SPECIAL REPORT

India-EU FTA: Where is the Europe's Trade Agenda Headed?

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The internal documents of the European Commission reveal the disgraceful attempts to push for higher levels of commitments in trade in industrial goods and agricultural products, services and investment liberalisation, geographical indications and government procurement under the proposed India-EU free trade agreement.

Since 2007, India and EU have been negotiating a free trade pact, officially known as Bilateral Trade and Investment Agreement (BTIA). Notwithstanding several rounds of negotiations, the finalisation of BTIA has been delayed as differences cropped up between India and the EU over certain issues.

Despite much anticipation, both trading partners could not finalise the agreement before the official India-EU Summit held in New Delhi on 10th February 2012. The joint statement issued after the Summit is very ambiguous and therefore does not shed light on the progress made on several issues under negotiations. It appears that the current logjam in the negotiations is over services liberalisation under different modes on both sides besides India's reluctance to accept substantial tariff reduction on cars, wines and spirits.

The Significance of EC Documents

The EC documents, which are not publicly available, were prepared just weeks before the India-EU Summit. The documents assume greater significance as the trade negotiations between India and EU are being held behind closed doors. Considering the fact that this legally binding BTIA would cover close to 1.7 billion people – almost 20 percent of the world population – the potential impacts and implications (both positive and negative) of the agreement could be far reaching.

The documents provide an overview of the current state of play in the India-EU trade negotiations. The EC documents are elaborated versions of the landing zones paper (released in November 2011) containing some additional detail to avoid ambiguities and "clearly establish conditionality of the EU's offer."

While these documents may represent the European position, one cannot deny that there would be enormous pressure on the Indian authorities to accept higher levels of commitments in several sectors.

A listing of all the EU's demands is beyond the scope of this article, some of the key demands mentioned in the EC documents are described below.

Commitments on Services

The EU is seeking greater commitments on services and investment liberalisation in addition to all the elements included in the revised offer by India under the Doha Development Agenda (DDA) of the World Trade Organization (WTO).

The EC documents contend that the minimum levels of services liberalisation commitments from India are "necessary" for EU to offer commitments in mode 1 (cross-border service supply) and mode 4 (movement of natural persons) in reciprocity. India is seeking a significant relaxation for the movement of its professionals under mode 4 within the 27-bloc while the EU is seeking greater market access in banking services (mode 3 - commercial presence), insurance (mode 1 and 3) retail trade (mode 1 and 3), and telecommunications (mode 1 and 3) in India.

It is important to note that since information technology (IT) and IT enabled Services (ITeS) are of critical importance to India, the EU has deliberately linked services package to the tariff negotiations. According to the EC document, the negotiations on the services and investment texts will need to continue in parallel.

The EU expects the following commitments on services to be explicitly included in India's schedule of commitments.

Establishment:

- India is expected to remove the limitation that exists in DDA revised offer in most sectors requiring approval for new investments where a foreign investor, with an existing joint venture or technical collaboration, could not make any new investment in a similar venture unless the existing Indian partner issued a no objection letter and the new investment was also subject to specific prior Government approval. However, this regulation has been removed by a new consolidated Foreign Direct Investment Policy, which came into effect from April 1, 2011.

Financial services:

- EU is seeking greater market access commitments and national treatment obligations for European banks and financial services industry.

- India is expected to bind foreign ownership in the form of FDI at 74% while ensuring that 100% owned subsidiaries are not forced to divest.
- India is expected to provide to wholly owned subsidiaries of European banks incorporated in India full national treatment, including removal of any numerical ceilings on number of local branches and assurance that banking licences are only denied on purely prudential basis.
- India is expected to commit granting to European banks a number of branch licences per year which amounts to 50% of all new branch licences awarded in India in the given year, but not less than 10 licences per year. [As per India's revised offer at WTO, the number of branch licences issued to foreign banks has been increased to 20 per year. In terms of branch licences, foreign banks have greater presence in India than in the EU].
- India is expected to clarify that the definition of branch does not include back-offices (offices that are not directly engaged in sales to clients) and ATMs, which will therefore be able to establish outside the quota.

<u>Insurance:</u>

- India is expected to bind the autonomous liberalisation that will enter into force when the current draft bill in the Parliament will be approved; in particular India is expected to commit allowing foreign ownership of 49% or more if the law allows more.
- India is also expected to allow branching in reinsurance.

<u>Distribution</u>:

- India is expected to bind the current opening, i.e. 100% foreign ownership in franchising both for mode 1 and 3.
- For multi-brand retail India is expected to bind the already decided autonomous liberalisation that will enter into force when published. The minimum commitment is allowing foreign ownership of 51%.
- For single-brand retail India is expected to commit 100% foreign ownership for European single brand retailers.
- India may enter limited specific exclusions from product coverage. However, these should not exclude from commitments sectors currently open for competition on national treatment basis. Any such exclusion is subject to further negotiations.

<u>Legal services:</u>

- India is expected to submit and mutually agree with EU a roadmap for gradual opening of the provision of legal services by European companies and professionals and to commit on implementing the mentioned roadmap. This commitment would be included in the text of the Title on Trade in Services accompanied with a specific review clause for amending the specific commitments of India in 5 years time to reflect the progress made in following the roadmap.
- The roadmap is expected to broadly follow the following liberalisation path:
    - Allow EU firms' representative offices and EU qualified lawyers to provide advisory services on foreign (public international law and EU law), home country and third country law (of any given EU Member State) as of entry into force of the EU-India FTA.
    - Allow for the EU firms and professionals to cooperate with Indian law firms on cases that touch on both domestic and foreign legal issues and to share profits derived from such cases as of two years after the entry into force of the FTA.
    - Allow the establishment of joint ventures five years after the entry into force of the FTA.
    - These commitments are not expected to cover representation in domestic courts, and may exclude some categories of law from market opening, may be subject to specific qualification requirements and may include additional conditions such as proportion of voting shares, ownership caps, etc.

<u>Telecommunication:</u>

- India is expected to commit ownership cap of 74% for all subsectors.

- India is expected to commit mode 1 for telecom services other than satellite (such as - Virtual Private Networks).

<u>Postal and courier services</u>:

- India is expected to grandfather the market currently available to EU companies already present on the Indian market, including scope of services allowed to be provided.
- India is furthermore expected to agree to a specific review clause in the text of the Title on Trade in Services committing to a review to be conducted once the current ongoing reform is concluded, during which both regulatory principles as well as specific commitments would be reviewed.

<u>Maritime transport services</u>:

- India is expected to include the market access commitments on maritime services in the FTA.
- India is expected to abolish or considerably reduce the cargo reservation to liner ships flying Indian flag.

<u>Accountancy, bookkeeping and auditing services:</u>

- India is expected to take commercial presence commitments in these sectors, specifically the auditing services. These commitments may be gradual entering into force over a period of five years as of entry into force of the FTA and may be subject to specific qualification requirements and may include additional conditions such as proportion of voting shares, ownership caps, etc.
- India is expected to allow companies to use their internationally known brand names even if registered after 1988.

Ambitious NAMA Package

In the Non-Agricultural Market Access (NAMA) negotiations under the framework of BTIA, the EU is seeking an ambitious outcome for its businesses through drastic cuts in applied tariff rates as well as reduction of non-tariff barriers. The NAMA products account for almost 90% of the world's merchandise exports and cover industrial goods, fuels and mining products, fish, and forestry products.

The EC documents show that the EU is not satisfied with India's initial tariff offer and therefore seeking further improvements. In particular, EU is insisting on elimination of duties on the additional 57 tariff lines (mostly related to automobile industry) as an essential component of the overall NAMA package of the agreement.

The documents also indicate that there is a vast difference between the coverage of India's original tariff offers exchanged at the beginning of the negotiations and of the potential offer (Table 1). "India would reach a level of around 95% full duty elimination in NAMA (both in terms of trade and tariff lines). EU coverage approaches 100% with a very limited number of exceptions (some chemicals and fisheries lines)," claims the EC document on NAMA package.

Table 1: Coverage of India's NAMA Tariff Offer

Estimated Coverage (full Liberalisation in 10 years or less) FTA tariff offers	Tariff lines (in %)				Bilateral trade (in %)			
	India		EU		India		EU	
	Original offer	Potential offer	Original offer	Potential offer	Original offer	Potential offer	Original offer	Potential offer
Total NAMA	91.0	95.2	94.6	99.8	89.0	95.5	90.4	99.8
Chemicals	94.1	97.5	88.4	99.7	86.3	94.2	80.3	97.6
Textiles	91.1	100	95.5	100	76.7	100	88.5	100
Machinery	92.1	98.9	95.0	100	85.5	99.4	97.2	100

While comparing India's offer to the EU with the offer made to Japan (under India-Japan FTA), the EC document points out that the outcome for the EU is considerably better than the one achieved by Japan. "While India has completely excluded 1040 lines in their offer to Japan, only 400 would remain excluded from the offer to the EU and preferential treatment would apply to an additional 80 lines (mainly paper, passenger cars and trucks)," says the document.

Duties Reduction Could Lead to $2.4 Billion Revenue Loss to India

Given the fact that India's WTO bound and currently applied rates on NAMA are higher than EU rates (see Table 2), the price paid by India for the tariff concessions to EU would be much higher. There is also very low applied MFN tariff of the EU on NAMA imports from India.

Table 2: Comparison of WTO Bound and currently applied rates

Estimated simple average duties	India			EU			
	WTO Bound	WTO DDA	MFN applied	WTO Bound	WTO DDA	MFN applied	GSP India
Total NAMA	45.1	18.8	9.5	4.0	2.1	4.3	2.0
Chemicals	41.6	14.2	8.0	4.7	2.7	2.5	0.3
Textiles	62.0	40.0	10.0	8.2	3.9	8.2	7.3
Machinery	27.9	10.5	7.2	2.2	1.4	2.5	0.3

The EC document acknowledges that the potential agreement would save nearly US$2.4 billion (Rs.11000 crore) annually on custom duties on NAMA products – based on Indian imports from EU in 2008 – once it is fully implemented. The document further maintains that this amount does not include agricultural products and products subject to preferential treatment.

In other words, the potential agreement entails an annual revenue loss of Rs.11000 crore to the Indian Government on account of reduction in customs duties. The annual loss of Rs.11000 crore cannot be ignored by Indian policy makers, particularly in the present times when tax revenues are under severe pressure.

Specific Sectors

Based on its negotiations with India, the EC document on NAMA package draws the following conclusions on specific sectors:

Textiles/Clothing:

Given India's international competitiveness in Textiles/Clothing the entire sector will be liberalised by both sides with a significant degree of frontloading (more than half of tariff lines fully liberalised after 3 years). Apart from full coverage, both trading partners have reached a high degree of reciprocity in staging.

Chemicals (and Pharmaceuticals):

India's offer to EU is far better than the one offered to Japan. Under the India-Japan FTA, as many as 482 chemicals lines were excluded. In contrast, only 57 chemicals lines are to be excluded under the proposed agreement with EU. Whereas India's original offer was to exclude 132 chemical lines. Despite substantial improvement in India's offer, the EU would maintain the currently applied duty on 4 sensitive chemicals lines.

Table 3: Chemicals - Original Offer

	Lines	**Trade**
Total	2238	1959
Exclusion	132	268
Coverage	94.1%	86.3%

Table 4: Chemicals - Potential + Request Offer

	Lines	Trade
Total	2238	1959
Exclusion	55	114
Coverage	97.5%	94.2%

- On its part, India has already offered the full elimination of all duties on pharmaceuticals.

- India would eliminate duties on chemicals in no more than 7 years (while the EU would eliminate duties over a maximum of 5 years).

<u>Machinery:</u>

According to the EC document, India's offer on Machinery is close to the target of full liberalisation. Coverage has already improved from 92.1% of tariff lines and 85.5% of trade to 96.9% of tariff lines and 95.7% of trade. The EU continues to press strongly for the elimination of duties on 32 additional tariff lines in chapters 84-85 (including both machinery and car parts) which would bring coverage to almost 100%, i.e. 98.9% of tariff lines and 99.4% of trade.

<u>Passenger Cars:</u>

India would offer preferential access to European automotive industry while the country has not offered the similar concessions to Japan, Korea and ASEAN under its bilateral agreements.

The expected car package contains the following elements:

- India should reduce its tariff on imports of passenger cars from the EU to 30% at entry into force for cars > 1.5 litres and for cars < 1.5 litres to 30 % no later than 2017/2018.
- In addition, India should open at entry into force a tariff quota of at least 40000 units with a yearly growth rate of 5000. No later than 2017/18, the in-quota duty rate must not be higher than 10%. The quota should be allocated to exports of cars less than 1.5 litres until the out-of-quota rate is 30% for all car categories.
- A review clause should establish the objective of full duty elimination and propose a mechanism to work towards this goal.

- India will present, no later than 1 January 2017, an offer for further substantial reduction of duties on all types of passenger cars. The EU expects such offer to include a schedule for bringing Indian import duties progressively to zero over a reasonable period of time.
- Provided India delivers the elements set out above, the EU should reduce duties on cars to 3% at entry into force and to zero no later than 2017/18.

Apart from above mentioned sectors, EU is also pushing for substantial improvements in India's offer on paper, trucks and fisheries.

Wines and spirits:

According to the EC internal document, India has offered to bring tariffs on wines and spirits to 75% at entry into force and reduce to 40% in 3 years (wine) and 4 years (spirits). However, this offer is not acceptable to the EU. It is seeking substantial reduction in both cut-off points and end duty levels. In particular, EU is demanding 20% for the top band in a 2-band system, for both wines and spirits; 30% in the middle band and 20% in the top-band, in a 3-band system for wines only.

Agriculture package

The EC document indicates that the EU is not satisfied with India's initial tariff offer on agricultural products, particularly important sectors of poultry, dairy (SMP, WMP, whey and cheeses), olive and other oils, pasta, chocolates, biscuits, confectionary, food preparations including infant formula, roasted cereal preparations, some processed fruit and vegetables.

It appears from the document that the negotiations on agriculture package are yet to be concluded.

Geographical Indications

The EU is very determined on the recognition and protection of its 130 geographical indications (GIs) as per Article 23 of the TRIPS which provides a higher level of protection for GIs for wines and spirits (such as Champagne and Scotch Whisky). The document states that "The situation on GIs is of growing concern. Despite commitments to take action, India is reluctant to enter into any additional political commitment on GIs."

By taking an uncompromising position on GIs, the document contends: "The EU expects that effective registration should take place before entry into force of the agreement. Without such result on GIs, the Commission considers it is not in a position to conclude negotiations. If deemed necessary, conditionality clauses will apply, i.e. the EU will make certain trade concessions conditional on GI protection upon entry into force."

It further adds: “India will be expected to confirm readiness to apply administrative facilitation to the 130 applications, to notify extension of TRIPS Art 23 level of protection to any non-wine/spirit product category and to confirm readiness to work on political deliverables on GIs within the FTA.”

Government Procurement

The EC document provides a glimpse into the negotiations on the rules pertaining to government procurement. It admits that considerable progress has been made on government procurement text by both trading partners and only a few remaining issues need to be addressed. With regard to procurements related to public sector undertakings in India, the document indicates that the negotiations on market access have not progressed much.

Other areas

The internal document also states that the negotiations are well advanced on Rules of Origin Protocol, Trade Remedies, TBT, SPS, Trade Facilitation and Customs, Competition Policy, Transparency, Dispute Settlement and the Mediation Mechanism. However, more preparatory work is required on the IPR chapter and the chapter on sustainable development, says the document.

Lack of Transparency and Public Consultation in India

The internal documents of EC may embarrass the Indian authorities who have stoutly maintained that the economic interests of the domestic producers and service providers would be fully protected under the proposed agreement with the EU.

It is of grave concern that the India-EU BTIA negotiations have been marked by a gross absence of transparency and public consultation in India.

Given these wide-ranging demands emanating from Europe seeking deeper tariff cuts and services liberalization, it is pertinent for the Indian authorities to organise country-wide consultations with state governments, local bodies, small and medium enterprises, farmers’ groups, community organisations and trade unions on an equal footing before inking such a lop-sided agreement with EU.

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