UK INDIA
BUSINESS COUNCIL

ROAD TO A UK-INDIA FTA: CONSULTING UK BUSINESSES ON DOING BUSINESS IN INDIA

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SUBMITTED BY:
UK INDIA BUSINESS COUNCIL

SUPPORTING BUSINESS SUCCESS

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INTRODUCTION

Trade and Investment were front and centre when the Indian and UK Prime Ministers announced a “transformational” Comprehensive Strategic Partnership on 4 May 2021, with the signing of a UK-India Enhanced Trade Partnership (ETP) and commitments to double trade by 2030 and to start Free Trade Agreement (FTA) negotiations by the end of 2021.

Businesses are active stakeholders in the process towards a Free Trade Agreement. As such, an active and open dialogue between business and Government will be critical to successful FTA negotiations and to achieving the wider ETP ambitions. The UK India Business Council (UKIBC), as the leading trade and investment organisation working in the UK-India corridor, therefore strongly supports the important business consultation undertaken by the UK’s Department for International Trade (DIT) and India’s Ministry of Commerce and Industry (MoCI) in preparing for the FTA negotiations.

The UKIBC hosted 18 pre-FTA consultation roundtables (in partnership with DIT) throughout July and August 2021 to gather intelligence from business and inform the FTA consultation process. The roundtables and wider consultation brought together almost 200 businesses of all sizes – SMEs to MNCs – from across the UK, including in regional-specific roundtables in Manchester, Liverpool, Leeds, Sheffield, the West Midlands, South-west of England, North-East England, London and Kent. We also held roundtables in a range of sectors: digital and data services; defence and aerospace; energy; food and drink; insurance; financial services; healthcare; and higher education.

It was notable that, alongside the range of themes typically addressed in an FTA, “ease of doing business in India” featured prominently in each of the roundtables and in our wider consultation. This reinforces the importance, as set out in the ETP, of both Governments focusing on immediate and ongoing improvements to the ease of doing business (EoDB) alongside initiating the FTA negotiations.

The interest in the EoDB is in large part because UK businesses are already deeply established in India. UK direct investment into India is responsible for more than 400,000 direct jobs and 800,000 jobs indirectly. At the same time, approximately 850 Indian companies have created over 110,000 jobs in the UK. Our countries traded GBP 24 billion worth of goods and services in 2019 and GBP 18 million in 2020 despite the challenges of COVID-19.

This, although positive, is only scratching the surface. The bilateral trade relationship in particular should be much stronger, so the ambition of the ETP and the FTA to remove barriers to trade and make it easier for investors to enter and operate in both countries is welcome. The result will be increased economic growth and job creation in both countries, and an ever-more tightly bound UK-India partnership.

The UKIBC has long advocated for a UK-India FTA. We believe it is both the right ambition and is eminently achievable. This summary of our formal submission to DIT and MoCI highlights a range of issues, on which businesses would like the UK and Indian Governments to focus to ensure that the target of doubling trade by 2030 is achieved.

EXECUTIVE SUMMARY

The UKIBC submissions to both Governments consolidated the views of UK businesses ahead of the FTA negotiations set to begin in Autumn 2021, and made a comprehensive series of recommendations on behalf of businesses that would deliver a step-change in the UK-India trade and investment partnership.

In our submissions we took a sector-by-sector approach covering:

Digital and Data Services, with businesses raising issues including data protection, data localisation, standards; artificial intelligence, and the need for a vibrant and competitive telecoms sector in India.

Food and Drink, with companies focusing on a mix of alcohol and food trade. Alcoholic drinks companies focused on the Basic Customs Duty on spirits, overall taxation, and the ban on foreign products in the Indian military's Canteen Stores Department. All businesses across the food and drink sector raised regulations, standards and customers procedures, such as labelling and certification.

Higher Education, with businesses raising issues including mutual recognition of qualifications, online degrees, and limitations on which foreign universities can operate in India.
Healthcare and Life Sciences, with businesses raising issues including standards, intellectual property, tax relief, regulations, drug pricing, local content requirements in public sector procurement, and technology transfer

Insurance, with businesses raising issues including tax parity, Order of Preference rules, limits of the repatriation of capital, data protection and localisation, and rules on "Control of the Board".

Financial Services, with businesses raising issues including tax parity, data protection and localisation, limits on cross-border services, Investor protection, and priority sector lending rules.

Energy, with businesses raising issues including sustainable finance, investor protection, standards, public sector procurement and technology transfer.

Defence, with businesses raising issues including FDI limits, regulations, Make In India, customs duties and offsets, and technology.

High Priority Recommendations

As summarised above and detailed below, there is an extensive set of recommendations from businesses and, if implemented, all would bring benefits to the UK-India trade and investment partnership.

At the same time, the UKIBC is realistic about what the Governments will be able to achieve in negotiations, particularly in the short- and medium-term, which we believe is critical.

The UKIBC recommends that the Governments seek to sign a series of interim- or mini-Agreements that will, over time, form a more-comprehensive FTA.

This approach of reaching an "early harvest agreement" would: capitalise on the excellent momentum already created by the Governments; it would lock-in wins and deliver economic benefits on an ongoing basis; and it would build the trust, confidence and momentum that may be needed to overcome more difficult issues in the medium- and long-term.

With this "early harvest agreement" in mind, the UKIBC therefore propose that the Governments' FTA negotiations should focus on:

- reducing tariffs in a relatively limited range of sectors, including on alcoholic spirits, food, and in the healthcare sector;
- reducing non-tariff barriers to goods trade, such as by aligning standards and simplifying burdensome and costly customs procedures. As with tariffs, certain sectors can be prioritised for an interim Agreement; and
- IP protection and alignment of data protection rules so as to drive growth in the innovative, tech-rich, and digitally-driven future-focused industries that will increasingly drive expansion of UK-India trade.

Ease of Doing Business

We believe that an important strength of the Enhanced Trade Partnership is that, alongside the FTA, it commits to retaining a sharp focus on the immediate need to address market access barriers and improve the ease of doing business in India. Throughout the consultation, businesses emphasised the importance of this parallel approach.

Indian State Governments

A complicating factor for the FTA negotiators will be the division of responsibility between the Government of India and State Governments. It will be important for the FTA to include safeguards to prevent State Governments taking steps that offset any gains secured through the FTA. For example, if a reduction in the spirits BCD is agreed, it is important that States do not raise local duties in response.

Cause For Optimism

This journey to an FTA is the result of impressive long-term thinking and extensive government engagement with business. The UK-India G2G engagement over the last two years has had greater intensity and purpose than before. It feels like there is real political will to reform, and to quickly remove the tariff and technical barriers to trade.

CHALLENGES TO DOING BUSINESS IN INDIA

This section outlines 10 key barriers that cut across sectors, thus affecting many businesses working in the UK-India corridor. We start by highlighting ease of doing business issues, then focus on cross- cutting issues that could be addressed in an FTA, such as: tariffs; standards; customs procedures; data protection and transfer; and intellectual property.

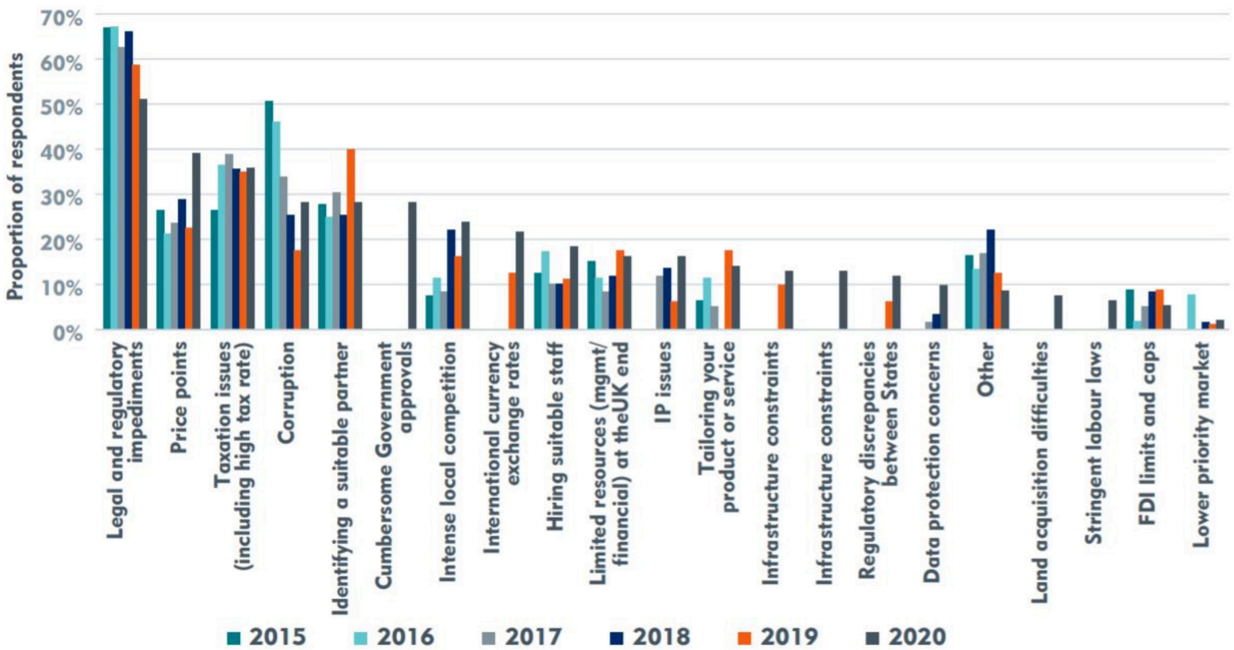
1.1. EASE OF DOING BUSINESS (EODB)

Businesses tell us that bureaucratic procedures and regulatory uncertainty are common challenges when doing business in India. These issues are a particular barrier to entry for companies new to the market, especially SMEs, who typically have less expertise, capacity and cashflow to deal with the issues.

As well as the range of EoDB issues raised at the pre-FTA consultation roundtables, the UKIBC's Doing Business in India Reports, produced annually since 2015, outline the views of UK companies on India's business environment. This intelligence, based on over 500 survey responses, complements the issues raised at the roundtables.

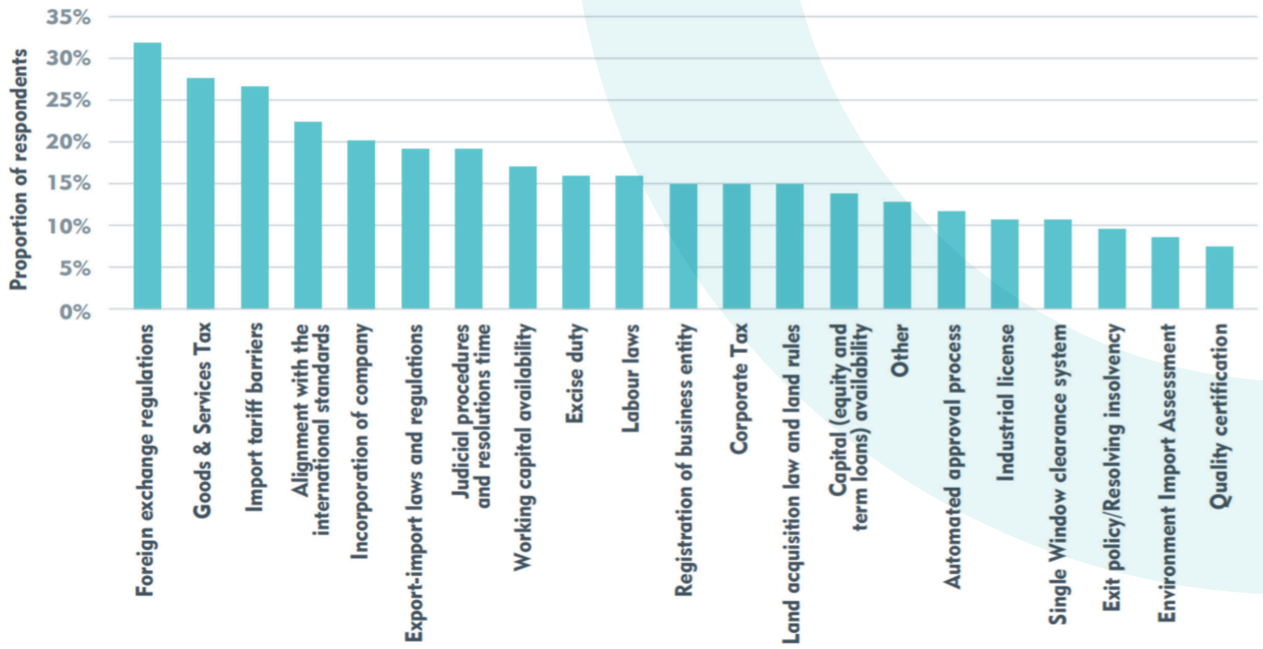
In the most recent Doing Business in India report of 2020, the most-frequently selected obstacle to business was 'legal and regulatory barriers'. Completing the top 5 was 'price points', 'taxation issues', 'corruption', and 'finding a suitable partner'.

BARRIERS TO DOING BUSINESS



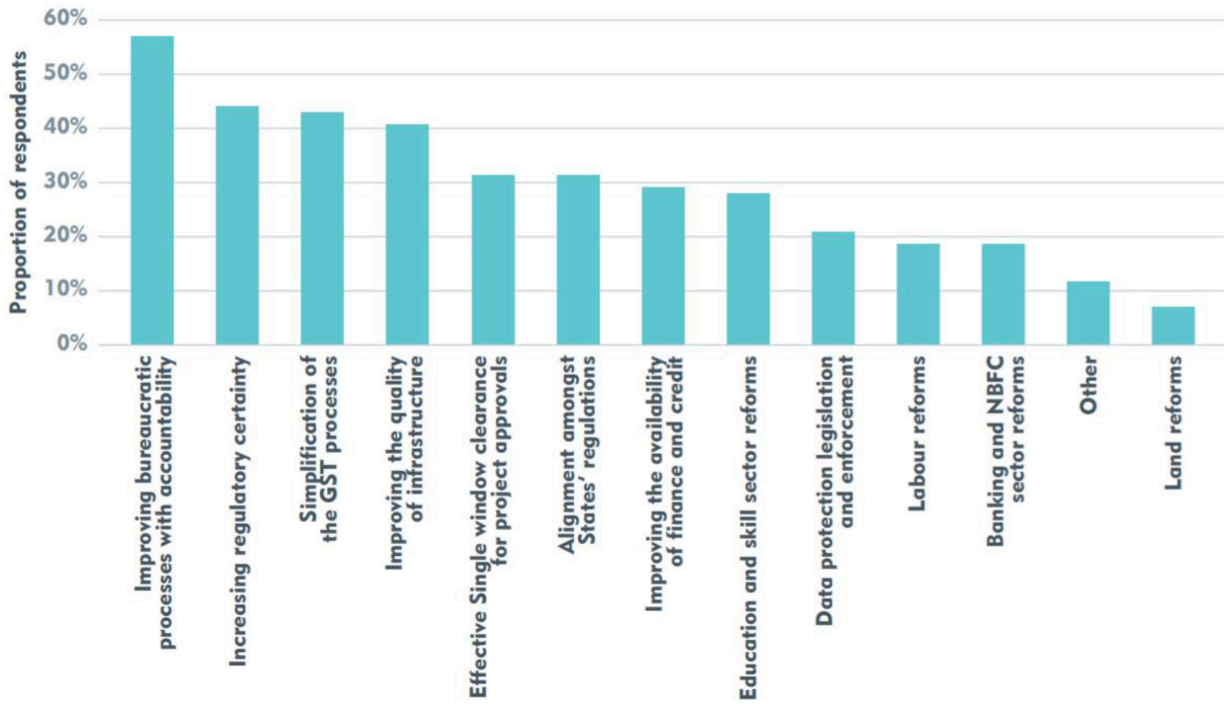
Of regulatory impediments, the most pressing were 'foreign exchange regulations', 'goods and services tax', 'import tariffs', 'alignment with international standards' and 'incorporation of company'. These issues are further examined below.

MOST PRESSING LEGAL AND REGULATORY BARRIERS



Businesses identified 'improving bureaucratic processes with accountability' as one of their top reform priorities. 'Increasing regulatory certainty' was the second most popular reform, followed by 'simplification of the GST processes' and 'improving the quality of infrastructure'.

MOST DESIRED REFORMS



Given the high priority for EoDB by businesses and its prominence in the ETP, it is important that the UK and Indian Governments, including Indian State Governments retain their focus and collaboration on this area. The FTA is important, but so is the ease of doing business. Progress has been made on digitsation, GST, and single window dispute resolution, but more needs to be done.

1.2. SELF-RELIANT INDIA

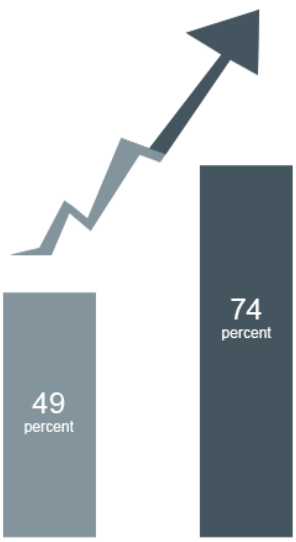
The Atmanirbhar Bharat Abhiyan, or the "Self-Reliant India Campaign" was announced by Prime Minister Modi on 12 May 2020 and should be viewed as an extension of the "Make in India" campaign as they share the aim of securing manufacturing investments from domestic and international business. More widely, this self-reliant campaign seeks to make India a global supply chain hub by boosting exports and reducing the country's dependence on imports.

Self-reliant India is generally well-regarded by UK businesses, who recognise the Government of India's ambition to strengthen India's position in global supply chains and strengthen the domestic economy. However, businesses are concerned about protectionist measures, such as high tariffs on certain products and local content requirements in public sector procurement. This is disproportionately impacting new market entrants over companies established in India.

The Government of India, from PM Modi down, have stressed that their approach is "integration, not isolation". Nevertheless, as set out in a recent UKIBC report: Road to a UK-India Free Trade Agreement: Enhancing the Partnership and achieving Self-Reliance, it will be important that the Government of India and State Governments are alert to the unintended consequences of self-reliant India.

It is important that India protects and, indeed, enhances its reputation as an open economy. If it is perceived to be protectionist, it could slow the flow of investments and limit India's integration into global supply chains. From the perspective of UK businesses, the ETP and future FTA present an opportunity to make sure the UK is not affected by any restrictive measures.

Example: FDI constraints in the Insurance sector



FDI LIMIT IN THE INSURANCE SECTOR IN MAY 2020

In May 2020, the Government of India increased the FDI limit in the insurance sector from 49 percent to 74 percent, a positive move welcomed wholeheartedly by industry. However, there were provisions in terms of ownership and control of the board that limit investor's ability to effectively control that 74 percent. The rules require that Indian insurance companies with foreign investment need to ensure that: a majority of their directors, a majority of their key management persons (KMPs), and at least one of the Board Chairperson, the Managing Director, or the CEO are "resident Indian citizens". The retention of ownership and control of the Board by domestic shareholders deters foreign investors from taking advantage of the 74 percent ceiling.

Enabling control of the Board to the degree of equity owned would help to increase FDI into the sector, which would mean an expanded sector providing innovation and increased value to Indian citizens and providing a larger pool of investable funds to support India's infrastructure and other investment plans.

Adopting the flexible approach to the Resident Indian requirements will also help to deepen operational capacity and promote talent in the Indian insurance industry. At times, non-Indian experts may be needed to provide critical expertise for the success of the insurance business in India. This will further provide greater exposure of domestic employees to global staff which will bring positive benefits in deepening of India's talent pool.

1.3. TARIFFS

Multiple businesses, across sectors, noted that India's tariffs tend to be higher than global averages. Tariffs are typically used to protect domestic industry but some perceive India's tariff regime to be a tool to force international exporters to invest and set up manufacturing capacity in India.

Tariffs can restrict and even prevent Indian consumers from access to high quality products that are not manufactured in India. While, in cases where products are manufactured in India, high tariffs can inflate prices on certain products due to limited competition. Additionally, as well as consumers, for Indian businesses and international businesses invested in India, restrictions on products used in company production processes restrains export opportunities from India and further limits access to wider products for consumers. Lowering, and in some cases abolishing tariffs, would help to enable more UK companies to export more products to more Indian customers and at a lower cost to those consumers.

Within the broad range of tariffs that are above average, we recommend focusing, in the near-term, on the Basic Customs Duty on alcoholic spirits, food and food products, and healthcare products such as medical devices. Other notably high tariffs include automotive and auto components, although these were not raised by UK companies during the consultation process.

Example: Basic Customs Duty (BCD) on Spirits

A reduction in India's Basic Customs Duty for spirits is the key issue for the alcoholic beverages industry and has the potential to be a genuine win for Indian and UK industry and for Indian consumers.

A combined duty burden of 150 percent is imposed on the landed value of imported bottled-in-origin (BIO) and bulk spirits. This is very high by global standards, including in comparison to other large emerging economies, such as China (5 percent) and Brazil (20 percent). While many of India's WTO bound tariff rates on agricultural products are among the highest in the world, the applied tariff rates outside alcohol are lower (averaging 32.7 percent).

The 150 percent tariff is not only for bottled-in-origin drinks, but also for imported bulk spirits which is used extensively by Indian domestic companies to produce Indian-made Foreign Liquor (IMFL). Approximately 85 percent of all Scotch Whisky exported to India is shipped in bulk. Some is bottled locally as Scotch Whisky, but the majority is used in Indian-Made Foreign Liquor. Bulk Scotch Whisky is one of the main costs for IMFL producers, so a reduction in BCD will drive local economic activity and support local jobs – critical outcomes in a post-pandemic economic recovery.

Industry views the FTA negotiations as a huge opportunity to negotiate a phased reduction of the effective duty.

A BCD reduction in an interim Agreement would be transformational for the Scotch whisky industry which accounts for only 2 percent of the Indian market by volume despite India being the largest 'whisky' market in the world. As well as the direct benefits to UK companies exporting to India that a reduction in the BCD would generate, the many Indian companies that use British imported bulk spirits in their own end-products would benefit greatly from reduced costs to their ingredients. Thereby, the reduction will be a win-win for both Indian and UK companies. In addition, Indian consumers will gain access to cheaper, high-quality products, so a win-win-win across UK industry, Indian industry and Indian consumers. A BCD reduction would also help swiftly develop the sector in India as UK companies are ready to collaborate with Indian companies to exchange knowledge and technologies.

1.4. STANDARDS

Businesses, across sectors, asserted that India's recognition of international standards is limited, making it more challenging for Indian companies to export and for UK companies to efficiently offer their goods and services in India.

Businesses would like to see the UK-India FTA lead to a greater use of international standards in India which promotes interoperability and creates trade opportunities. Our Governments can co-develop international standards, working in partnership and with other leading countries. Standards was a particularly prominent issue for companies in the food and drink, and healthcare and life sciences sectors.

Example: Standards in the Life Science and Healthcare sector

UK healthcare companies engaging with India need to navigate varying, albeit similar, standards that require costly and time-consuming approvals and checks.

There are various standards being followed in India – mandatory local standards and other local and global standards depending on specific products and services. However, some of these standards are voluntary and therefore not followed consistently. UK companies who follow international standards, mandatory local standards, and some voluntary standards are often competing with companies who take a less stringent approach to standards.

We recommend that the FTA leads to the alignment of UK and Indian standards including in highly regulated areas such as pharma and medical devices.

The benefits will be felt by both UK and Indian businesses. They will also be felt by those in need of treatment. Within healthcare it is essential that the medical devices and drugs are of a high standard. Standards provide a signal of quality to consumers/patients and healthcare providers, driving quality-based competition and improved transparency. This improves availability and enables buyers and sellers to make optimal purchasing decisions. They also enable easier benchmarking and reviews of health practices and services to ensure healthcare is of high quality and improving.

Standards alignment between the UK and India and across India's states would introduce wider sources of healthcare to consumers in India and internationally.

1.5. CUSTOMS PROCEDURES

An inability to show compliance with burdensome regulations, for example on labelling, product testing and other customs procedures, increases the costs and complexity of exporting to India and has been highlighted by many businesses as a deterrent to doing business in and with India. Indeed, we understand that the difficulty in simply getting information about requirements in India often discourages SMEs from exporting.

Furthermore, customs procedures are also a challenge for the Indian importer and their end customers, who are also required to complete certain procedures which can lead to buyers pulling out of deals.

Example: Customs Procedures and Standards in the food and drink sector

All goods exporters are impacted, with the food and drink sector particularly so. Non-tariff issues, including bureaucratic and other ease of doing business issues, have been identified, including labelling requirements, manufacturing compliances, and import compliances.

These burdensome requirements hinder trade, as they add complexity, uncertainty, time and cost. SMEs are particularly impacted by these compliance costs.

One example is the No Objection Certificate (NOC) requirements. Multinationals exporting all over the world find a distinctive obstacle in India with the requirement for NOCs, which give the consignee of the goods in India control over shipments. In the event that the consignee defaults, they are still required to agree to release the container, even though they have defaulted. This is a costly and frustrating process for both UK sellers and Indian buyers. One UK firm referenced fines of up to GBP 20,000 for related delays. Thus, the requirement not only delays the release of the consignment but also causes financial burden on the shipper and creates a general lack of confidence in the Indian market.

We recommend that the FTA negotiations result in the removal of the requirement of NOCs, which would bring India into line with all other major countries, including the UK, and others such as the EU, UAE, or USA.

Removing non-tariff barriers, such as the NOC requirement, make it easier for companies to trade and invest, thus providing their high-quality products at affordable prices to wider networks of consumers.

Despite the challenges businesses face when doing business in or with India, UK businesses remain committed to the Indian market. If unnecessary regulations, certifications, tests and other requirements could be removed or simplified, and associated costs cut, there is huge scope for more UK businesses, including SMEs. To enter the market and for those already established to expand. This would bring more UK investment in India and its agri-food supply chain, and deliver more high quality UK products to Indian consumers at cheaper cost.

1.6. DATA PROTECTION AND LOCALISATION

Data is integral to all sectors and as such rules and regulations around the storage and transfer of data must keep in line with industry developments. Digital and data services underpin and support growth, competitiveness and investment opportunities. The UK and India have huge strengths in these innovative new areas that can result in mutual wins by working together.

Businesses would like the FTA to include provisions that support core features of a thriving international digital environment – cross-border data transfers, personal information protection, mechanisms to promote interoperability among privacy law frameworks, transparent access to government information, and consumer protection and choice online.

Data flows support global, regional and national trade, and supportive texts in this area are increasingly important in trade agreements. Due to the fast-moving developments in the sector, policy and regulation therefore need to keep pace with, and embrace, new business models and innovation. While data rules were raised in almost all of the consultation roundtables, they were particularly underlined by companies in the digital, financial and insurance sectors.

In terms of managing non-personal data, businesses would like to see an agreed approach that balances innovation, market forces and security. To this end, there must be no requirement to share data with third parties, building on the dialogue between the UK's Information Commissioner and India's Ministry of Electronics and Information Technology.

The UK-India FTA should include a Data Adequacy Agreement that facilitates the cross-border movement of personal data based on mutual adequacy. This Agreement would incorporate provisions that protect the personal data and privacy of Indian and British citizens and guarantee the enforceability of those rights. Further, it is recommended that GDPR forms the basis of this Agreement as it has become a global model for data protection and privacy. If India was to follow this approach it would help India to expand its digital sector globally.

The COVID-19 pandemic has demonstrated the value both of freeing the sector to offer innovative solutions and of dispensing with unnecessary regulation. The UK and India already possess the scale, scope, data, IT and communications engineering, and research skills. Therefore, R&D collaboration must be strengthened, and university/research efforts focused on next generation technologies such as IoT, data analytics, 5G, AI, will be hugely advantageous in the present and future.

Example: Supporting the financial services sector

Financial Services are increasingly reliant on a range of different technologies, including Cloud Computing and Artificial Intelligence. This requires the free flow of data to provide improved services to customers based on Know Your Customer (KYC) information. In recent years, the Indian Government has introduced the Personal Data Protection Bill and proposed several regulatory changes. This has implications for localisation of both personal and non-personal data, and limits the data storage and sharing process across borders. Additional checks and balances have to be borne in mind to address and mitigate cybersecurity threats and anti-money laundering (AML) risks. In the financial sector, the Reserve Bank of India has separately mandated localisation of all payments data, including payments made by banks.

As noted above, we recommend that the FTA contains a data adequacy agreement and, with the financial services sector in mind, it should provide:

- Greater flexibility for safe and secured cross-border transfers of banking transaction information and provision of new financial services;
- Less stringent requirements to use local computing facilities or data storage centres; and
- Less stringent requirements to restrict customer information onshore.

The cross-border movement of transaction and KYC data across borders is critical for global financial service companies to ensure best services to customers, enhance operational efficiency, streamline investments, and drive innovation. Such an Agreement would protect the personal data and privacy of Indian and British citizens and guarantee the enforceability of those rights.

1.7. INTELLECTUAL PROPERTY

In a digital world, where goods supply chains are increasingly regional rather than global, it is clear that IP-rich innovations, technology transfer, and digital services are going to drive the future trading partnership between the UK and India. So, it is important that businesses will be able to protect and fully commercialise their IP.

Although India's national IP legislation is largely armonized with global standards, concerns remain amongst businesses that exceptions, particularly in copyright and patent legislation, are "anti- competitive" and stifle innovation. Additionally, the diverse and fragmented enforcement regime in India, combined with bureaucratic obstacles and lengthy backlogs of civil and criminal cases which, in some cases, may take several years to conclude, impede businesses who need to enforce their IP.

It is therefore important that both Governments continue working together to strengthen India's IP enforcement which will give investors more confidence. For example, streamlining and simplifying practices in IP administration and increasing opportunities to protect and exploit IP assets for mutual benefit.

The sectors where IP is particularly important are digital and data services, healthcare and life sciences, energy, and defence and aerospace.

Example: IP protection for healthcare businesses

The main concerns of UK healthcare businesses in India are:

- the potential threat of patent revocation, lack of presumption of patent validity, and the narrow patentability criteria under the India Patents Act;
- restriction on patent-eligible subject matter in Section 3(d) of the India Patents Act and its impact on armonized g innovation that benefits Indian patients;
- enforcement of intellectual property and the continued absence of a armonized IP enforcement agency, combined with a lack of coordinated actions at the national and state levels threatens to undercut any progress made; and
- working statements and compulsory licensing provisions.

We recommend that the FTA establishes a baseline of best practice for IP that reflects the UK's current standards, and that IP processes are fair, transparent and do not disadvantage UK companies. A strong, armonized IP regime with tighter legislation, robust enforcement and speedy resolution across all industry sectors is essential for India and the UK. Supporting innovation in healthcare is essential to ensure that: affordable and effective solutions are found; innovation is encouraged; and global challenges met.

Strong protection and enforcement of patents, regulatory test data, and other IP provide powerful incentives that drive and sustain substantial investments in valuable treatments and cures. Where markets are open and IP is protected and enforced, biopharmaceutical innovators have the predictability and certainty they need to collaborate with partners, compete successfully, and accelerate the launch of new medicines.

Such improvements can also lead to reduced costs, making it easier for patients to take medicines and therefore improving patient adherence to prescribed therapies.

1.8. PUBLIC SECTOR PROCUREMENT

Under the Atmanirbhar Bharat campaign, the Government of India has given preference to domestic firms in public tenders. For example, since May 2020, Governments across India no longer issue global tenders worth up to INR 200 crore (GBP 20 million).

However, access to public sector procurement has been an issue for UK businesses prior to Atmanirbhar Bharat. In the pharmaceutical sector for example, more-stringent guidelines were introduced in 2017 to segregate domestic manufacturers from foreign manufacturers, with domestic Indian companies being favoured. Companies in the energy sector asserted the same issue when competing for public tenders.

Local content requirements are an entry barrier for businesses which do not have the established networks, suppliers and partnerships to overcome such barriers. The use of local content requirements is not unique to India and aim to promote the use of local inputs and foster domestic industries. Yet, while such requirements might have perceived benefits related to domestic advances and achieving self-reliance, the unintended consequence is that they limit the supply of goods and services and damage competition, which deters innovation.

Therefore, reducing local content requirements, particularly for products that are not readily available in India, would support the industry and thereby the population.

We recommend that the FTA includes provisions on fair competition, subsidies and the functioning of State-Owned Enterprises (SOEs). Opening public sector projects to foreign companies will enable greater trade and investment, as well as bringing world-class solutions and technology to India.

1.9. NATIONAL SECURITY

India's national security outlook in relation to China was raised several times by businesses, specifically those businesses that have Chinese ownership or which have a significant presence in Hong Kong.

On defence and national security grounds, the Government of India has restricted investment from countries that share a land border with China without approval. This is inhibiting UK companies in two ways:

- those that want to invest in India via their Hong Kong subsidiaries; and
- those that have a degree of Chinese ownership and who want to make greenfield investment in India.

Relaxation has been provided in certain limited cases, including for procurement of medical supplies for containment of the Covid-19 pandemic till 31 December 2020. Businesses would like the FTA to provide exemptions or a transparent fast-track decision making process for UK investments.

1.10. INVESTOR PROTECTION

In 2016, the Government of India circulated a new model Bilateral Investment Treaty (BIT) and notified co-signatories of existing BITs (including the UK) that the treaties would be terminated on 1 April 2017. Investments made before that date would be covered by a 15-year sunset clause, but future investments would not be covered.

We recommend that the FTA has an Investment Chapter, which provides protections for companies investing in either country. Such a Chapter, or BIT, would send a signal to investors, providing them with comfort that they have recourse to legal remedies in the case of a dispute. It would also add credibility to India and the UK as reliable investment destinations.

The model BIT prepared by India contains clauses that businesses find restrictive. For example, the requirement that an investor must pursue local legal remedies for a period of at least five years before it may bring a claim under the Model BIT, unless the investor can demonstrate that there are “no available domestic legal remedies capable of reasonably providing any relief in respect of the same measure”. It is rare for a country to require companies to first exhaust local remedies, and we believe that it is unique to extend this for a period of five years.

Businesses need certainty and guaranteed protections to operate. Among the main issues raised during our consultations were consistency in tax rules and their application, as well as tax parity in the banking and insurance sector.

There is significant disparity between the effective corporate tax rates applicable to foreign companies in the insurance and banking sectors, at 43.68 percent, and domestic companies, which is 25.17 percent. This serves as a major disincentive for UK businesses in these sectors in India.

A reduction in the corporate tax rate to that of domestic companies will provide a level playing field and further encourage enhanced investment by foreign entities that are keen to invest as well as expand in India. This will showcase India as an attractive investment destination. In addition, Indian consumers will be able to access a wider range of insurance products, presenting a win-win.

It is worth noting in the case of retrospective taxation that we are encouraged by the Taxation Laws (Amendment) Bill, 2021 introduced in Indian Parliament on 5 August 2021 as it will see any tax demand made on transactions that took place before May 2012 dropped, and any taxes already collected on such transactions to be repaid. This is a very positive first step although implementation of the Bill remains ongoing. Successful implementation will send a welcome message to international investors and one that the UKIBC believe will help to attract foreign investment to India and which draws a line under historic Indian retrospective tax issues.

CONCLUSION

Successful negotiation of a UK-India FTA would enable more UK and Indian business to provide their products and services to more customers across both countries. It would also facilitate greater collaboration between UK and Indian companies opening further opportunities, including in third countries. This will translate into more jobs, growth and prosperity in both our countries.

It is therefore no surprise that businesses greatly welcome the commitment from the UK and Indian Governments to negotiate an FTA. Alongside this, companies are pleased that the ETP retains a focus on securing ease of doing business improvements and market access reforms on an immediate and ongoing basis.

The prize is large for both countries:

India will be the world's third biggest economy and consumer market by 2030. So, while this large market is expanding, the ETP and FTA will be reducing the barriers that currently stop UK companies from achieving their potential in India.

At the same time, Indian businesses would gain access to the UK's world class workforce, a world class regulatory and legislative environment, and one of the largest economies in the world. The UK also has some of the world's finest universities and research institutions, putting it at the forefront of science, technology, engineering and innovation, which will be decisive amidst the continuation of the digital revolution and race to net zero.

At the UKIBC we are realistic about what the Governments will be able to achieve in negotiations, particularly in the short term. There isa long list of asks from UK and Indian businesses, both offensive and defensive. Negotiations will be tough, with compromise required by both countries.

We therefore believe that the Governments should aim to negotiate a series of interim or mini Agreements that, over time, form a Comprehensive FTA. The Government of India has expressed an openness to this approach, which would capitalise on the excellent momentum already created by the Governments, it would lock-in wins on an ongoing basis, and it would build the trust, confidence and momentum that will be required to overcome more difficult issues.

Within this "early harvest" approach, the Governments should focus on a narrow range of issues that are relatively "low-hanging fruit" and/or issues that would facilitate the most significant wins. With this in mind, the UKIBC recommend priority focus should be given to:

- reducing tariffs, including on alcoholic spirits, food,and medical devices;
- reducing non-tariff barriers to goods trade, such as by aligning standards and simplifying burdensome and costly customs procedures; and
- IP protection and alignment of data protection rules to enable growth in the innovative, tech-rich, and digitally-driven future focused industries that will dominate UK-India trade in the years and decades to come.

Over time, and with trust and momentum building through successfully negotiating an Interim Agreement, other issues can and should be addressed.

Addressing ease of doing business challenges and successfully negotiating an FTA in an ambitious and pragmatic way will help companies of all sizes, but particularly SMEs who are less likely to have dedicated and specialised staff to navigate the current complexities, or the cash flow to take the risks needed to secure the large and growing rewards in India.

It matters when the 5th and 6th biggest economies in the world form a trade partnership, so the Enhanced Trade Partnership and future FTA are potential game-changers for businesses and consumers.

The UKIBC looks forward to supporting both the UK and Indian Governments, and facilitating continued feedback from businesses, on an ongoing basis throughout the preparation and negotiation phases.