

The Science, Indigenous Technology & Advanced Research Accelerator

(A not-for-profit Trust dedicated to make India a Science Nation)

**To**

**Shri P.K. Mishra**

**Principal Secretary to PM**

**PMO, South Block, New Delhi, 110011**

**NEED FOR CAUTION ON INCLUDING GOVERNMENT PROCUREMENT IN COMPREHENSIVE ECONOMIC PARTNERSHIPs**

Tuesday, 03 May 2022.

Dear Sir,

We wish first of all to record our deep appreciation at Government’s efforts to prioritise **Domestic Procurement** under the Preference to Make in India policies, implemented under Hon’ble Prime Minister’s leadership. The policy has already achieved great successes, especially in Defence and Telecommunications/ICT, the two foundational sectors for National Security. This has been achieved after a long struggle, undoing the legacy procurement system which favoured foreign firms and constituted a huge loss to the Indian economy. As the [Indian Government procurement market is worth US$ 500 billion annually](https://pib.gov.in/PressReleasePage.aspx?PRID=1586546), prioritising domestic procurement can release trillions of dollars in multipliers, uplifting the Indian economy in no time.

Recently, **Government Procurement** has been included for the first time in the Comprehensive Economic Partnership Agreement (CEPA) with the UAE (Chapter 10). It will also be included in the CEPA with Australia. While we commend Government’s efforts to strengthen ties with vital geopolitical partners, we wish to draw your kind attention to the consequences, which *could derail the Government’s outstanding Atmanirbharta campaign.*

1. **Consequences**

While we have been told that there is nothing to fear from Australia or the UAE, and officials have [reportedly stated](https://www.financialexpress.com/economy/india-uae-fta-steers-clear-of-credible-access-to-govt-procurement/2497038/) that “both the sides have refrained from extending any credible access to the other in Government procurement”, there are many issues with this assertion:

1. **Nothing prevents MNCs from locating minimal value-added activities in the UAE/Australia. Relocation of many MNCs’ and Chinese production to Vietnam is a classic example. Rerouting of China’s exports via ASEAN and Hong Kong, despite Rules of Origin, is another.**
2. The detailed provisions, listed in fully **22 pages** in Chapter 10 on Government Procurement in fact provide for ***enormous access***to the Parties.
3. The sheer length of the Chapter imposes restrictions on our policy space, which with our lack of enforcement mechanisms - will defeat any attempt at enforcing the “exceptions” for MSMEs and preferential policies. Although under Annex 10A, the India-UAE agreement excludes Preference to Make in India, foreign entities will be entitled to national treatment for each and every other tender. After all, even today, the PPP MII clause on domestic procurement is absent from many tenders. **Opportunities for domestic firms will accordingly vanish.** Foreign entities will hire Indian law firms to fight each case, we have seen this in the past, and we will be subject to exhausting litigation to save our firms from predatory tactics.
4. There are many restrictive clauses, such as on using Limited Tendering only for procuring prototypes or first goods / services, and not for large procurements.
5. Once fixed, these agreements will be very hard to renegotiate with more concessions extracted in return.
6. ***The explanation by officials that both sides have refrained from giving credible access begs the question why was the Chapter inserted in the first place? Was it to set a precedent for other countries?***
7. **Dangerous Precedent**

**The UAE template opens the door for including its intrusive provisions in subsequent agreements. For example, the CEPA with Japan provides for non-discrimination - treatment no less favourable than that accorded to non-Parties. It also commits Govt to enter into negotiations to review the Chapter to achieve “a comprehensive Chapter on Government Procurement… when India expresses its intention to become a Party to the Agreement on Government Procurement (GPA).” So now we are obliged to extend the same terms to / enter into negotiations on Govt procurement with Japan, whose industry can overwhelm ours once it gets equal access to all Government tenders. This will be true for our agreements with Australia, the EU and other countries which are waiting in line to conclude FTAs/CEPAs with India.**

**The flood gates are about to open. The one instrument left in the hands of Government of India to develop the economy - which is domestic procurement in Central Government funded projects - will be sacrificed at the altar of these agreements. So, we request the Government to please exclude Government Procurement in future agreements as we are not obliged to include these in bilateral agreements which are by definition free of multilateral constraints.**

**There are additional reasons to beware of FTAs.**

1. **Past experience**

**Our past experience with Free Trade Agreements has been negative. Under ITA-1 and CEPAs with Japan, South Korea and ASEAN, India’s tariff reductions were among the deepest and covered the highest number of tariff lines. We opened up without putting in place an Industrial Policy or trying to couple the growth of our software exports with the development of our hardware industry. Many of these countries host highly developed ICT sectors, and Japan and South Korea enjoy a trade surplus in high-tech products *even with China*, so the fate of indigenous electronics and telecommunications manufacturing was sealed. India’s imports of telecom equipment increased by approximately 80 times during 2005-2020. In fact, in 2015, MEITY stated that ITA-1 had created barriers for domestic entities and led to an increasingly concentrated market dominated by a few firms.**

**Government had announced a review of these agreements and we request the results of these reviews be made public and urgent consultations take place with all stakeholders before entering into further negotiations on FTAs/CEPAs.**

1. **Geopolitically**

**We have seen how the West has weaponised trade, investment, currency and information flows, in short, inter-dependence, to exclude one country from the global economic system.** **This may not be the right time to strengthen integration with countries that can turn this integration against us.**  ***But it is the right time to deepen Atmanirbharta, as Hon’ble Prime Minister has said*. We do not have to pay for our commendably independent stand on the Russian-Ukraine crisis by giving up even more policy space**.

**India has already given up enormous policy space under the FTAs and the WTO - in investment, intellectual property rights and trade, which has made pursuing a 21st Century Industry Policy litigable. For example, higher tariffs had incentivised tariff-hopping FDI in smartphones and automotives in India, but the FTAs will force us to remove them which will lead to good manufacturing FDI vanishing.**

Meanwhile, contrary to the neoliberal advice given to us, many **Developed Countries** are pursuing Industrial Policies. We too should argue that India is fully entitled to encourage R&D and domestic growth. We cannot sacrifice our manufacturing industry and agriculture (the latest World Bank figures show the share of value addition by the manufacturing sector in GDP shrinking to 13%).

**We need instead to double down on Atmanirbharta by focusing on R&D among other policies. We have several excellent models - the Carel model for set-top boxes in which C-DAC developed the technology and then licensed it at a very low fee compared to Cisco’s, and also the Covaxin vaccine which was developed under a Public Private Partnership. These models can be extended to the Defence Industry and Telecom/ ICT, the two key sectors underpinning National Security.**

**We have faith in Hon’ble Prime Minister and your esteemed Office that you will prioritise India’s National Interest and remain true to the path of Atmanirbharta.**

With deep regards,

Smita Purushottam

Former Ambassador & Chairperson

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