



Report of the Third Round of Negotiations On a Free Trade Agreement between the European Union and India

28 November – 2 December 2022, New Delhi

The third round of EU-India FTA negotiations took place in New Delhi between 28 November and 2 December 2022. The round was held in hybrid mode, with all but four sessions being held in-person but with the participation of some capital-based colleagues joining by videoconference. The sessions on Technical Barriers to Trade, Small and Medium-Sized Enterprises and Good Regulatory Practices were held the following week in a virtual format. Negotiations on investment protection (IPA) were held in New Delhi the following week and negotiations on geographical indications (GIs) on 12-13 December, both in hybrid mode.

After two rounds of clarifications of the two sides' respective proposals, the aim for this third round of FTA talks was to get into real negotiations, with the aim of starting to consolidate texts. With a view to the forthcoming stocktaking meeting at DG TRADE Director General/India's Commerce Secretary level, the round was meant to provide as much clarity as possible on convergences and key differences between the two sides' respective positions. The EU also presented a new draft text, which had been tabled ahead of the round, on Capital Movements, payments and transfers and temporary safeguard measures.

The fourth round of EU-India FTA negotiations will be held in Brussels from 13 to 17 March 2023.

Details per negotiating area:

Trade in Goods:

All the articles of the Trade in Goods draft text were discussed in a constructive atmosphere. The exchanges allowed negotiators on both sides to identify additional points of convergence but, more importantly, to obtain clarity on the important sensitive issues where political guidance would be needed to make further progress. One article and several points in other articles were agreed by the two sides, in an effort to consolidate the text as far as possible.

Rules of Origin:

The two sides held constructive discussions focusing on the "origin procedures" (section B), where progress was made on a system of self-certification of origin, the modalities of which are yet to be agreed. On the "product specific rules"

(PSRs), negotiators had a general exchange of views on the practice in the EU and in India. The PSRs have not been tabled yet. Negotiators agreed to hold intersessional talks as necessary.

Customs and Trade facilitation:

Discussions on the Customs and Trade Facilitation (CTF) Chapter continued in a very good atmosphere, building on the first and second rounds. The third round of CTF discussions allowed negotiators to go through the whole of the EU text proposal for a third time, while examining the Indian textual proposals that had been sent prior to the round. Five fully agreed provisions were added to the six provisions agreed already during the second round. On other provisions exchanges continued in order to increase mutual understanding.

Sanitary and Phytosanitary Measures:

Negotiators worked on the basis of the merged text sent by the EU ahead of the round, which is comprised of the text tabled by the EU and the Indian counterproposals. Major parts of the first five articles were agreed upon, and the main principles of the two following articles were discussed in details. Negotiators agreed to hold intersessional talks.

Technical Barriers to Trade (TBT):

Negotiators discussed a number of articles of the EU text proposal for the TBT chapter and had detailed discussions on technical regulations, standards and conformity assessment articles. No significant progress was made during this round due to substantial differences that exist between the EU and Indian systems, in particular as regards the Supplier Declaration of Conformity (SDoC). Each side also presented its proposal for a sectoral annex: India presented the annex on pharmaceuticals and the EU presented the annex on motor vehicles. All provisions of the annexes were discussed in details.

Trade remedies:

Negotiations continued with a constructive dialogue on the respective text proposals. Based on a merged text, negotiators explored potential options and made progress on aligning their proposals. Areas such as “green box” payments under the AD/AS Section and the transition period under the bilateral safeguard, as well as other provisions were discussed further, namely the application of the lesser duty rule, and the provisions on public interest consideration and transparency. Both sides confirmed that the Agreement should reiterate WTO rights and obligations, striving for WTO+ provisions in certain areas. Negotiators will consider holding intersessional talks as needed.

Services and Investment:

Negotiators engaged in text consolidation in areas the respective proposals converge, and on the basis of working documents or mark-ups prepared prior to the round. Those concerned: Mode 4, Domestic Regulation, Professional Services, Financial Services and Telecommunication Services. For other parts of the text, negotiators confirmed certain key divergences of ambition, structure of the chapter and scheduling approaches. Negotiators agreed to hold intersessional talks.

Digital Trade:

This round offered the first opportunity for text-based discussions, which provided for useful and informative exchanges on most of the text. Both sides discussed the following articles: Objectives, Right to regulate, Exceptions, Privacy, Data flows, Spam, E-contract, Consumer protection, Paperless trading, Non-prior authorisation, Open government data, Understanding on computer services, Source code and Customs duties. Negotiators will consider holding intersessional talks as needed.

Government Procurement:

Negotiators continued the discussion on government procurement based on the EU's text proposal with a few additions proposed by India. Most of the text has already been agreed, but its most important elements, including, inter alia, the non-discrimination principle and the application of dispute settlement to the Government Procurement Chapter, remain to be agreed.

Intellectual Property:

Negotiators continued their detailed discussions based on text proposals tabled by the EU and India. The exchanges focused on general provisions, copyright, trademarks, designs and IP issues related to genetic resources, traditional knowledge and traditional cultural expressions. The Indian and EU sides gained a better understanding of each other's positions and domestic rules. Negotiators agreed to hold intersessional talks.

Anticompetitive Conduct, Merger Control and Subsidies:

The two sides held positive discussions on the articles of the EU draft text for a Chapter on Anticompetitive Conduct, Merger Control and Subsidies relating to Principles and Anticompetitive Conduct and Merger Control. Negotiators reached agreement on most of the text of Section A and identified a few points where further reflection and redrafting is required. Negotiators also discussed Section B - Subsidies - of the EU draft text, in relation to an Indian counterproposal tabled at the end of November. The Indian side walked the EU through its text proposal and requested that feedback be provided by the EU before the next round. Negotiators agreed to hold an intersessional session to discuss selected issues.

State-Owned Enterprises:

Negotiators held a constructive dialogue on the content of the EU proposed text for a chapter on State-Owned Enterprises (SOEs), building upon the discussions held during the first two rounds and explanatory information exchanged thereafter. Further clarity on the position of each of the two sides revealed in more detail the existing gap between the two sides' current positions and the work that will be needed to advance in future rounds. Negotiators agreed to hold intersessional talks.

Small and Medium-Sized Enterprises (SMEs):

Negotiators discussed all articles of the EU text proposal for the SMEs Chapter. India submitted several drafting suggestions, including additional provisions on cooperation. Both sides exchanged preliminary views on the drafting suggestions and agreed to consult internally on proposed changes ahead of the next round.

Energy and Raw Materials:

The two sides held constructive discussions on the draft Chapter on Energy and raw Materials with a view to better understand certain challenges that the EU's proposal posed to India. They also had initial discussions on proposals that India intends to table to further develop the Chapter.

Transparency:

Negotiators discussed all the articles of the draft Chapter on Transparency and some limited progress was made. India will propose alternative text proposals on several articles ahead of the next round.

Good regulatory Practices:

Negotiators discussed all the articles of the draft chapter on Good regulatory Practices (GRPs) and a number of provisions have been agreed. Good progress was made during this round although important differences between the two sides continue to persist, in particular with respect to the scope of the chapter, where India would like to limit the GRPs to Acts of Indian Parliament, excluding from the scope regulatory measures issued by ministries and departments of the Government.

Sustainable Food Systems (SFS):

Negotiators continued working on the basis of the EU text proposal as well as India's comments and alternative text proposals. The focus was mainly on the article regarding the subcommittee, its role and placement in the future Agreement with regard to the overall institutional structure of the Agreement. Discussions will continue at the next round.

Dispute Settlement:

After the first two rounds, which had focussed on the presentation and preliminary discussion of each sides' proposals, negotiators started text-based negotiations for a first set of articles, working on the basis of the two sides' text proposals. The main issues covered were scope, consultations, initiation, establishment and functioning of a panel. Discussions were constructive and substantive progress was made on several provisions.

Mutual Administrative Assistance in Customs Matters:

The EU's draft text on Mutual Administrative Assistance (MAA) having been tabled only ahead of the second round, this was only the second time that formal discussions were held on Customs MAA. India and EU already benefit from the provisions on Customs Cooperation and MAA of the existing 2004 CCAA Agreement. Therefore, the discussion during this round focused on the content to be added to the existing MAA provisions.

Anti-Fraud:

The EU's draft text on the anti-fraud clause having been tabled ahead of the second round, this was only the second time that negotiators had an opportunity to hold extensive discussions. This opportunity allowed both sides to enhance their mutual understanding, in particular regarding the placement of the clause in the agreement and the procedure for its implementation.

Trade and Sustainable Development:

Negotiators discussed all the articles of the EU text proposal for a Chapter on Trade and Sustainable Development (TSD). They exchanged views on the overall scope and enforceability of the chapter, thereby identifying significant divergences between their respective positions. Building upon intersessional exchanges of information, India is to provide editing suggestions ahead of the next round.

Capital Movements, Payments and Transfer Chapters:

This was the first round of discussions on the EU's proposed Chapter on Capital Movements, Payments and Transfers and Temporary Safeguard Measures. The EU presented and explained its text proposal. The Indian side asked questions about various provisions of the EU's text proposal, notably on the purpose and scope of the chapter.
