



Mr Karel De Gucht
European Commissioner for Trade
European Commission
Rue de la Loi 170
BE-1000 Brussels
BELGIUM

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Dear Commissioner, *Karel De Gucht*

BUSINESSEUROPE has been and continues to be a strong supporter of an ambitious EU-India Free Trade Agreement, provided it delivers significant market access and investment improvements for European business.

While these negotiations are welcome, they should not preclude the European Commission from engaging the incoming Indian government promptly and using all available tools and diplomatic channels to seek resolution to long-standing trade issues confronted by European exporters and investors. This is particularly important because negotiations have been stalled for some time.

European companies currently face substantial barriers to trade and investment in India. The resolution of these obstacles cannot be postponed to a future date when the bilateral free trade negotiations resume.

These barriers include, *inter alia*:

- **Tariffs, additional duties and levies:** Exorbitant import tariffs together with additional duties and levies (resulting to charges up to 150% and more) prevent from doing business some key sectors of the European economy, such as textiles; electric, electronic and ICT; machinery; automotive; chemicals; or food and drinks.
- **Technical barriers to trade:** India is adopting regulations with specific requirements for products to enter its market, without taking into account international standards such as UN regulations. These regulations create significant barriers to trade and protect the national markets, in contradiction with the WTO rules on TBT. Examples of these numerous outstanding technical and administrative barriers to trade, which remain in the way of a fair access to the rapidly growing Indian market, are double testing, royalty fees for safety markings or discriminatory payment requests for foreign manufacturers.

- **Investment:** There are a number of long-standing and severe restrictions to foreign investment in numerous areas, in particular services sectors such as insurance, retail, banking, accounting and auditing, maritime transport and legal services. Examples of these barriers include equity caps, restrictions on the legal structure of foreign investors, as well as nationality and residency requirements.
- **Procurement:** Non-transparent and burdensome bidding procedures, lack of national treatment, and the absence of a formal bid challenge procedure continue to affect European bidders in the award of government contracts in India, including medical devices.
- **Intellectual Property Rights:** Enforcement of IP rights in India remains a major problem for European companies. Moreover, India has taken several steps that could be perceived as a departure from what had been a positive trajectory in innovation, technology, and intellectual property (IP) policy-making. Such steps include “compulsory license” decisions based on questionable grounds; uncertain patentability exceptions and requirements; domestic manufacturing requirements for technology purchases by both the Government of India and private sector customers; and a national regulatory framework on access and benefit sharing which creates legal uncertainty and does not provide for rules which enable the creation of value and related benefit sharing in relation to Indian genetic resources. Furthermore, significant systemic difficulties remain with regard to patent granting procedures, which prove burdensome and lengthy; unsatisfactory patent enforcement and the lack of effective regulatory data protection.
- **Customs Valuation:** Indian customs are “invariably rejecting” on a sectorial basis a number of European companies transfer prices when transactions are made between related parties, citing differences between the declared customs value and prices extended to duty-free operators. It is inappropriate to use the value extended to duty-free operators as the basis for determining whether the relatedness of the parties affected the transaction value for sales to the domestic market; or, as “identical goods” or “similar goods” under the WTO Customs Valuation Agreement (CVA). More generally, customs procedures and controls are not transparent, burdensome, heterogeneous and unpredictable.
- **State discriminatory practices:** There are numerous long-standing discriminatory practices in a number of Indian states where foreign businesses encounter a complex environment with discriminatory tax rates, discriminatory licensing requirements, and regulations that limit our access and growth.

BUSINESSEUROPE is aware of the European Commission has a number of negotiations and dialogues in place with the Indian authorities where trade and investment issues are discussed. However, these dialogues have not yet resulted in practical solutions to these long-standing barriers.



Furthermore, BUSINESSEUROPE is grateful for the support that we have received from the Commission regarding our agenda in India. However, given that concluding an ambitious FTA does not appear to be within striking distance in the near future, BUSINESSEUROPE calls upon the Commission to seek additional avenues to address these issues that hamper European exports to this key market. For example, the Commission might want to reassess whether the existing cooperative structures with India are sufficient to solve longstanding barriers to trade and investment, or whether they need to be updated and reinforced.

This relates for example to the implementation of the European Commission's Market Access Strategy. Likewise, the new political scenario in India may provide a good opportunity to re-launch bilateral dialogues, such as the one on intellectual property.

In this regard, and in light of India's expressed willingness to establish a bilateral intellectual property dialogue with the US government, we wish India be similarly forthcoming in activating our bilateral dialogue already agreed upon years ago. The Commission might also consider engaging with like-minded trade partners at relevant international fora such as the WTO, to address discriminatory Indian trade practices.

BUSINESSEUROPE stands ready to engage further with the European Commission in order to advance and deepen the EU's bilateral relations with India.

Yours sincerely,



Markus J. Beyrer