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UNICE STATEMENT ON EU-INDIA RELATIONS

Summary

India is one of the world's fastest growing markets and is becoming a global power in many business sectors. The EU and India have strong economic ties. However, there is real scope for strengthened economic ties to benefit both sides.

UNICE therefore calls for a further strengthening of EU-India economic relations to increase business opportunities, as a complement to the WTO.

Recent reforms of Indian business legislation are a welcome achievement. However, the Indian economy is still heavily regulated. The effectiveness of reforms could be increased by ensuring improved implementation in all States of the Indian Union.

UNICE believes that the EU-India Strategic Partnership should support increased trade and investment relations between the EU and India. It expects the 7th EU-India Summit to focus the Partnership on targeted deliverables to spur trade and investment flows.

To improve market access and ensure non-discrimination for European companies in India, UNICE's priority remains the WTO multilateral approach. Again, it calls on EU and Indian authorities to make every effort to restart negotiations in the Doha Development Agenda (DDA) as soon as possible.

Given the critical importance of EU-India economic relations and without prejudice to a DDA agreement as soon as feasible, UNICE would support the commencement of negotiations towards an EU-India free-trade agreement (FTA), provided it is fully compatible with WTO criteria in terms of coverage and reciprocity.

Any new trade agreement with India should address the real trade and investment barriers faced by European companies. It should be comprehensive by:

- ensuring broad and deep liberalisation of trade in goods and services,
- improving of business conditions in investment,
- protecting intellectual property rights,
- tackling regulatory cooperation and NTBs;
- dealing with trade facilitation;
- including disciplines on government procurement.

UNICE looks forward to pursuing dialogue on EU-India relations with the European institutions and other interested parties. European business will continue to monitor progress in EU-India trade and investment relations, and awaits with interest discussions on the new bilateral trade framework.

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1. Introduction

India is one of the world's fastest growing markets and is becoming a global power in many business sectors. The EU and India have strong economic ties; the EU is India's main partner in trade, investment, and development cooperation.

While the EU is India's major trading partner with roughly a fifth of India's trade, India ranks as the EU's 10th trade partner accounting for only 1.8% of EU exports and imports. India currently receives less than 1% of the EU's FDI outflows. Clearly, there is real scope for strengthened economic ties to benefit both sides.

UNICE therefore calls for a further strengthening of EU-India economic relations to increase business opportunities through enhanced bilateral economic relations, as a complement to the WTO.

2. Economic reforms in India

Recent reforms of Indian business legislation are a welcome achievement. However, the Indian economy is still heavily regulated which acts as a constraint on business activity.

Reforms have already had an impact in some sectors and have helped to reduce poverty, and increase bilateral trade and investment in the last decade. The opening of new sectors to foreign investment in India should allow European companies to establish partnerships in India and contribute to economic growth on the sub-continent.

The effectiveness of reforms could be increased by ensuring improved implementation in all States of the Indian Union. A strong consensus for reform at both federal and State government level is vital to ensure that policies are implemented effectively at State level. UNICE would like to see further reforms completed rapidly, comprehensively and consistently throughout India. The EU could contribute through cooperation to reinforce institutions with strategic importance to European business.

Indian trade policy is still restrictive in comparison with other emerging economies. The time has come for India to open its market, considering that trade and investment liberalisation will generate new commercial opportunities for EU and Indian businesses and create much needed jobs in India and the EU.

India's labour market is still rigid. More flexible labour markets help to boost job creation; businesses operating in India should be given greater discretion over their own personnel management strategies.

The EU should support India to ensure concrete progress leading to further confidence among European companies regarding the openness and general business environment in India.

3. Towards a real EU-India Strategic Partnership

The emergence of strong and internationally competitive Indian companies, in high-technology and high value-added sectors, is contributing to India's strong economic growth. While these companies benefit from an open trade environment in the EU and other markets, significant constraints still exist for European companies trying to access the Indian market.

Achieving a fair and level playing field will therefore be key in EU-India relations. Only then will it be possible for both the EU and India to benefit from a stronger partnership.

Since 2004, the EU and India are committed to a Strategic Partnership. The bilateral Action Plan covers a broad range of initiatives and EU-India dialogues including political cooperation, economic matters and socio-cultural exchanges.

UNICE believes that the Strategic Partnership should support increased trade and investment relations between the EU and India. It expects the forthcoming 7th EU-India Summit to focus the Partnership on targeted deliverables to spur trade and investment flows.

The current level of trade between the EU and India could increase exponentially if the right drivers are in place. This could lead to mutually beneficial cascade effects, such as an increase in foreign direct investment and enhancement of collaboration in knowledge-driven R&D activities.

While other areas of EU-India relations are important, UNICE considers that the main objective should be to promote more open, dynamic and growing bilateral economic relations.

4. UNICE support for an EU-India FTA

To improve market access and ensure non-discrimination for European companies in India, UNICE's priority remains the WTO multilateral approach. Again, it calls on EU and Indian authorities to make every effort to restart negotiations in the Doha Development Agenda (DDA) as soon as possible by showing strong political commitment and making ambitious new offers.

Given the critical importance of EU-India economic relations and without prejudice to a DDA agreement as soon as feasible, UNICE would support the commencement of negotiations towards an EU-India free-trade agreement (FTA), according to the following conditions. The agreement must:

- be part of a coherent EU strategy on FTAs;
- complement the multilateral trading system;
- build on an anticipated degree of market access achieved within the DDA framework;

- be fully compatible with GATT article XXIV and WTO criteria in terms of coverage and reciprocity. Any proposal for an FTA should be supported by a written report assessing its conformity with article XXIV.

The expected results of the trade agreement must be significant for the EU so as to justify the resources devoted to these negotiations. A specific assessment of the economic opportunities, costs and benefits of an agreement should be developed prior to the start of the negotiations. The mandate for any negotiations could be limited in time to avoid very long negotiating process.

To ensure the potential for new commercial opportunities is maximised by any new agreement, the European Commission should consult European business in a structured and transparent manner and ensure that business concerns and priorities spearhead the negotiations.

Any new trade agreement with India should address the real trade and investment barriers faced by European companies. It should be comprehensive by:

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- including disciplines on government procurement.

Some of the main issues to be tackled for the benefit of EU and Indian economic and business relations are listed below in this paper. UNICE is committed to further complement its views on an EU-India FTA as the debate develops.

5. Main economic issues in India

Indian tariffs

Indian's import tariffs are among the highest in the world. With numerous exemptions and/or additions, Indian tariffs are complex and opaque, leading to administrative problems. Moreover, India still maintains almost 30% of its customs tariffs unbound, which brings uncertainty to economic operators. Improvements in market access have the greatest value over the long term when they are bound in WTO commitments.

Indian tariff levels in industrial sectors often constitute tariff walls that entirely prevent market access for EU exports. In addition, the tariff structure includes numerous exemptions and a general lack of transparency. India also has a number of discriminatory taxes, and very high additional duties for some sectors.

Non-tariff barriers (NTBs)

Non-tariff barriers (NTBs) are a major barrier for EU companies in India. A recent WTO study¹ has shown that the average percentage of tariff lines affected by NTBs is 93% in India compared with 22% in a similar emerging country like Brazil and 13% in the EU. NTBs result principally from the administrative burden and the number of procedures and authorisations that the European companies need in India.

In particular, EU companies have to face obstacles such as extensive marking, labelling and certification requirements, export taxes, a complex excise tax structure, import prohibitions and restrictions, and complex and inefficient customs procedures.

To tackle these issues, the EU and India should work more closely in their different sectoral working groups towards enhancing a more transparent framework for technical regulations and standards, and using global harmonised standards. An efficient NTB mediation mechanism, analogous to that proposed by the EU and India in the WTO DDA negotiations could be instrumental in this respect.

Services

Services account for a large share of economic growth in India, about half of India's output and 23% of the labour force. For European companies, entry and capital conditions are still restrictive. The Indian market should be further opened to EU service providers on a non-discriminatory basis.

Retail trading remains closed for FDI and key sectors such as banking and insurance continue to be dominated by state-owned companies, some of which face financial problems, including a relatively high level of non-performing assets. Moreover, some provisions under preparation could further restrict the foreign shareholdings in and operations of express service providers in favour of the Indian Post.

India's economic development would greatly benefit from a broad of services sectors to international competition. India should support transparent regulations and apply clear criteria in licensing procedures for national and foreign service providers.

Investment

Even if India has opened up considerably in the last decade, European FDI currently amounts to a fraction of what it could be. Important sectors still remain restricted for Foreign Direct Investment (FDI) - such as telecommunications, insurance, banking, aviation - or are banned as in retail distribution and legal services. Restrictions also prevail in the building of urban complexes.

For other sectors which are not subject to approval procedures, there are still restrictions on the free flow of investment and technology through internal policy guidelines.

¹ WTO (2003) Market Access: Unfinished Business – Post Uruguay Round Inventory”, Special Study number 6, p.20.

A streamlined, less bureaucratic approach to dealing with business and investment would undoubtedly bring benefits to India in terms of more investment and faster economic development. Bureaucratic hurdles are detrimental to the efficient allocation of capital across borders. International companies in India are not able to carry out an internal clearing of accounts.

The setting-up of a business requires approvals that vary greatly from State to State of the Indian Union and several government authorities are involved in this procedure. More transparency and harmonisation of trade and investment rules across the Indian States is necessary for companies doing business in India.

Foreign companies having joint ventures in India are subject to obtaining government approval before setting up new ventures in the same or similar fields². This might lead to delays or compensation claims, or even frustrate the whole investment. Despite the 2005 review, many of the main issues for business remain unsolved.

The privatisation efforts, particularly on the infrastructure sector, should be further pursued.

Intellectual property rights

The lack of effective intellectual property rights protection is a major barrier to market access in India, and one cause for the low level of FDI Inflows. In May 2005 India enacted a new Patent Law, thus bringing its legislation largely into line with TRIPS. Although welcome, there are still some important issues which are of significant concern for European business. These include inappropriate conditions for the patentability of some types of inventions and the existence of a pre-grant opposition procedure. Further, the way the law is in fact implemented by the Patent Office and courts will, to a significant extent, determine whether it affords protection to innovators in practice. The EU should promote further development of Indian institutions in the IP field.

Additionally, India has yet to introduce an appropriate provision to provide regulatory data protection in line with international standards, which would act as an incentive for both European and Indian companies to invest in the country's enormous potential as a collaborative R&D partner.

UNICE is also concerned with the situation regarding counterfeiting, India being a source and market for counterfeit and pirated products.

Government procurement

Preferences for procurement through local Indian suppliers have been reduced recently but preferred sources for procurement still include the public sector. National treatment and non-discrimination should be guaranteed, and national preferences eliminated to the greatest extent possible.

² Press Note 1 of 2005/Press Note 18 of 1998.

As part of the EU-India Strategic Partnership the EU should promote India taking on observer status in the WTO Committee on Government Procurement, with a view to becoming a signatory party.

Infrastructure

Indian infrastructure is still insufficient for the appropriate conduct of many business operations in that country. This gap could undermine India's economic growth. India is in need of serious investment in all sectors of its infrastructure,.

EU companies, which have large experience in this sector, are committed to help India to significantly improve its infrastructure, through increased investment, capacity and expertise. To achieve that aim, further efforts are needed by:

- enacting transparent laws consistently throughout India which guarantee a solid legal framework, notably for public-private partnerships (PPP) and long-term contracts,
- removing barriers to foreign investment in India,
- supporting privatisation;
- promoting public-private partnerships (PPP).

Energy

India is adversely affected by a chronic shortfall in power supply. Moreover, State reforms bolstered by the central government are unequal. Companies are therefore often forced to set up captive power generation capacity to counteract power failures or fluctuations. The EU should help promoting the development of power generation in India and further independence to State electricity boards.

The energy sector offers great potential, particularly on clean energy sources, where EU companies have large experience. Moreover, the investment regime needs to be streamlined and further liberalised, and PPPs promoted.

In the international tender process, foreign bidders are at a disadvantage vis-à-vis domestic manufacturers due to certain clauses, such as the Mega Project Clause, which should be withdrawn. UNICE also requests more transparent tender submission procedures.

Visa and work permit regime

Whereas modern business needs flexibility for travel, visa procedures in India are increasingly difficult and slow due to internal problems within the Indian administration and postal service. The EU and India should address this problem with a view to facilitation of the visa regime.

6. EU-India business cooperation

UNICE fully supports the process of EU-India Business Summits as a means of strengthening the EU-India business relationship. European business stresses the

importance of the implementing the recommendations and encourages the EU and India to do so promptly.

European business is also working to support the launch of an EU-India CEO Round Table which should be supported by representative business organisations on both sides and bring high-level insight and expertise to the current bilateral business relations.

Conclusion

UNICE looks forward to pursuing dialogue on EU-India relations with the European institutions and other interested parties. European business will continue to monitor progress in EU-India trade and investment relations, and awaits with interest discussions on the new bilateral trade framework.
