

Report of the EU-India High Level Trade Group to The EU-India Summit

13TH October 2006

CHAPTER ONE OVERVIEW OF HLTG ACTIVITIES

1.1 The 2005 EU-India Summit generated a serious political commitment to increase bilateral trade and economic cooperation and to tackle barriers to trade and investment. Within the Joint Action Plan, the Summit launched a High Level Trade Group (HLTG) and mandated it to explore ways and means to deepen and widen the bilateral trade and investment relationship. The HLTG was also tasked with examining the possibility of launching negotiations on a broad-based trade and investment agreement. It was decided that the HLTG would report to the 2006 EU-India Summit, which is the purpose of the present document.

1.2 The HLTG met five times¹ in New Delhi or Brussels and engaged in substantive discussions on a wide range of subjects. The broader trade policy context was examined and information was exchanged on the EU's and India's bilateral trade agreements with other parties. In order to facilitate dialogue, the HLTG exchanged non-papers on trade in goods, trade in services, investment, trade facilitation, public procurement, intellectual property rights, competition and dispute settlement. The exchanges based on these non-papers enabled a clearer picture to emerge on areas of convergence, on particular sensitivities and on the issues meriting further examination. These areas are all addressed in more detail in chapter three.

¹ On 13th February, 16th March, 8th May, 13th July and 19th September 2006.

CHAPTER TWO

OPPORTUNITIES FOR ENHANCED TRADE AND INVESTMENT BETWEEN THE EU AND INDIA

A strategic partnership

2.1 Trade and investment is a cornerstone of the EU and India's multidimensional relationship. As natural allies in a wide range of global issues, this relationship was upgraded in 2004 to a Strategic Partnership, which led to even closer cooperation on a broad range of areas. Both the EU and India are committed at many levels - governments, businesses and consumers - to open the door to further engagement. This presents a unique opportunity to bolster trade and investment relations.

Importance of the multilateral framework

2.2 The EU and India, both global players in world trade, have a shared belief in the benefits of the rule-based multilateral trading system and are deeply committed to supporting fair and balanced trade rules for all. The EU and India have cooperated closely under the aegis of the World Trade Organisation (WTO) and this remains the core framework for their trade relations. Both parties are committed to the successful outcome of the Doha Development Agenda (DDA) negotiations and are convinced that deepening bilateral trade relations should support, rather than undermine, the multilateral route. These are complementary approaches towards the common goal of progressively improving trading conditions, within clear and fair rules, to promote growth, employment and sustainable development for all.

Strategically important markets

2.3 The EU and India constitute strategically important markets for each other's economic operators both in terms of immediate opportunities as well as future potential. Whilst keen to open the door to these opportunities, the EU and India are aware of the need to ensure the benefits are distributed fairly. The EU and India support a social form of economic development and are keen to encourage a model of growth with equity, which is socially inclusive and broad-based. Both are conscious of the need for growth to respect the environment and be sustainable for future generations.

... in India

2.4 India represents the only large and growing emerging economy in Asia where the EU remains the leader both in external trade and foreign investment flows. European businesses cannot afford to ignore the opportunities in one of the most dynamic markets in the world with a growth rate second only to China's. With GDP growth at 8% and foreign investment up 40% to €6 billion, India is on a path to become a global economic heavyweight. India's great advantages in the marketplace are that it has a large pool of educated and skilled, English-speaking workers. This has provided a launch pad for service specialisation and also contributed to the growing consumer market. There are therefore

opportunities for European firms in terms of investment, including collaboration with Indian partners whether through outsourcing or joint ventures, trade in intermediary products as well as access to a market for consumer goods.

2.5 Looking to the future, there are many intrinsic advantages that will continue to drive India's competitiveness in global trade. A first example can be found in sheer demographics. India has one of the youngest populations in working age (more than 50% of the population under 25) and this situation is predicted to continue: in 2020, the average Indian is estimated to be 29 years old, compared to age 45 in Europe. This will provide the Indian economy with a ready supply of competitive labour for years to come. Secondly, India's role at the cutting edge of innovation and research provides a technological edge for many industries, such as in the pharmaceutical, creative or information and communication technology sectors. India's imminent transition from being a major business process outsourcing destination to a knowledge process outsourcing destination is part of this trend.

... and in the EU

2.6 The EU represents the largest market in the world with a GDP of €10,800 billion in 2005, home to nearly half a billion consumers, with a high average level of income (GDP per capita of €23,377). It constitutes a single market where internal borders have been abolished between 25 countries allowing goods, services, people and capital to move freely, which has helped to make it the largest global destination for foreign investment. The enlargement of the EU and the introduction of the Euro have further improved the climate for trade and investment. Europe's economy combines a strong industrial base with a knowledge-based economy founded on a skilled workforce and a high level of investment in research and development. Internationally, the EU's strengths lie in creativity, innovation and quality.

2.7 The EU considers that open markets are a powerful stimulus to competition, innovation and productivity growth. In fact, the EU is one of the most open markets in the world, including for Indian exporters. In 2004, 77% of India's exports to the EU entered either duty free or at a reduced tariff rate thanks predominantly to EU's autonomous policy, known as the Generalised System of Preferences (GSP).

Complementary trade exchanges

2.8 The market analysis shows essentially complementary trends in economic developments between the EU and India. The countries complement each other in their diversified economic structures in terms of output, capital stock, human resources and trade in goods and services. Taking bilateral trade patterns as an example, the EU's exports of goods to India are predominantly intermediary products for further manufacturing whilst India's exports to the EU are in both primary products and finished consumer goods. In terms of value, the EU's most significant exports to India are precious stones and gems, machinery and electrical equipment, base metals, chemical products and vehicles. India's exports to the EU comprise mostly textiles and clothing, precious stones, machinery, agricultural products and leather materials.

2.9 In bilateral services trade, the main products exchanged in both directions were transport services, travel services and business services. In addition, India has shown high growth in information technology, medical services, tourism and some financial services whereas the EU is a leader in professional services such as accounting and legal services, financial services, postal and courier services and telecommunication services.

2.10 In some areas, there is clearly reciprocal trade within the same product and service categories (precious stones, machinery, chemicals, base metals, transport services and business services). This can be explained, in some cases, by the structure of the industrial chain; for example, European traders export diamonds to India where they are processed and sent back as finished products. There are other cases when the data does not capture differentiation between products or services, where there is a complementarity in market demand in terms of quality or price.

Trends in bilateral trade and investment

2.11 This overall economic complementarity is behind the positive trends in bilateral trade. Certainly, the recent evolution of trade and investment between the EU and India is impressive.

2.12 In 2005, bilateral trade in goods grew by a Himalayan 20% to €40bn² and this rate seems set to continue into 2006. There has been a steady growth of 11% on average between 2001 and 2005. Trade was also balanced with a minor surplus to the EU. The EU is India's largest trading partner by far accounting for nearly a fifth of India's total external trade³ whereas India is the EU's 10th main partner with 1.8% of trade.

2.13 Trade in commercial services has similarly increased at a phenomenal rate by 10% average annual growth and with a marginal surplus to India. In 2004, India exported €3.8 billion worth of services to the EU, whilst EU service exports to India amounted to €3.3 billion.

2.14 The EU and India remain important investment partners with investment flows becoming ever more balanced. EU is India's largest source of foreign direct investment (FDI) with outflows amounting to €1100 million in 2004. India's FDI inflows into the EU increased from €140 million in 2002 to €600 million in 2003. Nonetheless, India accounts for less than 1% of the EU's total foreign direct investment, which does not do justice to the potential of India or the capacity of EU investors.

Potential for growth

2.15 Whilst this expansion in trade and investment is significant, there are reasons to believe that current levels are below potential: trade is growing rapidly but remains modest in relative terms. Despite the fact that nearly 1 out of every 6 people on the planet is Indian, India currently punches below its weight in terms of share in world trade. But this is set to change. There are opportunities for enhancing trade and investment in both directions.

² All figures Eurostat unless otherwise specified.

CHAPTER THREE

DISCUSSIONS ON A POSSIBLE BROAD-BASED TRADE AND INVESTMENT AGREEMENT

The HLTG discussed a number of specific areas that would be relevant to any future bilateral trade and investment agreement. The thrust of these discussions along with any relevant conclusions are set out by area below.

The discussion on these areas was without prejudice to a final decision on the nature of any possible future broad-based trade and investment agreement. Various permutations of such a possible agreement were discussed by the HLTG, including, but not only, a free trade agreement.

3.1 Trade in Goods

A reduction of trade barriers can bring progressive improvements in trading conditions with the objective of promoting growth, employment and sustainable development. Bilateral free trade agreements (FTA) aim to eliminate tariffs between the parties on substantially all trade and thus provide opportunities for current and potential exporters to develop their business and diversify the export base.

The HLTG discussed the principles behind any possible future FTA between EU and India and concluded that any bilateral agreement should be WTO compatible and build upon the outcome of the DDA negotiations. It was further determined that:

- The ambition is to achieve elimination of duties on 90% of tariff lines and trade volume within 7 years of the entry into force of the agreement;
- Modalities for the treatment of sensitive products would be agreed including review clauses and partial liberalisation.

The HLTG concluded that there was potential interest in elimination of duties in bilateral trade in light of the complementarity of EU and Indian economies.

Both parties are convinced that substantial benefits could be achieved through the elimination of non-justified non-tariff obstacles to trade. In the context of the DDA, both partners support a flexible mediation mechanism to tackle non-tariff barriers. Such a mechanism could also be explored at the bilateral level. There would also be mutual interest in developing disciplines on transparency in regulation.

³ Source IMF

3.2 Trade in Services

The HLTG analysed the importance of the service sector to both the EU and India and considered the scope for negotiations of a FTA in services. There was unanimity on the principle that any such agreement should build upon the outcome of the DDA, to which both partners are fully committed, and that any agreement should be compatible with GATS. In concrete terms, the parties concurred that any agreement should:

- Ensure substantial sectoral coverage measured in terms of number of sectors, volume of trade and modes of supply. No mode of supply should be excluded; and
- Provide for the elimination of substantially all discrimination between the parties.

Furthermore, the HLTG determined the importance of a common understanding being reached on various points. In particular, the following areas can be the focus for further discussions

- The use of the current level of opening as the point of departure for additional services commitments.
- Liberalisation commitments in modes 1, 2, 3 and 4 as well as exploring areas of mutual interest to facilitate the mutual recognition of professional qualifications in various sectors and related issues.

The HLTG concluded that there was a potential interest in an ambitious free trade agreement. Nonetheless, both parties recognised the sensitivities of certain service sectors.

The HLTG agreed on the importance of the transparency of regulatory requirements which have an impact on trade in services.

3.3 Investment

Both the EU and India aim to provide a liberal, attractive and investor friendly climate and consider it plays an important role in economic growth. Foreign capital inflow is encouraged not only as a source of financial capital but also as a tool of knowledge and technology transfer.

The HLTG recognised the need to promote long-term productive investment that generates stable employment and sustainable growth. Whilst bilateral investment flows already represent a notable share of both parties' total FDI, the HLTG assessed that there were significant opportunities for increasing bilateral investment and that there was clear mutual interest in facilitating these flows further.

Thus, the HLTG considered that a chapter on investment should be included in any future agreement. The parties developed certain principles of such a chapter and were of the opinion that it should:

- Improve market access and provide for national treatment to investors;
- Ensure that host and home states retain their right to regulate;
- Foster transparency by clarifying the regulatory framework;
- Aim at freeing the flow of payments and investment-related capital movements; and
- Seek to facilitate the movement of investment-related natural persons.

The HLTG noted India's interest in including provisions on investment protection and promotion in any possible future bilateral trade and investment agreement. The EU is ready to further consider this issue on the understanding that any such provision would have to be complementary to bilateral investment treaties between India and EU Member States.

3.4 Trade Facilitation

Trade facilitation is an important topic in the development of international trade. It promotes transparency, cuts red tape and simplifies trade procedures, saving both time and money for business. Moreover, procedural barriers in export markets can be a particular burden for SMEs. In addition, trade facilitation measures can reinforce security and promote higher customs revenues and a better investment climate. Cooperation in this area therefore has considerable potential to improve supply chains and trade logistics between the EU and India, thereby enhancing trade flows.

Negotiations in the DDA on trade facilitation have been making good progress. The EU and India have been cooperating closely with a view to achieving an ambitious outcome in line with the negotiating modalities. The HLTG agreed that the parties should support and build on this constructive collaboration.

Consequently, the HLTG advocated that the EU and India develop provisions on trade facilitation within any possible future bilateral trade agreement, as a complement to a future DDA Agreement. They should also complement the activities foreseen in the EU-India Customs Cooperation and Mutual Assistance Agreement. Discussions could cover reinforced co-operation with the aim of developing a joint working programme and initiatives in the customs field, the modernisation of customs, simplified procedures, supply chain security, automation, the role of customs in enforcing IPR, and other modern challenges in customs work.

Trade facilitation means also finding the right balance between ensuring a secure business environment and strengthening and facilitating legitimate trade.

The precise scope and content of a bilateral Trade Facilitation agreement will need to be worked out in more detail to take account of developments in the DDA negotiations. Furthermore, it must also be based on further inputs from business and other stakeholders to help ensure that it effectively makes trading easier.

3.5 Public Procurement

The HLTG examined the role of public procurement policies in ensuring that public money is spent in a transparent, efficient and equitable manner. An open and competitive tendering framework allows public authorities not only to make significant cost savings, but to tap into the full financial and technical potential of the private sector. Companies also benefit from an open procurement regime in that it grants them unhampered access to larger markets and provides a level playing field for economic operators. Finally, a competitive procurement regime facilitates the transfer of state of the art technologies and management practices, thus contributing towards the competitiveness of the knowledge and skills economy.

The HLTG examined how to capture these benefits in the bilateral trade arena noting, in particular, the possibilities for improving reciprocal market access. The HLTG concurred on the relevance of international commitments on procurement and noted the discussions in the seminar held on this subject on 12th May in New Delhi.

The HLTG agreed that a pragmatic approach should be followed for addressing government procurement. This approach shall inter alia include better understanding of each party's procurement practices, examine measures to enhance transparency, as well as examine ways to possible improvements in market access opportunities.

3.6 Technical regulations - TBT and SPS

Cooperation on technical barriers to trade (TBT) and sanitary and phyto-sanitary measures (SPS) aims to prevent and eliminate barriers to trade, while respecting legitimate objectives in terms of protecting health, food safety, the environment etc. As signatories to the WTO TBT Agreement and SPS Agreements, the EU and India are committed to follow common and accepted principles under the SPS & TBT Agreements,

Recognising the importance of technical cooperation, the HLTG agreed that a chapter on these topics should be included in any possible future bilateral trade agreement with a view to increase bilateral trade.

On TBT-related issues, the HLTG decided that a forum should be set up for examining current barriers to trade and for exchanging information in general as well as on statutory notifications. The HLTG also agreed on the importance of ensuring that technical regulations not be more trade restrictive than necessary, and recommended a further exploration on how mutual recognition could be established for technical regulations and conformity assessment, including exploring ways to establish suppliers' declaration of conformity, with a view to increasing bilateral trade.

On SPS issues, the HLTG noted that there is a need to enhance bilateral cooperation in order to promote mutual understanding and trust between India and the EU. Both sides would efficiently search for mutually acceptable solutions with a view to facilitating trade. Both sides would exchange information on good

regulatory practices, development of specific provisions for application of regionalisation, and for assessment of equivalence.

3.7 Intellectual Property and GIs

Ensuring an adequate level of protection of intellectual property plays an important role in developing the right climate for trade and foreign direct investment. Both the EU and India consider that robust intellectual property laws play a decisive role in an economic policy that supports innovation and creativity.

The HLTG agreed that the WTO Agreement on trade-related aspects of intellectual property rights (TRIPS) sets minimum standards of protection for each category of right. WTO Members have the right to go beyond these standards if they consider it necessary and appropriate in order to incite innovation, to spur investment and to reward creators and innovators for their work

The HLTG agreed to include provisions on intellectual property in any possible future bilateral trade agreement in a manner that was complementary to the appropriate WTO provisions and respecting national sovereignty. The intention is to move towards the effective protection and enforcement of intellectual property rights.

The HLTG also recognised that geographical indications (GIs) constituted a potentially important part in bilateral trade and should be covered in any possible bilateral agreement. Both the EU and India are committed to the reinforcement of GI protection as part of the DDA negotiations. Bilaterally, the protection of GIs on each others' markets would be enhanced by the negotiation of an agreement on GIs.

3.8 Competition Policy

Competition rules are important to promote growth and efficiency of economies and, in a trade policy context, to ensure that the benefits of liberalisation and related regulatory reform are not undermined by anti-competitive conduct of private parties. Competition rules are not about increasing market access *per se* but about ensuring the conditions which will enable that access is translated into real, not just theoretical, business opportunities. Robust competition policy also improves the attractiveness for foreign investors by creating transparent and non-discriminatory legal frameworks for foreign operators. Effective domestic competition law regimes are thus, essential to guarantee that commonly defined and agreed forms of anti-competitive behaviour detected in bilateral trade can be addressed, whilst fully respecting national sovereignty. Enhanced cooperation among competition authorities can play a vital part in this direction.

The HLTG agreed that it is fundamental to have comprehensive domestic competition laws, which effectively address anti-competitive behaviour and are based on principles of transparency, due process and non-discrimination on the basis of nationality

Both parties considered that there would be an interest in developing their co-operation in the field of competition under the framework of a possible future bilateral trade agreement. Examples of cooperation provisions include the

possibility for competition authorities to exchange non-confidential information and the coordination of enforcement activities.

3.9 Dispute settlement

In accordance with the overall objectives of increasing trade and investment and providing greater commercial and legal certainty, bilateral dispute settlement mechanisms are designed to settle any trade irritant or manage it so as to avoid a spill over on the broader relationship. Consultations or other cooperative means remain the preferred means of resolution but where this is not possible, a dispute settlement mechanism can help enforce the rules.

The HLTG agreed that any possible future bilateral trade agreement should include a binding State-to-State dispute settlement mechanism. It noted the degree of convergence between the parties' approaches to this issue in existing bilateral trade agreements. The details of the architecture of such a mechanism, including appropriate timeframes, mediation/consultation, selection of panellists and openness of procedures, would need to be negotiated at the appropriate stage.

3.10 Other areas

Either party may wish to include other areas in any future bilateral trade agreement.

CHAPTER FOUR

RECOMMENDATIONS

For a variety of reasons discussed in the preceding chapters, the High Level Trade Group (HLTG) is of the opinion that there is a compelling case to take the trade and investment relationship between the EU and India to a higher plane. Deepening economic engagement would be mutually advantageous and would also reinforce the Strategic Partnership. Further it would be complementary to the successful conclusion of the DDA negotiations, which both parties continue to consider their foremost trade policy priority.

The HLTG recommends that an expanded trade partnership be developed through the negotiation of a broad-based trade and investment agreement. The HLTG is of the view that significant benefits would accrue to both EU and India if this agreement were substantial and comprehensive, covering a broad range of trade-related areas. The HLTG therefore, recommends that future negotiations should be based on the principles and parameters mentioned in chapter 3 of this report and cover all the areas identified in the said chapter.

The HLTG is conscious that engagement on building an expanded trade and investment partnership, including the negotiation of a broad-based trade and investment agreement, is a major political decision. Both the EU and India will need to conduct internal consultations. Such consultations should consider the timing and timeframe for future negotiations. The HLTG will hold at least two additional meetings to prepare for the launch of negotiations.