UK, and EU against Russia. Given the dynamic changes in the sanctions regulatory landscape and impending investigations of sanctions compliance, Indian businesses will be seen being more cautious in engaging with sanctioned countries.
- Indian businesses having a global presence will be forced to navigate through and ensure compliance with the unpredictable and ever-evolving terrain of sanction-related regulations in various jurisdictions. In this behalf, businesses may be seen designing and implementing internal compliance programs (ICP).

Contribution by : Harika Bakaraju

EMERGING ISSUES

Issues such as climate action, labour, gender and foreign subsidies are increasingly impacting trade in a tangible manner. Countries are imposing various forms of non-tariff measures to keep issues such as forced labour and carbon emissions in check.

Some of these issues are progressively becoming a large part of the free trade agreements being signed by countries as well.

This has great significance for a country like India, especially at a stage where it aspires to become the manufacturing and export hub of the world.

This section elaborates on the various developments which took place in 2022 concerning such issues and the non-tariff measures which affect Indian trade.



TRADE AND LABOUR

United States of America

In August 2022, the US banned entry of garments imported from an Indian H&M supplier, Natchi Apparel Pvt. Ltd., into the US since it had reason to believe that the company used forced labour to manufacture garments. In September 2022, the measure was [withdrawn](#) once the company proved that its workers were being treated with dignity.

European Union

In September 2022, the European Union introduced a [proposal](#) for prohibiting products made with forced labour in the European Union market.

Trilateral Joint Statement on the International Labour Organization's Global Forced Labour Estimates

In September 2022, the US, Japan and the European Union [committed](#) to explore new policies and initiatives to 'fight against forced labour in the global supply chain'.

Outlook for 2023

- In addition to the legal instruments being adopted by the United States and the European Union, several other countries are looking to ban the imports of goods produced through forced labour. For example, the imports of goods produced through forced labour and certain prison goods are prohibited in Canada.
- Similarly, the United Kingdom has introduced a bill which prohibits importing products made by forced labour. Businesses must also be cautious of imports made from the Xinjiang Uyghur Autonomous Region, since countries such as the United States and a bill introduced in the United Kingdom presume that all goods imported from the region are produced through forced labour.
- However, forced labour continues to remain a concern in India. Businesses may consider undertaking necessary steps to identify and address problems of forced labour in their supply chains.

Contribution by : Divyashree Suri

TRADE AND ENVIRONMENT

EU

- On 13th December 2022, negotiators of the Council and the European Parliament reached an agreement of a provisional and conditional nature on the Carbon Border Adjustment Mechanism (CBAM).
- Scope of sectors expanded to include hydrogen and a limited number of downstream products such as screws and bolts and similar articles of iron or steel.
- Scope of coverage expanded to include indirect emissions.
- Reporting period extended to begin from October 2023.

India

- The Indian Parliament passed the Energy Conservation Amendment Bill which enables the Government to set up an emissions trading system.

USA

- The Inflation Reduction Act, 2022 has been signed into law on 16th August 2022.
- The legislation is expected to boost the renewable energy sector by extending tax credits and increasing funding.
- It is likely to create demand to low carbon products and electrical vehicles.

COP 27

- The Indian Government submitted its Long-Term Low Emission Development Strategy, highlighting major strategies to transition to a low emissions pathway.
- Countries agreed to establish a "loss and damage" fund to mitigate the losses borne by developing countries that are "particularly vulnerable" to the adverse effects of climate change.
- India's proposed resolution to phase down the use of coal failed.

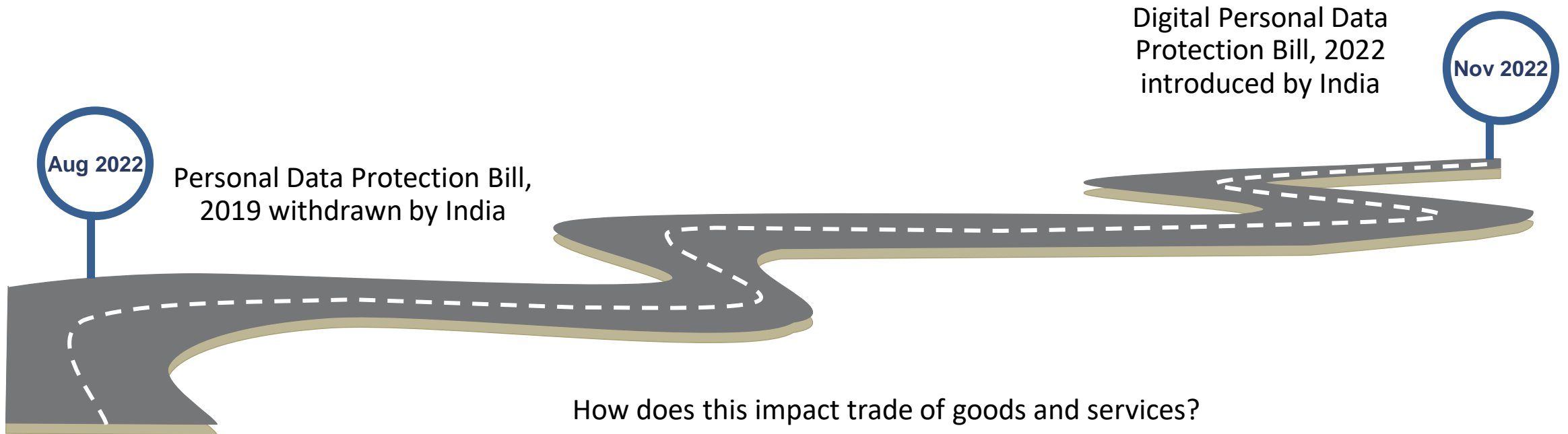
Outlook for 2023

- The introduction of measures such as the CBAM will put added pressure on Indian businesses to either adopt their own methods to address emissions or be at a disadvantage in trade with the EU. The possibility of other nations adopting similar laws necessitates that India addresses these issues on a policy level.
- While India does not presently have an emissions trading system, the Indian Parliament has just approved the Energy Conservation (Amendment) Bill on 12th December 2022 which enables the Government of India to set up a domestic carbon trading scheme.
- The Government of India's recent initiative to issue green bonds further incentivizes private players to invest in Green infrastructure. Early adoption and onboarding will help businesses minimize any effect on revenue. Further, the affected sectors would require to invest in technology and integrate its climate policy keeping in mind both domestic and international regulatory regimes in order to get the first-mover advantage.

Contribution by : Naghm Ghei and Harika Bakaraju



TRADE AND DATA



Clause 17 of the DPDP Bill permits cross-border transfer of all personal data to countries or territories notified by the Central Government. The DPDP Bill does not contain any express provisions relating to data localization and is unclear on whether the storage of data outside India would be permitted by law. India is in the process of negotiating landmark free trade agreements with the United Kingdom, European Union, Australia, Canada, and the Gulf Cooperation Council.

India may negotiate 'adequacy' agreements with its trading partners as part of the free trade agreements, and may also enter into digital economy agreements with different countries of strategic importance.

Outlook for 2023

- Clause 17 of the DPDP Bill provides significant discretion to the Central Government. It is expected that the law surrounding cross-border transfer of data shall be defined by various bilateral and plurilateral agreements entered into by India.
- However, the DPDP Bill must be amended to, at the very least, clarify if personal data may be stored outside India, lay down the standard procedures for notification of countries permitted and framework for data transfer, set out rights and obligations for all parties involved, and set out a transition period.
- Stakeholders have submitted their comments on the Digital Personal Data Protection Bill, 2022 to the concerned line ministry on 2nd January 2023. It is likely that this Bill will undergo slight changes on the basis of such comments and be passed in the Monsoon Session of the Parliament. Another bill on 'Digital India' is expected soon, which is likely to address all things relating to the internet and social media.

Contribution by : Divyashree Suri



FOREIGN SUBSIDIES

European Union

- On 23rd December 2022, the EU published the Foreign Subsidies Regulation (FSR), which aims to address distortions caused in the EU market due to foreign subsidies granted by non-EU countries to entities engaging in economic activities in the EU. It entered into force on 12th January 2023.
- The FSR is applicable to entities including foreign entities engaging in economic activities in the EU and receiving foreign subsidies from non-EU countries. Such entities are susceptible to redressive measures if the foreign subsidies received by them are found to cause distortions in the EU market. The European Commission (EC) has been conferred with the jurisdiction under the FSR to undertake an investigation of distorting foreign subsidies.
- The EC is expected to publish an implementing regulation that will set forth the form, content, and procedural details of mandatory notifications, and other procedures relevant to conducting the investigations by the EC.

United States

- On 29th December 2022, the US President signed the US Consolidated Appropriations Act, 2023. One of the requirements under the said is that the merger notifications should disclose information concerning subsidies received from a foreign entity of concern i.e., any entity which is owned by, controlled by, or subject to the jurisdiction of China, Russia, Iran, North Korea, or designated terrorist organizations.

Outlook for 2023

- The EU's FSR is applicable to foreign entities engaging in economic activities in the EU. As the FSR is set to be adopted on 12th July 2023, the EU is expected to commence investigating foreign subsidies from non-EU countries to such entities for any distortions in the EU internal market. Additionally, the *ex ante* mandatory notification requirements are set to apply from 12th October 2023, whereby entities engaging in mergers and acquisitions and public procurements, upon meeting certain thresholds (i.e., financial contribution and turnover) will be required to report receipt of foreign subsidies.
- Businesses will be susceptible to additional notification burdens and redressive measures under the FSR for benefitting from foreign subsidies and causing distortions. Until the implementing regulation is issued and greater clarity on the application of the FSR is provided, Indian entities engaging in economic activities in the EU (especially with a legal presence within the EU) may be seen assessing whether their operations are in any manner susceptible to the FSR and the redressive measures thereto.
- Given that the US has implemented a similar (but narrower) requirement for merger notifications to disclose the receipt of subsidies from limited countries, it is to be seen if any other countries will adopt similar regulations to counteract distortions in their domestic market on account of foreign subsidies.

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