WTO Panel's Ruling against India - Export Subsidies

Why in news?

World Trade Organisation's (WTO) dispute settlement panel ruled against India in a trade dispute over its subsidies to exporters under various schemes.

What was the charge against India?

- The US in March 2018 challenged export subsidies provided by India under five sets of schemes:
    i. Export-Oriented Units, Electronics Hardware Technology Park and Bio-Technology Park (EOU/EHTP/BTP) Schemes
    ii. Export Promotion Capital Goods (EPCG) Scheme
    iii. Special Economic Zones (SEZ) Scheme
    iv. Duty-Free Imports for Exporters Scheme (DFIS)
    v. Merchandise Exports from India Scheme (MEIS)
- The US had alleged that these schemes violated certain provisions of WTO's Subsidies and Countervailing Measures (SCM) Agreement.
- The SCM Agreement prohibits subsidies that are dependent on export performance.
- According to the agreement, India was only exempt from this provision until its GNP per capita per annum reached $1,000. [Click here to know more]
- The export subsidies under most of the challenged schemes, except for MEIS, consist of exemptions and deductions from customs duties and other taxes.
- The subsidies under MEIS consist of government-issued notes ("scrips").
- [Scrips can be used to pay for certain liabilities vis-a-vis the government and are freely transferable]
- The US argued these subsidies were a detriment to American workers and manufacturers.
- When consultations with India did not work out, the US in May 2018 requested that a dispute settlement panel be set up.

What was India's defence?

- The SCM Agreement allows for special and differential treatment of certain developing countries.
- The agreement carves out exemptions from or remission of duties or taxes on

an exported product under certain conditions.
- India argued that certain provisions under this agreement excluded it from the provisions prohibiting export subsidies.
- It also argued that all the challenged schemes, except the SEZ scheme, adhered to a provision of the SCM Agreement.

What is the rationale for ruling against India?

- The panel found the US had "demonstrated the existence of prohibited export subsidies" that were inconsistent with SCM Agreement provisions.
- India had foregone revenue through exemptions and deductions from duties and other taxes to the benefit of exporters in most schemes.
- In the case of MEIS, the US was able to establish that exporters benefited from a direct transfer of funds through the provision of scrips.
- MEIS, because of its design, structure and operation, did not meet the conditions for the exemptions from these prohibitions as well.
- The US had established that most of the measures under the other four schemes were "contingent in law upon export performance".
- With its present GNP numbers, India is undisputedly no longer excluded from the application of the WTO prohibition on its export subsidies.
- WTO also concluded that "no further transition period" was available to the country to stop these subsidies.
- It is also to be noted here that not all the US' arguments were accepted by the panel.
- It rejected some of its claims regarding -
    i. certain customs duty exemptions provided under the DFIS scheme
    ii. excise duty exemptions under the EOU/EHTP/BTP schemes
- WTO recommended that India withdraw certain "prohibited subsidies" -

i. under the DFIS scheme within 90 days from the adoption of its report
ii. under the EOU/EHTP/BTP, EPCG and MEIS schemes within 120 days from the adoption of its report
iii. under the SEZ scheme within 180 days from the adoption of its report

What will the impact be?

- If the panel's ruling is adopted, the decision is expected to put at risk export subsidies claimed to be worth over $7 billion annually.
- These, notably, benefited producers of steel products, pharmaceuticals, chemicals, information technology products, and, textiles and apparel.
- While there will be no retrospective impact, India would have to stop providing the subsidies in this form.

What are the other alternatives?

- Some experts say India can tweak the schemes to support exports while making them more WTO-compliant.
- E.g. India can provide tax concessions (like concessions on GST) on parts and components used in the production of the exported product
- By this way, it can continue to support exports.
- The government has already begun work on making some of the debated schemes more WTO-compliant.
- In September 2019, it announced the Remission of Duties or Taxes on Export Product to replace the MEIS as a more WTO-compliant scheme.
- The overall duty foregone under this scheme is expected to be "more or less the same" as MEIS (around Rs 40,000 crore-45,000 crore annually).

What next?

- India plans to appeal the WTO report on some aspects of law and legal interpretation.
- This is to be done before the panel's report is adopted within 60 days of it being circulated with all members.
- The US is expected to push for early adoption.
- However, if India's notice to appeal the report is submitted before this, it stands a chance of challenging the ruling.
- On the other hand, the dispute panel's appellate mechanism is expected to become dysfunctional after December 11 2019.
- [Two of the three remaining members of the body will retire on that date.]
- In that case, India may not be obligated to implement the panel's current ruling.
- This is because, if its appeal is submitted on time, it will join a set of 10 other appeals in other WTO dispute cases that have been filed since July 2018.
- So, until those appeals are cleared and India's own appeal is resolved, the country will be under no legal compulsion to make the changes recommended in the panel's current report.

Source: Indian Express

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