
TRADE BARRIERS BETWEEN INDIA AND THE EUROPEAN UNION: A CRITICAL LEGAL ANALYSIS OF TARIFF AND NONTARIFF MEASURES AND THEIR IMPACT ON BILATERAL TRADE

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ABSTRACT

India and the European Union (EU) maintain a substantial bilateral economic partnership within the global trading landscape. However, this relationship has been marked by enduring trade impediments that impede the full realization of bilateral trade's potential. These impediments encompass both intricate non-tariff measures (NTMs) and tariff-based limitations. This study provides a critical analysis of the legal aspects of these trade barriers, focusing on India's trade regulatory structure, the EU Common Commercial Policy, and World Trade Organization (WTO) accords. The research investigates the substantial tariff disparities, technical trade barriers (TBTs), sanitary and phytosanitary (SPS) concerns, deficiencies in intellectual property protection, and regulatory inconsistencies that have historically obstructed the proposed India-EU Free Trade Agreement (FTA). The effectiveness of current legal frameworks in addressing trade disputes is assessed through a detailed examination of significant cases and the rulings of relevant regulatory authorities. Furthermore, the report analyses the socioeconomic consequences of trade impediments, considering the perspectives of various stakeholders, such as consumers on both sides of the transaction, Indian exporters, and European manufacturers. However, despite the presence of several structural and political barriers, the most practical way to achieve greater economic integration is through the harmonization of regulatory standards, dispute resolution, and a new free trade agreement framework.

Keywords: Trade Barriers Tariff Measures Non-Tariff Measures India EU FTA WTO Bilateral Trade Sanitary and Phytosanitary Measures Technical Barriers to Trade.

LIST OF ABBREVIATIONS

EU - European Union

FTA - Free Trade Agreement

GATT - General Agreement on Tariffs and Trade

GSP - Generalised System of Preferences

IP - Intellectual Property

MFN - Most Favoured Nation

NTM - Non-Tariff Measure

SPS - Sanitary and Phytosanitary

TBT - Technical Barriers to Trade

TRIPS - Trade-Related Aspects of Intellectual Property Rights

WTO - World Trade Organisation

DGFT - Directorate General of Foreign Trade

MEA - Ministry of External Affairs

LIST OF CASES

1. European Communities: Measures Affecting the Approval and Marketing of Biotech Products WTO Panel Report WT/DS291/R (2006)

2. India: Additional and Extra-Additional Duties on Imports from the United States WTO Appellate Body Report WT/DS360/AB/R (2008)

3. India: Measures Concerning the Importation of Certain Agricultural Products WTO Appellate Body Report WT/DS430/AB/R (2015)

4. European Union: Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia WT/DS442/AB/R (2017)

5. India: Export Related Measures WTO Panel Report WT/DS541/R (2019)

6. Novartis AG v Union of India (2013) 6 SCC 1

LIST OF STATUTES

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2. Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) 1994
3. Agreement on Technical Barriers to Trade (TBT Agreement) 1994
4. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994
5. Customs Tariff Act 1975 (India)
6. Foreign Trade (Development and Regulation) Act 1992 (India)
7. EU Regulation No 952/2013: Union Customs Code
8. EU Regulation No 178/2002: General Food La

INTRODUCTION

In the contemporary global economy, the bilateral trade between India and the European Union is considered to be one of the most important. The combined annual trade in goods and services between the two regions exceeds hundreds of billions of euros, making these two regions two of the biggest in the world. However, the bilateral trade between India and the European Union remains far below its potential. This is mainly due to the complex web of tariff and non-tariff barriers that have been in place for many years. Custom duties and import taxes are examples of tariff barriers that are still in place and limiting market access for both parties. The WTO framework provides India with very high bound tariff rates, especially in the manufactured products and agriculture sectors. In addition to imposing a uniform external tariff, the European Union also enforces a number of regulations that are limiting Indian exports, especially in the food, pharmaceutical, and textile sectors. However, the most complex legal issue arises in the case of non-tariff measures. Non-tariff measures comprise technical measures and procedures for the conformity assessment under the TBT Agreement, sanitary and Phyto-sanitary measures limiting agri-food exports from India, intellectual property rights enforcement under the TRIPS Agreement, and antidumping measures against manufactured exports from India. The legal complexity of these measures often makes it hard to ascertain their hidden agenda. Since 2007, negotiations on a comprehensive India-EU Free Trade Agreement (FTA), technically known

as the Broad-Based Trade and Investment Agreement (BTIA), are underway. However, negotiations have been stalled several times owing to differences on government procurement, market access, IPR, etc. In such a scenario, the legal aspect of trade barriers assumes significance from an academic perspective. The legal regime on trade barriers in the India-EU relationship is analysed in this study. The impact of tariff and non-tariff measures is evaluated in the context of WTO law and agreements, and the future scope for regulatory convergence and trade liberalization is also analysed.

STATEMENT OF PROBLEMS

Tariffs and non-tariff restrictions remain the major points of contention between India and the EU, even after almost two decades of negotiating a free trade agreement. The central point of contention seems to be the effectiveness of the existing multilateral legal frameworks, such as the WTO agreements on SPS, TBT, and TRIPS, in controlling the restrictions erected by both parties or if the absence of a bilateral FTA enables the practice of protectionism under the guise of regulatory policies. The disparity in regulatory requirements is one area that needs urgent attention. Many Indian exporters are not in a position to afford the technical and financial requirements to comply with the stringent food safety regulations, drug approval criteria, and environmental regulations in the EU. The EU also contests India's high import duty and local content requirements in key sectors such as electronics and solar energy. This raises a more general question of law regarding whether the procedures for dispute resolution under the WTO are adequate to manage trade friction instead of a bilateral free trade agreement (FTA), or whether the inherent delays and limitations of dispute resolution under the WTO have left both sides without adequate legal tools to manage these long-standing problems.

OBJECTIVES

1. To critically examine the legal regime governing tariff measures in the case of EU trade with India under the WTO and domestic law.
2. To examine the impact of non-tariff measures, namely anti-dumping measures, SPS measures, TBT measures, and IP rights enforcement, on EU trade with India.
3. This study aims to evaluate how well the World Trade Organization's dispute resolution mechanism works in resolving trade disagreements between the European Union and India.

4. To assess the adequacy of WTO dispute resolution in addressing India EU trade disputes.

This study aims to examine the current deadlock in the free trade agreement negotiations between the European Union and India, and to identify the main legal and regulatory challenges that are preventing a resolution.

RESEARCH QUESTIONS

1. Where do the non-tariff regulatory measures of the EU and the tariff structure of India create illegal barriers to trade, and to what extent do they conform to the WTO regulations?
2. What barriers, both structural and legal, have prevented the conclusion of the India-EU Free Trade Agreement, and what changes are necessary to enable free trade between the two countries?

RESEARCH METHODOLOGY

This investigation utilizes a qualitative framework, particularly a doctrinal legal methodology, to analyse the nature, scope, and consequences of trade barriers in the context of India-European Union interactions. This methodology emphasizes a structured analysis of both primary and secondary legal sources. The doctrinal method necessitates a comprehensive review of World Trade Organization agreements, alongside pertinent national statutes and regulations, to elucidate key legal tenets, their practical application, and any existing interpretative disputes. The study is entirely based on secondary sources, including WTO Appellate Body and Panel Reports, Supreme Court of India decisions, literature reports from various international organizations like the WTO and UNCTAD, and policy reports from the European Commission and the Indian Ministry of Commerce. No primary data collection has been carried out. In order to identify areas of divergence that create trade friction, a comparative analytical technique is employed to compare the trade regulatory regime in India with that of the EU's Common Commercial Policy. The examination of relevant dispute settlement precedents is undertaken in order to assess the adequacy of the existing WTO procedures in resolving these disputes.

REVIEW OF LITERATURE

Tariff Measures and WTO Disciplines

The legal foundation of tariff regulation in international trade is the General Agreement on Tariffs and Trade (GATT) 1994, which establishes the principles of Most Favoured Nation (MFN) treatment under Article I and the binding of tariff schedules under Article II¹. Scholars such as Hoekman and Kostecki (2009) have extensively documented how bound tariff commitments function as legal ceilings while applied tariffs may be set lower². India high bound tariff rates, averaging over 48 percent for agricultural products, represent a significant divergence from applied rates, creating legal and commercial uncertainty for EU exporters. The EU common external tariff, while lower on average, incorporates tariff escalation mechanisms that disadvantage Indian processed goods exports³.

Non-Tariff Measures: SPS and TBT

The primary legislative guidelines governing non-tariff measures are outlined in the "Agreement on Sanitary and Phytosanitary Measures" and the "Agreement on Technical Barriers to Trade." Trebilcock and Howse (2005) observe that developing nation exporters, who lack the institutional power to defend against EU standards in a WTO dispute, are disproportionately disadvantaged by the requirement in Article 5 of the SPS agreement to base food safety measures on a scientific basis, which is a core requirement of the agreement. There is a potential for achieving trade restrictive outcomes while still satisfying WTO legal requirements, as was evident in a landmark case in the WTO, "EC Biotech Products" (2006). There have been instances of a ban on Indian basmati rice and seafood exports to Europe due to pesticide content, which have been a regular feature of legal debates in this context.

Intellectual Property as a Trade Barrier

The most controversial area of EU trade law in India has been the TRIPS Agreement, which comes under the WTO. In the case of bilateral trade agreements, the EU has continued to insist upon TRIPS plus standards, including the extension of patent term, data exclusivity for pharmaceuticals, and stricter enforcement. India's balancing approach to IP protection and public health concerns has been evident in its implementation of the requirement of compulsory

¹ WTO Trade Policy Review: India WT/TPR/S/313 (2015) para 3.12. India bound tariff on agricultural goods averages 48.6 percent against an applied average of approximately 32 percent.

² European Commission DG Trade Statistical Guide (2023) 44. India EU bilateral goods trade reached approximately 124 billion euros in 2022.

³ Agreement on Sanitary and Phytosanitary Measures 1994 Art 5 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection).

licensing in Section 84 of the Patents Act 1970 and the historic judgment in *Novartis AG v. Union of India* in the Supreme Court in 2013, refusing patent protection to incremental pharmaceutical innovations in Section 3(d)⁴. One of the major hurdles in the conclusion of the FTA has been the EU's insistence on TRIPS plus IP standards.

Anti-Dumping and Trade Remedies

In the case of India and the EU, anti-dumping measures under the WTO Anti-Dumping Agreement and Article VI of the GATT have been frequently used. There have been a number of anti-dumping investigations initiated against Indian exports in the pharmaceutical and leather chemical sectors to the European Union. India has also levied anti-dumping duty on exports from the European Union. Vermulst (2005) states that "due to the methodological leeway left to investigating authorities to establish dumping margins, anti-dumping proceedings can be used to pursue protectionist aims under the guise of a legitimate legal framework." The rising legal standards for penalizing anti dumping abuse are exemplified in the scrutiny of the WTO Appellate Body in cases like the "EU Fatty Alcohols" (2017)⁵.

The Stalled India EU FTA Negotiations

Academic research by Garcia (2013) and Woolcock (2014) provides a comprehensive understanding of the negotiations between India and the EU in the context of the BTIA agreement, which had five core issues of contention: reduction of tariffs, services, investment, intellectual property, and government procurement. With a renewed political commitment, the negotiations, which had stalled in 2013, resumed in 2022, though with many legal and regulatory hurdles to cross. What was once considered a mere economic dialogue is now taking a new turn with a new "normative" dimension, owing to the insistence of the EU on sustainability issues such as labour and environmental standards in market access.

LEGAL ANALYSIS: KEY ISSUES IN INDIA EU TRADE BARRIERS

Tariff Asymmetries and WTO Compliance

The structure of tariffs in India creates two problems. On one hand, trade-restrictive applied tariffs are legitimized by the high bound tariff rates in agriculture, which are a carryover from

⁴ *Novartis AG v Union of India* (2013) 6 SCC 1

⁵ Edwin Vermulst, *The WTO Anti-Dumping Agreement: A Commentary* (Oxford University Press 2005).

discussions during the Uruguay Round. However, the WTO has noted India's inconsistent imposition of higher rates under the Customs Tariff Act of 1975. In the India Additional Taxes on Imports case of 2008, the WTO Appellate Body found India's additional customs duties on imported goods violated GATT Article II:1(b) by ruling such additional charges were unlawful beyond a predetermined rate. A major precedent was set in defining the legal scope of India's autonomy in tariff setting. Indian exporters who intend to move higher in the value chain are at a fundamental disadvantage with the EU's strategy of tariff escalation, which imposes higher tariffs on processed goods than on raw materials. Although not contrary to the WTO regulations, the strategy of tariff escalation by the EU has led to trade-distorting effects that disadvantage poor country exporters, an issue that has been raised repeatedly in the discussions of the WTO's Trade Policy Review⁶.

SPS Barriers and the Scientific Justification Standard

The European Union's framework of food safety regulations, governed by Regulation No 178/2002 (General Food Law), prescribes very stringent regulations for imported agricultural products. Owing to pesticide residue, heavy metal, and lack of hygienic regulations, Indian exporters of seafood, spices, rice, and horticulture products have often encountered import refusals by European Union authorities. This, though in line with the "cautious approach" of the SPS Agreement, is a matter of concern from a non-discrimination perspective, in light of Articles 2.3 and 5.5 of the SPS Agreement. In the case of India's import restrictions on EU chicken goods under the SPS measures, a WTO panel in the case of India Agricultural goods (2015) found that certain of India's actions related to avian flu were not consistent with India's SPS commitments. This case illustrated that SPS measures are a two-way street, with each party imposing measures to limit the other's agricultural imports that are not supported by science.

Intellectual Property: TRIPS Compliance and TRIPS Plus Demands

The most legally contentious aspect of India's non-tariff measures in the context of the EU would arguably be the aspect related to Intellectual Property. The constitutional and legal framework for finding an appropriate balance between IPR and development concerns in India appears to be at variance with the TRIPS+ requirements in the FTA between the two regions,

⁶ Stephen Woolcock, 'EU Policy on Preferential Trade Agreements in the 2000s' (2014) 18(7) *European Law Journal* 717.

which cover aspects such as longer patent periods for medicines, geographical indications for European products, etc. The Supreme Court's judgment in the Novartis case in 2013, for instance, provides significant insights. The European Union's pharmaceutical industry strongly objected to the Supreme Court's interpretation of Section 3(d) of the Patents Act as an obstacle to the "evergreening" of patents for medicines as violative of principles for incentivizing innovation, even when legally correct under TRIPS+ flexibilities. The present dispute reflects a broader moral distinction between India's role as a significant supplier of generic drugs to developing nations and the EU's stringent IP standards in its trade policy. Any agreement reached in an FTA that doesn't sufficiently address this gap will run the risk of facing legal challenges via internal dispute resolution mechanisms within the FTA, as well as within the WTO⁷.

IMPACT OF TRADE BARRIERS ON BILATERAL TRADE

The combined impact of tariff and non-tariff barriers on bilateral trade between India and the EU is significant. The European Union's major trading partner in goods trade is India. The goods trade between the two regions exceeds 124 billion euros in 2022. This information is derived from the European Commission's statistical data on the two regions' trade. Despite the above fact, analysts have predicted that an FTA between the two regions could increase bilateral trade by as much as 20 to 30 percent⁸. The most severe barriers in terms of impact are felt by the Indian exporters in the textile, leather, pharmaceutical, and agri-food sectors. Small and medium-sized enterprises, being unable to cope with the technical requirements of EU regulations, are heavily affected in terms of costs incurred in meeting SPS and TBT regulations. Being the largest global supplier of generic drugs, the pharmaceutical industry in India has to comply with the regulations set in the proposed chapters of FTA in the EU regarding data exclusivity and patent linkage. From the European Union's perspective, the access to the Indian market for the European Union exporters is limited due to high tariffs in the automotive, wine, spirits, and dairy sectors, as well as procurement and local content issues in the solar and defence sectors⁹. The legal and business issues related to Indian trade policy are again underlined in the WTO proceedings, i.e., India Export Related Measures (2019), where India export subsidy schemes have been found to be inconsistent with WTO rules. This would result

⁷ Maria Garcia, 'Fears and Frustrations: The EU-India FTA Negotiations 2007–2013' (2013) 51(6) *Journal of Common Market Studies* 1068.

⁸ European Commission, *Trade Policy Review: India* (DG Trade, 2023).

⁹ Ministry of Commerce and Industry, *Annual Report on India's Foreign Trade 2023–2024* (Government of India).

in a persistent trade barrier that affects consumer welfare on a larger socioeconomic level by leading to the misallocation of resources, increasing the prices of imported goods, and delaying the transfer of technology that comes with trade integration. India's trade with the EU does not enjoy the institutional approach to resolving trade disputes and the legal predictability that a trade agreement provides by not having an FTA in place¹⁰.

CONCLUSION

The issue of trade barriers between India and the European Union, which include not only tariffs but also a range of non-tariff measures, remains a major legal and economic issue despite several decades of internationalization and bilateral negotiation. As has been demonstrated in the course of this study, although the WTO regulations provide the underlying legal framework for enforcing trade barriers, the procedures are not sufficiently effective to provide the level of market access that a free trade agreement between the EU and India would provide. The following are the conclusions of the study. EU exporters are subject to legal uncertainty due to India's high-bound tariffs and discretionary customs duty. Agri-food exporting industries in India are subject to disproportionate compliance costs due to EU's SPS and TBT regulations. Public health and development concerns in the Indian constitution conflict with TRIPS plus pressures in FTA negotiations. Within the legal limits, both countries' anti-dumping policies are protectionist in nature. A multifaceted legal and regulatory strategy is necessary for the future. The first requirement is for both parties to agree to provide adequate technical support and to comply with S and TBT regulations for Indian exporters. The second requirement is for a balanced IP chapter that meets India's public health obligations and TRIPS flexibilities to be part of the free trade agreement. More rules of origin and safeguard provisions should be included in the third tariff reduction commitments to address adjustment costs. Fourth, to provide effective and timely recourse to the WTO system, a robust bilateral dispute settlement process needs to be established. Finally, the achievement of a legally sound and commercially ambitious free trade agreement between India and the EU is not only a desirable outcome in the field of trade policy but also a strategic imperative for both sides in an increasingly fragmented global trading system. In the absence of this, the trade relationship between the two countries will continue to operate at a suboptimal level as a function of the legal framework of barriers that both sides have erected and are unable to lift unilaterally.

¹⁰ UNCTAD, *Non-Tariff Measures: Evidence from Selected Developing Countries* (2010).

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