

## Controversial issues in EU-India trade Disputes at WTO level

### SUMMARY

Despite long-running negotiations, there appears little prospect that the EU-India Bilateral Trade and Investment Agreement will be signed in 2014, as the differences between the two have turned out even more challenging than initially expected.

Negotiations began in 2007, hoping to link the world's largest single market with one of the fastest growing economies in a mutually complimentary trade relationship. While some issues have been successfully negotiated, differences over automobiles, food safety, spirits, services and procurement so far remain unresolved.

Until such an agreement can be concluded, EU-India trade relations are regulated under their WTO commitments. Several recent disputes between India and the EU at WTO level illustrate the difficulties faced in the trading relationship.

The two disputes raised by the EU concern various Indian anti-dumping measures and taxes and other duties on alcohol. India has started consultations regarding EU anti-dumping measures on polyethylene terephthalate (PET) imports. The dispute India raised over seizures of generic medicines in transit through the EU has been resolved by mutual agreement, but there are significant prospects of the issue arising again.



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## Ongoing negotiations

In 2007 India and the EU began negotiations on a broad-based trade and investment agreement ([BTIA](#)), with the aim of liberalising trade in goods, services and investment, and to include chapters on economic cooperation, public procurement and intellectual property rights. However, despite more than a dozen negotiating sessions being held, progress has been limited due to a number of contentious issues. Until such an agreement can be concluded, trade between India and the EU will continue to be regulated by World Trade Organisation (WTO) rules, with India, like the EU, a WTO member since its foundation.

### EU interests

The EU wants India to reduce its taxes on alcohol and dairy products and duty on automobiles. For cars, the EU would like to see the import duty eventually phased out, whereas India wants to keep it at 10%.

Negotiations on opening up regulation of the insurance sector as well as public procurement have been particularly complicated. The EU has asked India to increase the foreign direct investment limit from 26 to 49% in the insurance companies. Though India is in the process of [amending](#) its rules on foreign investment, distinguishing between foreign direct investment and foreign portfolio investment (for stakes of no more than 10% in a company), a bill to alter rules applicable to the insurance sector is still pending.

India is an observer, but not a member of the WTO plurilateral [Agreement on Government Procurement](#). The EU wants commitments from India on a new public procurement law, which has not yet been submitted to the Indian parliament. As public procurement accounts for 15% to 20% of India's gross domestic product, due to infrastructure requirements in a range of sectors including telecoms, energy, railways, roads and healthcare, this sector is of obvious interest for EU businesses.

### India's potential gains

India's main interests lie in services trade, including the information technology sector. India wants liberalisation of services under the General Agreement on Trade in Services (GATS) Mode 1 (services provided from the territory of one member country into the territory of the other) and GATS Mode 4 (service supplier moving to the state of the service receiver). It is calling for the EU to recognise it as a "data-secure" nation under the EU Data Protection Directive. Such status is seen as essential for improving market access for Indian information technology companies.

In addition, India would like a more liberal visa regime for its professionals. While the EU has offered 40 000 additional professional visas for entry into the EU each year, India wants the 20% safeguard quota, introduced under the GATS Mode 4 system, removed.

## Disputes between the EU and India at WTO level

Disputes between the EU and India have to be resolved in accordance with the [WTO Understanding on rules and procedures governing the settlement of disputes](#).

### EU-India trade

The European Union (EU) and India are major [trading partners](#). India is the EU's eighth largest export market, and the EU has a positive trade balance with it. In 2012 the EU exported goods to the value of €38.5 billion to India and imported €37.3 billion's worth. EU services exports to India amounted to €11.5 billion, with imports of €11 billion.

Throughout all [stages](#) of dispute resolution the parties are encouraged to continue consulting each other with the aim of settling. [Four disputes](#) between India and the EU have been the subject of recent proceedings under the dispute settlement process.

## EU cases brought against India

### *Anti-dumping measures*

On 8 December 2003, the EU [requested consultations](#) with India on 27 anti-dumping measures regarding various EU export products, including pharmaceuticals, chemicals, paper, textile and steel. The EU argued that there was a lack of evidence of the claimed dumping effect, and that analysis of the injury and causality was insufficient. While most of the contested measures have been terminated by India, including those on steel and pharmaceutical products, the dispute remains under consultations.

### *Taxes and other measures on imported wines and spirits*

On 22 September 2008, the EU [initiated consultations](#) with India on certain tax measures and other import measures applied at state level on imported alcohol. Here, the EU argued that tax measures as applied by some Indian states discriminate against imported alcohol. Furthermore, the dispute also concerned restrictive retail and wholesale distribution in the state of Tamil Nadu, and tax exemption for local wines in Maharashtra seen as a possible prohibited subsidy. The EU updated the scope of negotiations in 2009, following the introduction of new measures in several states. The facts of the dispute partially resembled the 2006 [Indian Wines and spirits duties case](#) concerning internal taxes applied only to imported products, or at a much higher rate than on domestic ones. Therefore, the EU considered it to be in breach of the WTO national treatment principle and preventing a level playing field. Consultations continued in 2010. The issue of lowering duties on alcohol is culturally sensitive in India; progress in this area is also assessed in the light of parallel efforts regarding market access in the BTIA negotiations.

## EU defence in cases brought by India

### *Indian PET imports*

On 4 December 2008, [India requested consultations](#) regarding EU anti-dumping measures on polyethylene terephthalate (PET) imports, used for example in drinks bottles and packaging. India considered that the EU measures were inconsistent with its obligations under the WTO's [Anti-dumping Agreement](#) and its [Agreement on Subsidies and Countervailing Measures](#), as they did not require the termination of definitive anti-dumping or countervailing duties within five years of the imposition of such duties or permit the initiation of an expiry review. This dispute is currently under consultation, but no dispute panel has been established. The Committee of Polyethylene Terephthalate Manufacturers in Europe (CPME) has [claimed](#) that if the anti-dumping measures are not renewed, Indian PET would flood EU markets.

### *Indian generic medicines in transit*

On 11 May 2010, India requested consultations with the EU and the Netherlands concerning repeated [seizures of imports of generic medicines](#) on patent infringement grounds. The drugs seized had been produced in India and were in transit through ports and airports in the Netherlands to third-country destinations (Brazil). India alleged that the respective EU and Dutch measures were incompatible with their obligations under the General Agreement on Tariffs and trade ([GATT](#)) and the Agreement on Trade-related Aspects of Intellectual Property Rights ([TRIPs](#)). The dispute [was resolved](#) in 2011

by mutual agreement. According to this agreement, the mere fact that medicines are in transit through EU territory, and that there is a patent title applicable to such medicines in EU territory, does not in itself constitute sufficient grounds for customs authorities in the EU to suspect the infringement of patent rights. Such grounds could be provided by evidence that the medicines might be diverted onto EU markets. The dispute over Indian generic medicines could however flare up again, as issues of limits to increasing intellectual property rights (IPR) protection beyond minimum international standards, the status of goods in transit, and the effect of intellectual property rights (IPR) on third-country markets have been left unresolved.<sup>1</sup>

## European Parliament

An EP [Resolution of 11 May 2011](#) on the state of play in the EU-India free trade agreement negotiations calls for the inclusion of legally binding clauses on human rights, social and environmental standards and their enforcement, providing for measures in cases of infringement. In the same resolution, the EP asked the Commission not to request "data exclusivity" in the context of IPR negotiations, and to recognise that data exclusivity would have far-reaching consequences for the production of generic medicines and is therefore detrimental to developing countries' access to medicines and public health policy. Data exclusivity measures allow pharmaceutical companies to retain exclusive rights to their test results for up to ten years.

According to the Commission's [answer](#) to an MEP's 2013 question, the EU has proposed to include a provision in the EU-India agreement stressing that it does not require India to change its IPR legislation in relation to access to medicines.

## Main references

[The long road towards an EU-India Free Trade Agreement](#)/ EP Policy Department, DG External Policies, October 2013.

[Some critical issues in EU-India free trade agreement negotiations](#) / Jan Wouters et al., Leuven Centre for Global Governance Studies, February 2013.

Library Statistical Spotlight ["Analysis of EU India trade"](#) / Library of the European Parliament, 19 September 2013.

## Endnote

<sup>1</sup> ["Seizing" pharmaceuticals in transit: analysing the WTO dispute that wasn't](#)/ Bryan Mercurio, International and Comparative Law Quarterly, Vol. 61, issue 02, April 2012, pp. 389-426.

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