CIVIL SOCIETY CONSULTATION ON INDIA-EU FREE TRADE AGREEMENT

A briefing report by
Centre for Financial Accountability
with support from
Rosa Luxemburg Stiftung

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New Delhi, December 2022

CONTENTS

A note on the collection

India is involved in numerous bilateral and regional free trade agreements (FTAs). Free Trade and investment agreements have a significant impact on overall economic activities and in many ways impact the government's ability to evolve policies to address economic and social objectives.

This collation specifically speaks to the FTA currently under negotiation between India and the European Union and is a product of the civil society consultation that took place on 17th November, 2022 at USO House, New Delhi. This consultation was organized by the Centre for Financial Accountability with support from the Rosa Luxemburg Foundation. This note is a summary of discussions that took place during the consultation that brought together members and representatives of various civil society organizations and groups in India who work on or closely monitor free trade agreements. Many of the participants also came from groups that are at the receiving end of the policy decision agreed upon during an FTA negotiation or are directly involved in some of these negotiations, with the aim of better understanding the issues that concern the Indian masses, in relation to the Free Trade Agreement.

This collection will be useful for many stakeholders including farmers, workers, small traders, self-employed, women entrepreneurs, public sector employees and many other sections of the society who are directly affected by the India-EU FTA and can educate themselves on the implications of FTAs and how they can take actions to protect their interests through democratic processes.

It has been the attempt of the Centre for Financial Accountability to simplify and widen the discussion on the economy, finance and trade from academic and intellectual circles to civil society organizations and the masses for a better understanding of the policies and agreements that impact the political economy of the country. Since many of these negotiations are done in secret, summary reports such as this can deepen democratic debate through informed opinion-making.

This collection is organized in an eclectic, but nonetheless in a thematic manner, as far as possible. It will draw out the main themes of deliberations and set on record the comments from various contributors (and as per consent to record and the written submission made by them), rather than seek to be comprehensive or to report discussions sequentially. The document is a dynamic document and will be updated from time to time upon the receipt of write submissions from other contributors and is currently not intended to present a uniform view of those present– that would not be possible – rather it is intended to vicariously help the readers to check-in on the interventions made during deliberations. A comprehensive list of contributors and the themes of their interventions is provided for reference. We hope that this note will provide an easy reference for civil society organizations to understand the implications of India-EU FTA in their respective areas of enquiry. ●

Interventions	Contributors
Facilitator	Sonal Raghuvanshi, Centre for Financial Accountability
Welcome Address	Joe Athialy, Centre for Financial Accountability
Introduction to the gathering	Nadja Dorschner, Rosa Luxemburg Foundation
Opening remarks	Helmut Scholz, The Left (Germany) Member of the European Parliament
Country Profile: Demarcating issues of concern and India's Experience with Free Trade Agreements	Shalini Bhutani, Lawyer and Independent Researcher
Introduction to India-EU Free Trade Agreement	Ranja Sengupta, Third World Network
Sectoral Interventions on Data Rights	Anita Gurumurthy, IT for Change
	Parminder Jeet Singh, IT for Change
Sectoral Interventions - Agriculture Sector	Yudhvir Singh, Bhartiya Kisan Union
	Afsar Jafri, GRAIN
	Dinesh Abrol, All India People's Science Forum
	Richa Chintan, Focus on Global South
Sectoral Interventions - Fisheries Sector	Mukesh Bhatnagar, Retd Professor of Centre for WTO Studies, Indian Institute of Foreign Trade
	Olencio Simoes, National Fishworkers Forum
Sectoral Interventions - Government Procurement and Sustainability	Abhijit Das, Former Head, Centre for WTO Studies, Indian Institute of Foreign Trade
Sectoral Interventions - Financial Sector Liberalization	Himanshu Damle, Public Finance Public Accountability Centre
Sectoral Interventions - Health Sector	Roshan Joseph, Medicins Sans Frontiers
	Amitava Guha, Centre of Indian Trade Unions
Sectoral Interventions - Micro, Small, Medium Enterprises	KE Raghunathan, Consortium of Indian Association
Sectoral Interventions - Labour Rights	Thomas Franco, All India Bank Officers Confederation
	Amitava Guha, Centre of Indian Trade Unions

Nadja Dorschner

Introduction to the gathering

Hello comrades. It is a pleasure for me to be given the opportunity and I'm very grateful to make a short introduction to this meeting on behalf of Rosa Luxemburg Stiftung (RLS). As a globally operating organization, we try to create spaces for dialogue between left and progressive actors looking at topics such as the realization of democratic and social rights. We want to talk about how we can transition towards just and ecologically sustainable economic world orders. Again, I would like to thank CFA very much for creating exactly such a space for dialogue today.

And with today's meeting we aim to get an overview of concerns that exist within the Indian civil society on the proposed trade agreement between the European Union and India. Therefore, we are very grateful to have Member of European Parliament Helmut Scholtz and his assistant Bernd Schneider with us, who will be able to take up the concerns they listen to here and raise them in the Parliament. We thank them for coming the long way to India and engaging with us. Also with us, we have colleagues from Brussels who hopefully can also use the learnings from this meeting to inform critical organizations in Europe about the concerns that exist in India and use these learnings for your advocacy work towards European policymakers. We hope that we will be able to initiate critical debates around the EU India trade negotiations. So this event today is a first start. We also plan to launch two reports soon on the expected impacts of the Free Trade Agreement in the European Union. The report on the Indian concerns is prepared by Ranja Sengupta1 and those from the German side is prepared by LoraVerheecke.[2] I'm very excited that we will listen to insights into your findings today. And more generally, talk about the impact of this FTA on farmers, informal workers, on marginalized and vulnerable sections of society.

I also hope that we can look at some of the bigger questions that actually stand behind free trade negotiations. Like what would global trade actually need to look like in order to contribute to decreasing global inequality and in order to fight the climate crisis? I think we need to acknowledge that partners at the negotiation table should critically look at whether it is possible to set any standard to address these inequalities and to find ways ahead for just sustainable global trade. For India, there's a lot at stake. India needs to secure incomes and livelihoods for 1.37 billion people. I think what can give us hope is the success of the farmers' protests that has proven that mobilization across very huge sections of civil society is possible. So I hope this success motivates us all to continue the struggle. And also with the RLS office in Brussels, we'll try to make sure that your concerns and analysis of the EU-India FDA are disseminated into large academic, political and activist networks. Thanks everyone for coming and being with us today. ●

1. Ranja Sengupta was one of the participants at the consultation event and gave an interim presentation on the report that is now released and can be accessed here - https://www.rosalux.eu/en/article/2207.development-opportunities-or-challenges.html

2. This report by Lora Verheecke can be accessed here - https://www.rosalux.eu/en/article/2204.eu-india-trade-deal-business-as-usual.html

Anita Gurumurthy

Interventions on Data Rights

Thank you so much for having me here. I would like to bring to the table some concerns on the proposed text on digital trade in the EU-India Free Trade Agreement.

1. Data is a key building block of the economy today. Furthering the rights and interests of people, esp those who are in the margins of society, is possible only if the state is able to play its allocative, regulatory and redistributive functions in relation to data as a resource. The idea of data sovereignty is tied to this truism.

Unrestricted cross-border data flows - even if limited by safeguards for personal data protection and privacy - pose a tremendous threat to the productive capacity of peoples and nations. We are concerned that trust in the digital economy is equated with the reductionist idea of privacy as an instrument of market readiness – without cognizance of the public trust doctrine, that makes it wholly unjustified to make the commons of data the subject of private ownership. Public trust would require that data flows are tied to people's right to self-determination.

The text also includes making Open Government Data available for cross border business opportunities, beyond its use by the public sector. Emerging evidence shows how analytics firms from the Global North benefit hugely from public sector data in the South, and do so, without any public accountability. Even in Europe, the exposé around the NHS-Palantir deal still remains fresh in public memory.

The proposed provisions on unrestricted data flows and Open Govt Data are thus inimical to data sovereignty – as a territorial and societal issue. In critical sectors of economic activity and public service delivery, the Indian government will need to ring-fence access to data resources in order to legitimately protect its longer term geo-economic interests, and to tackle redistributive justice within its jurisdiction.

For example, in the agricultural sector – an economic domain which is a key source of livelihoods for women in the Indian economy – the bulk of data resources is currently with the public sector. In the agricultural data exchange that the government of India is setting up, it may be necessary to evolve differential terms of participation for different economic actors, (including domestic and foreign businesses), and regulate the export of data resources from this domestic infrastructure to locations outside India. The trade agreement cannot aid the corporate capture of such resources that then undercuts the ability of women and other marginal actors to compete in and benefit from the data economy.

2. The second point is about algorithmic accountability – which is essential to safeguard the foundational human right to equality and non-discrimination. The provision in the agreement that prohibits a party from demanding access to, or transfer of, source code owned by a natural or legal person located in the other party's jurisdiction is inimical to the enforcement of algorithmic accountability safeguards in cross-border digital services. It is increasingly clear that without the ability to open up algorithms, institutional oversight in the digital economy will not meet its public interest objectives. Public and private harms such as predatory profiling practices (such as reverse redlining in fintech services), violation of reproductive and sexual autonomy (such as through data extractive femtech advisory services), and anti-competitive conduct in e-commerce marketplaces cannot be addressed locally. Given that the EU is taking the lead on algorithmic accountability laws for its own jurisdiction, the source code provision seems to suggest a double speak.

3. Thirdly, the text proposes that a party should not require prior authorisation of a digital service just because it is being provided online – the implicit suggestion being that existing commitments apply automatically to digitally-mediated trade as well, and no additional regulatory step is permissible. This demand is antithetical to economic and social justice. Research has demonstrated that inclusive e-commerce is contingent on the ability to introduce positive discrimination/affirmative action measures that protect MSMEs' access to e-commerce (TAPED dataset, 2021) where women tend to be concentrated.

A 2020 research report by ODI and research in Asia by GRAIN demonstrate how platformization of agricultural value chains in developing countries and entry of agri-tech platforms may actually exacerbate gender divides in agricultural participation and productivity – with women being sidelined in the contracts or squeezed through unfavorable terms.

The scramble to platformize services that were previously less trade-intensive and mainly the preserve of the public sector, such as in education and health, portends a serious social policy problem. Ed-tech and digital health sectors are booming with investments, especially from Big Tech companies. In emerging e-commerce and services trade agreements, education and health are cast as marketable commodities and not as public goods that the state is delivering to the most marginalized citizen. Under these conditions, digitalization will result in a de facto marketization of services that were previously public, directly disenfranchising the most marginalized.

Clearly, the digitally-mediated marketplace needs a new set of policy measures to determine market access and regulate dominant market players.

4. Fourthly, the provision that prevents the imposition of customs duties on electronic transmissions is antithetical to the WTO MC-12 ministerial decision that "the current practice of not imposing customs duties on electronic transmissions will continue until MC13, which should ordinarily be held by 31 December 2023. Should MC13 be delayed beyond 31 March 2024, the moratorium will expire on that date unless Ministers or the General Council take

a decision to extend". India and other developing countries have consistently opposed the 'no customs duties' position, as it weakens the fiscal revenue base of developing countries, putting pressure on care-relevant infrastructure such as the social security net, and health and sanitation services etc.

5. Finally, the digital economy needs developing countries to be unfettered in imagining policies – not just fit for the purpose of a neo-liberal trade paradigm, but fit for a fair and just future. Cooperation on regulatory issues is best left out of trade agreements. The EU has been a strong partner in the development cooperation route and this space will continue to be crucial for policy exchange on public digital infrastructure, data commons and human rights in the AI economy – especially in their relevance for social and gender justice. Also, the ongoing processes in the EU to revamp the due diligence obligations of its transnational corporations must include equal concern for the rights of citizens in the Global South, in order for trade and development cooperation to lead to global justice and equity. ●

Afsar Jafri

Interventions on the Impact of the proposed India-EU FTA on India's Agriculture sector

Thanks to the Centre for Financial Accountability for holding this important gathering. India relaunched the negotiation for a Free Trade Agreement (FTA) with the European Union on 17 June 2022 after a gap of 13 years. As per the news report, the proposed India-EU FTA will be much broader and more ambitious than any trade deal recently concluded by New Delhi. It will be a comprehensive deal and not an interim or limited one. It is expected to achieve the ambitious goal of liberalizing 90% of trade in agricultural goods. This would clear the way for EU members to dump their cheap subsidized agricultural products in India. Therefore, civil society groups and farmers' unions in India have the following concerns about this mega FTA between 27 member countries of the EU and India.

EU Subsidies may not get negotiated

The India-EU FTA envisages a lowering of Indian tariffs to zero or near zero levels for 90% of the agricultural products, but the huge agricultural subsidies enjoyed by the EU farmers may not be part of the negotiation and will remain unaltered. The EU subsidizes its farmers through dual subsidies – through individual states and the Common Agricultural Policy (CAP). Since these subsidies are not a subject of negotiation under this FTA, they will continue to distort trade. In 2021, the EU Parliament cleared the next CAP for Euro 387 billion (USD 436 billion) on payments to farmers and support for rural development. As per the 2019 notification to the WTO, EU subsidies in agriculture include Euro 68.515 billion in Green Box, Euro 4.889 billion in Blue Box and Euro 5.392 billion in Amber Box. The huge agricultural subsidies would ensure that the EU can dump its highly subsidized farm products in the Indian market. Indian farmers are not having that kind of domestic support and therefore cannot compete with the EU farmers. In the earlier round of negotiations, which got stalled in 2013, the Indian negotiators completely ignored the EU farm subsidy and kept it out of the FTA negotiations.

Neither the EU made any commitment to subsidy cuts. The current negotiations will not be different either.

Tariff Barriers and NTBs for Indian exports to the EU

Post the FTA, tariff barriers used by India to protect its agriculture and farmers will get dismantled to provide market access to the EU, but there are greater chances that India won't get increased market access in EU countries since the EU maintains high non-tariff barriers (NTBs) such as sanitary and phytosanitary standards. EU-prescribed SPS standards would disallow Indian food products on the European market due to India's supposedly insufficient food producer traceability and market surveillance systems. The heavy farm subsidies, given by the EU also act as NTBs for goods from developing countries including India. During the earlier negotiation of this FTA, the Ministry of Commerce, the Government of India identified 26 such NTBs in agriculture faced by the Indian exporters to the EU, most of which arise from differences in the harmonization of standards between the EU and India. India offers one single large market to the EU, but the EU is 27 separate markets thus harmonization of standardization makes a more significant challenge for Indian exports.

Moreover, negotiations on the tariff cuts at the WTO were on the bound rates (maximum applicable rates), which is different from cuts on applied rates under an FTA, including the India-EU. The EU average-bound agricultural tariff rates are very low (14.2% in 2019) compared to India (113.1% in 2020). The FTA commitments to bring tariff rates to 0 or near 0 for 90% of products means that India stands to face massive protection loss, much more than the EU. India's gain in agricultural exports will hardly increase, as compared to the EU's exports which will see a quantum jump.

EU Demand for market access in the dairy sector

Even though dairy is a sensitive sector in FTA negotiations for India, in India-EU FTA, it will be a serious issue since EU corporate dairy has already made a huge investment in India. For example, French dairy company Lactalis began its expansion in India in 2014 with the purchase of Hyderabad-based Tirumala Milk Products. Then in 2016, it acquired the dairy business of Indore-based Anik Industries and in 2019 it bought the milk products business of Prabhat Dairy, making Lactalis one of the largest private players in India's dairy business. Lactalis has also launched some of its exclusive dairy products in the Indian market like President cheese and Lactel UHT milk. Besides Lactalis, the other key European dairy companies in the Indian dairy products market include Danone (France), Sodiaal (France), Savencia (France), DMK (Germany), FrieslandCampina (Netherlands) and Nestle (Switzerland). The EU has been aggressively arguing for the opening up of the dairy sector in India by claiming that the tariffs levied by India on imported dairy products are unrealistically high. Europe's dairy companies have identified the high tariffs as the main obstacle to expanding their commercial ties with India. In the FTA with India, the dairy corporations would not let go of this opportunity to get maximum market access in the Indian dairy sector. This will be disastrous for not only the several dairy cooperatives in India but for the millions of small dairy farmers, generally women, who supply fresh milk to these cooperatives. Already with increasing costs of cattle feed and fodder, this sector is witnessing a deep crisis. The flooding of Indian markets with cheap and subsidized dairy products from the EU will further push the millions of dependent farmers and agricultural laborers into indebtedness and perpetual poverty forcing them to give up agriculture and dairying.

The National treatment provision in an FTA, including in the India-EU, would ensure that foreign dairy companies investing in India have the same rights and privileges as domestic dairy companies. That would mean, the Indian government cannot discriminate in favor of its dairy cooperatives or small dairy farmers. Moreover, the EU's high sanitary standards would prevent dairy products from Indian dairy cooperatives from entering the European market due to supposedly insufficient traceability and market surveillance systems in India's dairy cooperatives. At present, the EU does not allow the import of dairy products from India alleging that Indian cattle are generally infected with foot and mouth disease and are not maintained as per the EU norms.

EU Demand for export restrictions

The removal of export measures have always been a key demand from the EU under the India-EU FTA negotiation. From time to time, India imposes bans on the export of food products such as rice, wheat, sugar etc to maintain domestic food security. If Brussels gets its way, once an India-EU FTA is signed, India won't be able to restrict the export of agricultural products to give preference to the needs of its population and ensure food security of millions, dependent on India's food security programme.

EU Demand for TRIPS Plus protection (UPOV 1991)

On Intellectual Property, the EU demands India to protect Geographical Indications (GI) as well as protection for plant varieties under the International Convention for the Protection of New Varieties of Plants (UPOV) 1991. The EU demands GI protection for its 130 (agricultural) products, including wines, spirits, meats and cheeses. Once India would provide GI protection for the EU products, this would create a problem for Indian agricultural products because many Indian products' names sound similar to the European GI's protected items. For example, India's own Amul will not be able to sell cheeses under the titles of Gouda, Emmental or Mozzarella.

On the plant varieties, the EU wants India to provide TRIPS-Plus provisions by acceding to UPOV'91, which would severely affect India's ability to protect farmers' rights to seeds. UPOV'91 protects the interests of the EU's agribusiness corporations engaged in crop research and development. At the same time, UPOV'91 severely limited the customary rights of Indian farmers to save, exchange and reuse farm-saved seeds and propagating material. UPOV goes far beyond even what is required by TRIPS and recognises only 'breeder's rights' instead of 'farmer's rights as provided under the Indian legislation, the Plant Varieties Protection and Farmers Rights Act (PVPFRA), 2001. The PVPFRA upholds farmers' rights to the country's genetic resources, including seeds, which they have preserved and developed over centuries. UPOV'91 would be a disaster for Indian farmers who are dependent on their farm-saved seeds as well as thousands of seed savers who are conserving India's agricultural diversity for future generations. GRAIN research shows that there are many provisions of the UPOV'91 which are quite disastrous for developing countries like India. Some of these include:

- UPOV '91 force members countries to implement plant variety protection, which favors seed companies at the expense of farmers;

- UPOV-91 provides Dual Protection – grants seed companies exclusive rights to control the production, re-production, sale, export and import of "their" varieties. Secondly, it doesn't allow farmers to save patented seeds and instead of protecting the rights of farmers, it upholds plant breeder's rights of seed companies;

- Under UPOV'91 Breeders' rights extend to "Essentially Derived Varieties" (EDVs) (varieties that retain the essential characteristics of the initial variety). Breeding through "selection" results in EDV varieties which cannot be marketed without the authorisation of the Right holder.

- UPOV-91 requires breeders' permission when using the propagating material or harvested material of a protected variety for production, multiplication and conditioning for propagation, offering for sale, selling or other marketing, exporting, importing, stocking;

- UPOV-91 extends Breeders' Rights to harvested material. It provides the option to further extend protection to products made from harvested material (optional) e*.g. a farmer sows with PVP variety without paying a royalty fee, the breeder can enforce their rights against harvested material (e.g. wheat) and the products made from harvested material (e.g. wheat flour).*

- Under UPOV 91, if farmers infringe the regulation or are suspected of infringement, they can have their houses searched without a warrant, their crops, harvests and processed products seized and destroyed, and they could be sent to jail for years.

- UPOV 91 also makes it much easier for seed companies to privatize farmers' farm-produced seeds and ban the use of local varieties.

Conclusion

Indian farmers have been hit hard by the earlier FTAs and we have seen how Indian farmers are facing the adverse implications of Indian FTAs with ASEAN, Sri Lanka and Malaysia. Cheap imports of tea, coffee, spices, fish products and palm oil have led to a drastic fall in domestic production and the destruction of livelihoods. Farmers' suicides have been high in regions growing some of these crops. There have been widespread protests against these FTAs in different parts of the country. It was the concerns in the agriculture sector that forced India to withdraw from the RCEP negotiations. However all those concerns which India has shown on RCEP are still valid for the EU India FTAs. Despite that, the Indian government is carrying forward its agenda of trade liberalization in the agriculture sector compromising the interest of Indian farmers, dairy farmers and seed savers.

The Indian FTA with the EU would not offer a level playing for millions of small farmers in India to access the European market. Rather it will bring in laws and regulations in India, especially in the seeds sector as well as import of subsidized products including dairy, which would take away their livelihood and their resources, especially the treasure of locally saved seeds, and force them to quit agriculture. With the drastic cut in import tariff and without any safeguards like special safeguard mechanism (SSM) in the WTO, policy space of the Indian government would be quite constrained to defend the rights of Indian farmers when faced with subsidized imports or policy changes in India. ●

Himanshu Damle

Interventions on EU-India FTA and Financial Liberalization

Even though India and the European Union (EU) are celebrating 60 years of bilateralism, it was only in 2007 during Prime Minister Manmohan Singh's first tenure that a Strategic Partnership between the two parties was signed, which after six years of engagements broke down due to unresolved issues. This hiatus was finally broken in May 2021, when India and the EU decided to resume from where they had left off towards an ambitious, comprehensive and a win-win trade deal for both. They also reached an understanding to pursue market access issues, implement globalization and protect investments. The talks were formally resumed in June 2022 with the first round held in Delhi, the second round held in September 2022 in Brussels, and are to be followed by the third round in Delhi in November 2022. The European Union as a region is India's third largest trade partner after the US and China with trade volumes evaluating at $116.36 billion in 20210-22. In addition to protecting investments, both parties are keen to make a headway in accessibility in regards to digital commerce, agricultural products and geographical indicators (GI)[1]. If the EU gets access to the vast and untapped Indian market, India in turn is hoping to enter a level-playing field on an equal footing with countries like Bangladesh and Vietnam that have received privileged status in the EU market.[2] The First Round covered 18 policy areas of FTA in addition to 7 sessions on investment protection and GIs. The Second Round focused on Indian responses to the EU's proposals and India's textual counterproposals.[3] While understanding each party's sensitivities on trade in goods and divergences on rules of origin was the highlight of Round 2, it is quite improbable to date the inking of the trade deal between the two with certainty due to EU's 27-member countries' complexities.

There are up north of 6000 European companies present in India across various sectors, which are responsible for providing 1.7 million jobs, excluding 5 million that are indirectly provided. If tapping the markets is considered to be a rationale behind the trade talks, from the EU's point of view, the objectives are very many, viz. sound, transparent, open, non-discriminatory, and predictable regulatory and business environment for European companies trading with or investing in India. This is inclusive of protecting investments and intellectual property. The EU's share in foreign investment stock in India reached €87.3 billion in 2020, up from €63.7 billion in 2017, making the EU a leading foreign investor in India. This is significant, but way below EU foreign investment stocks in China at €201.2 billion and Brazil at €263.4 billion. The reason for this lag is what the EU considers India's restrictive trade regime and regulatory environment. For example, TBT (Technical Barriers to Trade)[4], which serve legitimate public policy objectives are often treated contentiously by Indian exporters, as any imposition of TBTs can lead to a significant relocation of resources from high-productivity to low-productivity firms. This coupled with limited administrative and technical capability potentially threatens the adoption of regulatory standards that have gained international currency. Then, you have the SPS (Sanitary and Phytosanitary Measures)[5], which is found to be ineffective in India's case, primarily because SPS Measures provide a space for protectionist purposes under the guise of legitimate concerns. But, India is persevering to prove that its ease of doing business has improved, and in an age of deglobalization and economic decoupling, it wants to have a strategic partnership with the EU rather than merely focusing on an economic one, and an FTA in this regard would only help strengthen and forge newer ties and partnerships.

Coming on the heels of India-UAE CEPA (Comprehensive Economic Partnership Agreement), which is broad in scope, but shallow at the same time, there is a sudden spurt in signing FTAs. It must be noted that in a number of India's trade agreements, Indian trade deficits have increased after the signing of the FTAs as the demand for imported commodities increased with complete elimination of tariff and non-tariff barriers.[6] [7] The "Early Harvest",[8] the trade pact with Australia in April was interim and narrow in scope, but with the India-EU negotiations on, the scope of this FTA is supposed to be ambitious and broad with specific emphasis on trade and sustainable development. Importantly, the investment protection agreement was made distinct from FTA due to the regulatory framework within the EU.[9]

India has long exercised caution against FTAs, either because of its over-indulging conclusions on the success/failure rates of FTA utilization, market penetration, or integration with regional and global networks, and crucially trade deficits. All of this is supposedly to change with its new found penchant for signing on to FTAs.

Beginning in the 1990s, and on through the decade, economic liberalization helped India integrate into the global fold. There were divergences in academic scholarship between how such an integration would help India's trade schemata in the short as well long run, when it comes to fully subscribing to the international market order. The skeptics[10] argued that any FTA India were to become part of in the wake of economic liberalization might not make sense in the short-term, but would definitely help the country in its strategic ends, if India were to become a hub for services' exports. The not-so skeptics[11] argued that liberalization followed unilaterally should get its due acknowledgement in India's integration with the World Market, especially in its Look East Policy. The Look East Policy has been upgraded to Act East Policy, and with it, the driver for a deep integration was liberalization[12], or more appropriately financial liberalization, until CoViD-19 hit and brakes were applied and course changed towards 'protectionism' by the Government's 'Atma Nirbharta'.

The process of financial liberalization directly influences the level of interest rates and indirectly, the structure of capital costs, marginal efficiency of investment and levels of aggregate savings, investments and employment. The three major objectives of financial liberalization are,

- opens qualitative and quantitative financial flows
- liberalizes terms governing outflows of forex
- transforms financial structures

If we look at the financial landscape on either side of the Global Financial Crisis of 2008-09, India had done relatively better with its tight capital controls and small extent of its external linkages. This on the one hand had slowed down investment, while on the other locked in restrictions in most traditional industries. However, reforms were once again introduced during the current political dispensation of the BJP-led NDA regime when foreign investment permissions were relaxed. According to Arvind Panagariya,[13] foreign invested enterprises may be wholly owned in some policy priority areas, including marketing food products, high-tech and capital-intensive activities in transportation, coffee, rubber, medical manufacturing, e-commerce, to name a few. Despite such reforms, the results on the ground are barely translatable, as India's domestic financial development is still caught up in a lag, with the public sector banks accounting for a significant majority of the loans. In other words, India's financial system remains in a hybrid mode with market forces permitted, but continuing state ownership and intervention geared towards priority sector requirements on the one hand, and in curbing the unleashing of market forces on the other constrict both of these. While the corporate bond market remains highly regulated and small in size, the equity markets are open and well regulated, it is the debt market with extensive capital controls[14] that govern the flow of foreign funds.

Financial liberalization involves developing equity markets. With banks entering this arena, any turbulence in equity markets could have ripple effects on the performance parameters of banks. Secondarily, FII (Foreign Institutional Investors) investments constitute a large share of equity capital of a financial entity. An FII pull-out, even if caused by developments outside the country, can have rippling implications on the financial health. Thirdly, FII outflows can depreciate the currency, and in a special case (thankfully India hasn't faced it yet) can cause a currency crisis.

Even if Financial Liberalization leads to growth, it can also force the state to adopt a deflationary position to appease financial interests, which are contrary to deficit-financing, as deficit financing can lead to a liquidity overhang[15] in the system further leading to inflationary pressures.[16] This complex is a sign of interventionism on the part of the state and thus is contrary to the market dynamics. At the same time, curbing deficit contracts public expenditure, and this adversely impacts capital formation. This leads to declining growth and employment, and further contracts social sector expenditures. The moonshot of this declension is privatizing public assets. The cycle is vicious, as global finance seeks to delegitimize state and legitimize the market.

India's FDI (Foreign Direct Investment) flows are heavily distorted by phantom capital flows, where special purpose entities and other conduits are used for tax optimization and to obscure the origin of capital, thus facilitating speculative forays in the market. It is essential to clean up these phantom flows. Mauritius, a tax haven followed by the EU and the US are the largest investors in India. UK is the 3rd largest non-tax haven investor with an inward FDI stock into India as large as the US and the EU. But, post-Brexit, the EU stands to lose almost half of its inward FDI stock to India. Looking at India's outward investment, Mauritius and Singapore are the leading destinations whereas stocks in the EU fluctuate and remain relatively low. Another credo of financial liberalization that could be stamped is to exempt listed equities from long-term capital gains taxation regime, as this would facilitate investment in equities. Only short-term capital gains are taxable as of now.

Modi's Make in India to make manufacturing account for 25% of GDP decelerated due to a series of setbacks in the domestic credit market. By the end of the first term, it was clear that market-driven global integration had not delivered on the economic or strategic front leading to annulling a series of bilateral investment treaties. To add to the woes, the downward trend in customs duties since 1991 liberalization was reversed. Even India's stepping out of

RCEP that had simplified rules of origin and enough transition periods for Indian industry to adapt was deemed irrational. Atmanirbhar policy in the wake of CoViD-19 pandemic has been touted as a move away from market-driven liberalization to a more strategic approach with selective increases in industrial tariffs, liberalization of FDI in both goods and services, and PLIs (Performance-Linked Incentives) aimed at restoring key manufacturing processes.

Post-1991, India signed a large number of Bilateral Investment Treaties (BITs), including 21 with the EU members, of which only Latvia and Lithuania are still in force. Since 2015, India has annulled a high number of these BITs. The reason being a number of high-level investor state dispute settlement cases against India. In recent times, India has signed on FTAs, but have agreed in-prior principle to providing MFN status and national treatment to foreign investment, thus limiting the use of performance requirements and dispute settlement mechanisms.

With this adumbrated look at India's Financial Liberalization policies, let us briefly point out how this would impact the current and ongoing negotiations between India and the EU. EU Agreements are mostly two-dimensional - they have width and they have depth. In other words, they cover issues going beyond issues in liberalization of trade in goods and services and investments. Indian Agreements have shown an increasing inclination towards the dimension of width, but are a far cry from depth. In other words, EU Agreements are bound by commitments, whereas Indian Agreements are at best, "best-endeavors".[17]

Advancing non-trade policy objectives is a core part of the EU's foreign policy. One of the cornerstones of the EU's Trade Agreements is Trade and Sustainable Development (the negotiating parameters) culminating into provisions related to environment and labor standards. An example of the EU-South Korea FTA[18] is apt here, for the agreement widens the scope to measures affecting trade-related aspects on environment and labor. If these standards are violated, the EU can legitimately ask the other party to comply with the standards, as had happened in case of South Korea which was asked to improve, rather than improvise on its standards in 2019. Such factors were then introduced in the text of the subsequently inked EU-Vietnam trade agreement. Contrast this with the example of India-Korea Trade Agreement, who in general agree on Sustainable Development, but the text of the deal misses any chapter on commitments.[19]

Commitments need to be complied with, and an ombudsman is essentially tasked with the responsibility. In case of FTAs that the EU signs on to, there are two such compliance mechanisms in place, viz. DAG (Domestic Advisory Group), and PoE (Panel of Experts). The former is an informal mechanism, while the latter is a formal one in nature. Domestic advisory groups should be advisory, consultative, institutionalized and competent to cover all provisions of FTAs. The EESC (European Economic and Social Committee) considers that the participation of civil society in all FTAs is an indispensable element in the strategic ambitions of the external policies of the EU. The DAG, which is more of an informal mechanism, is represented by the two parties in a deal, while the Panel of Experts is constructed in accordance with the formal, third-party dispute settlement mechanism. In case of any dispute or non-compliance, the PoE is invoked and the decision of the same is binding and requires the contracting parties to effectuate a change or changes to their domestic regulations. The case of EU-Korea mentioned above is related to precisely such an invocation of the PoE. The PoE admonished Korea to ratify three ILO (International Labor Organization) Conventions and also had to amend its trade union and labor relations.

How these differences pan out between the EU and India remains to be seen considering there are differences in multilateral and regulatory and domestic positions on these aspects.

Multilaterally, two main conventions of the ILO, viz. C087 and C098 - Right to Convention and Right to Collective Bargaining are not ratified by India have not been ratified by India, and such a miss might become a point of contention to the inking of the treaty. Regulatory-wise, compliance is the responsibility of enterprises, and in India, where a large majority is in the informal sector, compliance costs could be onerous. If the trade deal is then said to go through, adherence to labor and environmental compliances could very well strike out a massive sector of the economy from getting integrated in the deal.

If these are fiduciary challenges (in financial and trade terms), then there are challenges on an environmental front. Firstly, India's environmental laws have gone through a series of notifications that critics believe are substantially diluted to foster India's growth. Secondly, you have the EU's Carbon Border Adjustment Mechanism (CBAM) to prevent carbon leakage within the geographical territories of the EU and by moving carbon-intensive production where standards are lax. India looks unfavorably at this schema for its protectionist, discriminatory and contrarian evaluations to international laws and agreements.

Unless these challenges are consensually agreed to be addressed, any trade deal, with whatever liberal economic policies in place will have serious impediments to clear. Maybe, this is one of the reasons why critics of the FTA between India and the EU call the deal, which is yet to materialize as a deal of unequals. As of now, for the EU, India remains a partial hedge against the risks emanating from the trade architectures along the pacific rim. It remains to be seen if additional layers are added on to this hedge.

Lastly, with India now chairing the G20 for a year, there is likely to be a political temptation to conclude an early harvest agreement with the EU, but it would be compromising on the principles of a comprehensive agreement that may take longer than is expected. ●

Endnotes

1. A GI is generally a produced, agricultural or natural product that is specific to a geographical origin. In trade parlance, GIs carry a guarantee of quality and originality.

2. India is specifically anticipating growth in industries like leather, textiles, processed foods etc. to create a parity in exports, which Bangladesh and Vietnam enjoy.

3. The EU tabled a chapter on trade and sustainable development, anti-fraud and mutual administrative assistance, which the Indian side was supposed to provide detailed explanations and clarifications on. Such an exchange then, would provide grounds for the negotiators to enter into actual negotiations in Round 3.

4. A progressive decline in tariffs has brought non-tariff measures (NTMs) under greater scrutiny as one of the major barriers to trade flows between countries. The increase in NTMs has been primarily driven by a surge in regulatory measures like technical barriers to trade (TBT) and sanitary and phytosanitary measures. Theoretically, the imposition of a TBT can affect a firm in various ways: first, it can directly raise production costs. In particular, TBTs can be associated with either an increase in variable costs (eg. labelling requirements) or fixed costs (eg. new production processes) of production or both. Second, the existence of different standards in different markets could entail individual fixed compliance costs for separate markets, which could severely limit exporters' production capacity and the number of markets. Overall, by increasing the variable or fixed costs of production, TBTs are likely to affect aggregate exports, which in the Indian case is very true to the markets maintaining these measures. Chakraborty, P., & Singh, R. (2020). Technical Barriers to Trade and the Performance of Indian Exporters. *ERIA Discussion Paper Series*, *No. 393*, 1–30. Retrieved December 1, 2022, from https://www.eria.org/uploads/media/discussion-papers/FY21/Technical-Barriers-to-Trade-and-the-Performance-of-Indian-Exporters.pdf.

5. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPSA) was negotiated with a view to setting in place an array of multilateral rules that would, on the one hand, recognize the legitimate right of WTO Members to adopt sanitary and phytosanitary measures necessary to protect human, animal, or plant life or health, and on the other, enshrine certain checks and balances to cope with the possibility of thee measures emerging as non-tariff barriers (NBTs). Das, K. (2008). Coping with SPS challenges in India: WTO and beyond. *Journal of International Economic Law*, *11*(4), 971–1019. https://doi.org/10.1093/jiel/jgn033

6. The case of import of Malaysian Palm Oil is appropriate here.

7. In order to understand the mathematical and econometric frameworks to assess the impacts of FTAs on the commodity value-chain, see Ghosh, N., Konar, A., & Pathak , S. (2015, October). *India's FTAs with East and SE Asia - Impact of India-Malaysia CECA on the Edible Oil Value Chain*. Observer Research Organization Occasional Paper. Retrieved December 5, 2022, from https://www.orfonline.org/wp-content/uploads/2015/12/Oc-Paper_73.pdf

8. An early harvest agreement is aimed at liberalizing tariffs on the trade of certain goods between two countries or trading blocs before a comprehensive agreement. It is primarily a confidence building measure.

9. While an FTA can be approved by the European Parliament, investment promotion pacts are to be ratified by parliaments of member countries.

10. Pal, P. P., & Dasgupta, M. (2008). Does a Free Trade Agreement with ASEAN Make Sense? *Economic and Political Weekly*, *43*(46), 8–41.

11. Asher, M. G., & Sen, R. (2008). India-East Asian Integration: A Win-Win for Asia. *Economic and Political Weekly*, *40*(36), 3–9.

12. Liberalisation is a loosely used terminology often tailor-made to suit contexts. But, in general, it refers to the relief of state restrictions with areas of social, political, and economic policies. Liberalisation in economic policy focuses on the reduction of government laws and restrictions in place to encourage greater participation by private entities. In India, liberalization began with the 1991 economic reforms, and were primarily aimed at - annulling the then-existing license raj; lowering of interest rates and tariffs; stripping the public sector's monopoly from various segments of the economy; and sanctioning of foreign investment in different industries. Trade liberalization, on the other hand is the removal or reduction of restrictions or barriers on the free exchange of goods between nations, These barriers include tariffs, such as duties and surcharges, and non-tariff barriers, such as licensing rules and quotas. For a in-depth treatment on Trade Liberalisation, see Wacziarg, R. (Ed.). (2018). Trade liberalization. 2 vol. set. Edward Elgar.

13. Panagariya, A. (2016, May 18). Two years of reform: Substantial progress has been made towards restoring economic momentum. Much remains to be done. *The Indian Express*. New Delhi. Retrieved December 5, 2022, from indianexpress. com/article/opinion/columns/pm-narendra-modi-2-years-of-modi- govt-bjp-two-year-anniversary-pradhan-mantri-krishi-sinchai- yojana-2804219/.

14. In a related concept, India during the heydays of unfolding its liberalization policies acted prudentially in liberalizing its capital account. A capital account deficit is showing that more money is flowing out of the economy along with increase in its ownership of foreign assets and vice versa in case of surplus. The Balance of Payments contains the current account (which provides a summary of the trade in goods and services) in addition to the capital account which records all capital transactions.

15. Excess liquidity in the system, and has the potential to send short-term interest rates crashing down.

16. Chandrashekhar, C. P., & Pal, P. P. (2006). Financial Liberalization in India: An Assessment of its Nature and Outcomes. *Economic and Political Weekly*, *41*(11), 1–25.

17. Best Endeavours are an onerous obligation requiring a party to take "all those steps in their power which are capable of producing the desired results" although it is by no means an absolute obligation and the concept of reasonableness still applies. One expression of this is that "best endeavours" requires "all that reasonable persons reasonably could do in the circumstances". In contrast to "Best Endeavors", you also have Rational Endeavors, which are the obligations that depend upon the circumstances of the party subject to it and they would not be required to sacrifice their own commercial interests.

18. European Union , Official Journal of the European Union (2011). Retrieved December 5, 2022, from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22011A0514(01).

19. Ministry of Commerce, GoI, India - Korea CEPA (2009). Retrieved December 5, 2022, from https://commerce.gov.in/wp-content/uploads/2020/05/INDIA-KOREA-CEPA-2009.pdf.

Abhijit Das

Inventions on Government Procurement and Sustainability

Thank you for having me. As I make these remarks, let me mention at the outset that I have no institutional affiliation any longer as I have recently retired as Head of the Centre for WTO studies. I must confess that between 2007 and 2011, I was very closely involved with the negotiations. I was part of the government, and I was a big champion of these negotiations. One decade down the line, I think this agreement will bear unmitigated disaster for India. If you look at what all the preceding speakers have spoken, there is one undersigned theme in what they have said. The underlying theme is that the agreement is a forward looking agreement in the sense that new areas of economic activities that are emerging now and that will emerge in the future, the doors will be shut completely by the provisions in this agreement for India to implement capture policies, in particular in areas such as digital trade and climate friendly products.

Let's be very clear, the products will not initially emerge from India. They will emerge from other countries, maybe the US, maybe European Union, maybe China as well. And what the provisions of the agreement will do is it will tie the hands of our government, prevent the government from giving a boost to its own domestic industry, to produce climate friendly goods or to produce digital products. And these are just two examples. There are a number of provisions in the entire agreement which really will shut the door for India or implement various policies on issues of sustainability.

The market access which we might imagine we will get through reduction of tariffs, let me clarify that much of it is going to be undermined through the ability, rather than through the justification which will arise from the provisions of the agreement, on grounds of environment and labor. Similarly, there's a mention of removing obstacles to trade of goods and services relevant for climate change. We've already seen what happened to India when it removed the tariffs on information technology products, and the domestic industry got wiped out. It could never get back on its feet.

The same thing is likely to get replicated in respect of climate friendly products. And just to recall now, about one third of India's trade deficit is on account of electronic products. And there is absolutely no denying that India will have to go towards a low carbon economy. What the FTA will do is it will make the country hopelessly import dependent in this path towards a low carbon economy. It will not allow the government to create jobs or to nurture its opportunity sector for climate friendly products.

Then there are issues around sustainable food systems, energy and raw material. Sustainable food systems, rather, you've already mentioned, if you look at it in some detail, it may even involve giving commitments for logistics services, transportation services, given what is contained in the broad objective and what is contained in the provisions of sustainable food systems. The provisions on energy and raw material, I'm afraid, is going to result in a grab for resources from India and more importantly, erect almost insurmountable barriers for the government to create a vibrant sector for renewable energy production. There's also some talk of harmonization of standards and if that were to happen in the renewable energy sector, at the EU levels, I am afraid Indian producers will not be able to meet those standards and they will get wiped out of the domestic market itself..

The short answer I'm trying to drive home at is in return for market access in a few sectors which India might aspire for, we are foregoing the future in sectors where there will be burgeoning economic growth.

Turning to the issue of government procurement, Ranja Sengupta has already alluded to - many countries in the past have used government procurement as a very effective policy tool to nurture their domestic producers. Under the rules of the WTO you can fence in favor of your domestic producers. The India-EU FTA provisions will deprive India of this flexibility. Some of you might argue that, well, the European Union is a huge market. You will get a huge market to sell to the European government procurement. The sad reality is that the European Union procures miniscule quantities. I did a very, very detailed study. That study is a bit dated, no doubt. But that study showed that if the European Union procures €100, you'll be surprised how much it procures from outside the European Union - not even €1, not even half a euro. It is a glorious figure of 0.3%. This has not changed. Rather, let me speculate, this probably has not changed over time.

When the negotiations started, this figure was pointed out to the European Union. This figure was based on two independent sources. Plus, we did a contract wise analysis. Within a year, the European Union stopped publishing those disadvantages. So the short point again is that given in the government procurement market, the pot of gold which is promised at the end is really going to be a mirage. So I'm going to conclude over here and I hope I have saved one and a half minutes for you. ●

Roshan Joseph

Interventions on the Health Sector

I work with Medicins Sans Frontiers. It's an international medical humanitarian organization. We have a presence in over 75 countries. I work with a team called Access Campaign, which works on pushing for access to new medical technologies by addressing legal, policy, political and regulatory barriers.

So, as someone was rightly saying that India is known as the pharmacy of the world and I'll start from there. So, India is a major generic manufacturer and supplier of affordable generic medicines for vaccines - HIV, TB, hepatitis, cancer, to most of the lower and middle income countries and other countries as well. And because of the generic competition, there has been a substantial reduction of price, up to 90%. Now, this generic competition or this substantial reduction of price of medicine is possible because of the safeguards that Indian laws have, which addresses monopoly extending practices and creates a balance between IP protection and health needs. So, despite when India signed onto the TRIPS agreement and had to amend its law in 2005, it ensured that there are sufficient safeguards in India's patent laws and other regulatory laws against unjust monopolies that India was able to in the last few years maintain its generic competition.

Now in the India-EU FTA text that has been published, the chapter on Patents and Intellectual Properties provisions are definitely TRIPS plus and compromises on India's safeguards. There are substantial provisions as well as procedural proposals that have been put forward in the text, which could jeopardize access to medicines and production of affordable generic medicine in India. So I'll focus on the two substantial aspects. That is, firstly, the patent term extension, which is also known as Supplementary Protection Certificate, and secondly, on data exclusivity.

So, coming to patent term extensions, the argument that is usually made is that it is needed to compensate for the time taken for market approval of a particular drug or the regulatory approval for medicines. However, this argument has been found to be flawed in several studies. But most importantly, what I would like to reiterate is that the same arguments were raised during the TRIPS negotiations also. But as a compromise, the 20 year period protection came, which kind of encompasses all the time taken for regulatory approval or the time taken for the patent applications to process in their respective patent offices. Now, this 20 year period includes all potential delays that could happen. This is important because before the TRIPS agreement, India granted patents only on process patents and not on product patents, which was limited to a period of seven years. So from seven years to 20 years, it was already quite a jump in 2005. Now, the EU proposes to have at least a patent term extension of five years which would take the monopoly period of protection beyond the 2020 year period.

The second thing that I would like to discuss is the provision on data exclusivity which restricts the regulatory agencies from relying on the test data that is submitted by originator corporations and to approve the generic medicines. Now, the EU proposal proposes to have an extension of eight to eleven years. This could be either run in parallel with the patent term or it could go beyond the patent term.

I think the best part would be that the European Union should not be pursuing this. There are other provisions which are procedural areas and include enforcement provisions which in turn include patents.. And the second part there's the issue of border measures which affect the legitimate trade of generic medicines. So I'll rest the case here. ●

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