



**Mr Jean Claude Juncker**

President of the European Commission  
European Commission  
Rue de la Loi 170  
1000 Brussels  
BELGIUM

29 March 2016

Dear President,

BUSINESSEUROPE is a strong supporter of close and prosperous relations between India and Europe. India is the EU's 9<sup>th</sup> largest trading partner and with an official growth forecast of 7.5% for 2016, it remains an important growth market and one which is key for European business. We therefore welcome the EU-India Summit taking place on 30 March and would like to highlight several topics ahead of your meeting with Indian Prime Minister Narendra Modi.

The Indian government under Prime Minister Modi seems committed to further unlock India's growth potential. We have taken note of several initiatives with this aim in mind. First, we strongly encourage the Indian government to continue working to implement a national Goods and Sales Tax (GST), which would simplify India's indirect tax system and help create a single market. Second, the "Make in India" initiative is a flagship in this regard, which ties in with the Indian government's objective of attracting more foreign direct investment.

This objective is undermined by a number of long-standing and severe restrictions to foreign investment in numerous areas, in particular services sectors such as banking, insurance, 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. There have been a few positive signs in insurance and retail services, for which FDI caps were increased (from 26% to 49%). We hope this will be extended to other sectors.

In order to attract further investment into India, it should be a priority of the Indian government to take note of the recommendations from European business and take measures to improve its investment and business environment. One important way for India to attract further investment is by improving its market access. While we support efforts to increase India's manufacturing capacity, we strongly discourage the use of the "Make in India" campaign as pretence to raise trade barriers against foreign companies.

European businesses face a number of barriers to trade in India, which we believe would best be addressed through a Free Trade Agreement between the EU and India. 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. We encourage the stock taking efforts that have taken place between European and Indian negotiators during recent months, and would like to reiterate that our level of ambition and expectation remains high.

Whether or not the EU and India will soon be able to reach an understanding on the conditions to continue the negotiation process on the FTA, European companies currently face substantial barriers to trade and investment in India. The European Commission should therefore engage the Indian government using all available tools and diplomatic channels to seek a resolution to long-standing trade issues confronting European exporters and investors. 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 some key sectors of the European economy, such as textiles; electric, electronic and ICT; machinery; automotive; chemicals; or food and drinks from doing business. Other sectors, including medical devices, face unpredictable hikes in import duties and registration fees for importing companies, putting patient access to innovative medical technology at risk.
- **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, difficulties to obtain market authorisation, or discriminatory payment requests for foreign manufacturers.
- **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:** Since Prime Minister Narendra Modi took office in 2014, the Indian government has strengthened engagement on intellectual property and other issues, including by re-energizing bilateral negotiations, reviving bilateral trade and intellectual property dialogues and releasing a draft National IPR Policy in December 2014. There are opportunities for dialogue on a cooperative vision for the future growth and development of the IP-intensive industries in India, involving stakeholders and regulators on both sides, but these must yield results which work for domestic companies and inward investors. Securing and enforcing IP rights in India remains a major problem for European companies. Among the most serious concerns are patentability exceptions and requirements which exceed international norms; deficiencies in patent enforcement; frequency of recourse to compulsory



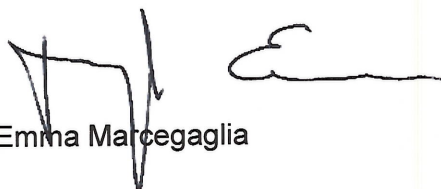
licensing by local industry; domestic manufacturing requirements for technology purchases by both the Government of India and private sector customers; and a national regulatory framework on access and benefit sharing which creates legal uncertainty and does not provide for rules which enable the creation 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; 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 affect 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. The administrative procedures are furthermore long and complex at both central and local government level.

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.

BUSINESSEUROPE is ready to engage further with the European Commission in order to advance and deepen the EU’s bilateral relations with India. While trade in goods and services more than doubled since the early 2000s, bilateral trade volumes have fallen during the past three years. We therefore hope the summit will be able to yield breakthroughs in some of the longstanding issues I outlined in this letter.

Yours sincerely,



Emma Marcegaglia