

# Free Trade Agreement India - EFTA

Facts and reflections on the ongoing negotiations

Handelskampanjens tekstserie  
Hva er norske interesser?



**HANDELSKAMPANJEN**



Free Trade Agreement between India - EFTA  
Facts and reflections on the ongoing negotiations  
Handelskampanjens tekstserie: Hva er norske interesser?  
Publisert av Handelskampanjen 2010

Forfatter: Susana Barria fra Intercultural Resources, India

Handelskampanjen samler organisasjoner fra bonde-, fag-, miljø- og solidaritetsbevegelsen.

Medlemmer av handelskampanjen: Attac, Fagforbundet, For velferdsstaten, Handel og Kontor, Latin-Amerikagruppene i Norge, Natur og Ungdom, Nei til EU, Norges Bondelag, Norges Bondekvinnelag, Noregs Bygdeungdomslag, Norsk Bonde- og Småbrukarlag, OIKOS – økologisk landslag, PRESS, Utviklingsfondet og Spire.

Innholdet i rapporten står for forfatterens regning.

© Handelskampanjen. Innholdet kan brukes fritt med henvisning til utgiver og forfatter

Trykking: Arkan

Opplag: 500

ISBN: 978-82-91923-27-7

Rapporten er utgitt med støtte fra NORAD

**[www.handelskampanjen.no](http://www.handelskampanjen.no)**

## Innhold

Forord	3
List of Abbreviations	4
Introduction	5
1. Conclusions	6
2. India: An emerging economic power?	8
3. EFTA: The Norway – Switzerland unholy association	9
4. India and Free Trade Agreements	11
5. EFTA-India FTA negotiations: State of play	13
6. Specific interests and concerns	15
6.1 Agriculture	15
6.2 Industrial Goods	16
6.3 Trade in Services and Establishment	18
6.3.1 Financial Services	18
6.3.2 Telecommunication Services	19
6.3.3 Energy Services	19
6.4 Intellectual Property Rights	21
6.4.1 IPR and affordable access to medicines	21
6.4.2 IPR and genetic resources	23
6.5 Fisheries	24
6.6 Other issues	27

## Forord

Handelskampanjen er glad for at vi kan legge fram denne rapporten om den bilaterale frihandelsavtalen som det nå forhandles om mellom India og EFTA (Norge, Sveits, Island og Lichtenstein). Rapporten er skrevet på oppdrag fra Handelskampanjen av Susana Barria fra Intercultural Resources i New Delhi, India. Rapporten gir mye verdifull kunnskap om hva det nå forhandles om og mulige konsekvenser av en slik avtale. Vi håper den vil skape mer åpenhet og debatt om disse viktige forhandlingene.

Bilaterale handelsavtaler som Norge forhandler om, får liten oppmerksomhet i media, og forhandlingene foregår uten offentlig innsyn og normale demokratiske prosesser. Det er ikke kjent verken hva Norge eller landene det forhandles med krever eller ønsker å oppnå i forhandlingen. De norske standpunktene er ikke vært gjenstand for noen offentlig debatt eller høringer før de fremmes overfor landene det forhandles med, og det foretas ikke konsekvensutredninger av hva slike avtaler kan føre til. Når Nærings- og handelsministeren og andre representanter for regjeringen uttaler seg om slike avtaler, så snakker de alltid om mulighetene de gir for norsk næringsliv. Men det er bare én side ved dem. Det er også et spørsmål om avtalene kan ha negative konsekvenser, enten for folk i landene avtalene inngås med eller for folk i Norge.

De fleste slike avtaler som hittil er inngått, har fått små konsekvenser for Norge. Men nå forhandler Norge om bilaterale frihandelsavtaler bl.a. med gigantene India og Kina, og Russland står for tur. Frihandelsavtaler med dem kan få store negative konsekvenser for viktige næringer og befolkningsgrupper i Norge, i tillegg til at de kan gi bedre vilkår for enkelte norske bedrifter. Internasjonale handelsavtaler handler like mye om innenrikspolitikken som utenrikspolitikken. Det burde vært utredet og diskutert bl.a. konsekvensene av eventuelle store utenlandske oppkjøp av norske bedrifter, hva frihandel med landbruksvarer fra India vil bety for norsk landbruk, og hva betingelsen bør være for en eventuell åpning for økt arbeidsinnvandring fra disse landene.

Bilaterale frihandelsavtaler som Norge inngår, kan selvsagt få både positive og negative konsekvenser for ulike næringer, tjenestetilbud og befolkningsgrupper også i landene Norge inngår avtaler med. I flere av landene som Norge nå forhandler med, er mulighetene for innsyn og påvirkning fra sivilt samfunn betydelig dårligere enn i Norge. Åpenhet og demokratiske prosesser i Norge vil derfor også bidra til styrking av demokratiet og mulighetene for påvirkning fra sivilt samfunn i de landene Norge forhandler med.

Det siste året har det vært et søkelys på avtalen som er forhandlet fram med Colombia. Rapporten *Frihet for hvem? Frihandelsavtalen mellom Norge og EFTA* som Handelskampanjen ga ut sammen med Latin-Amerikagruppene, dannet et viktig grunnlag for den sterke motstanden som finnes mot denne avtalen. Et stort antall norske organisasjoner har krevet at avtalen legges på is.

Handelskampanjen har i samarbeid med andre organisasjoner utarbeidet fire krav til regjeringen i tilknytning til forhandlingene om bilaterale frihandelsavtaler:

- Hovedstandpunktene i kravene og forslagene både fra Norge og landene det forhandles med må offentliggjøres.
- Det må gjennomføres konsekvensanalyse av avtaler det forhandles om.
- Avtaleutkast må sendes ut på offentlig høring.
- Avtaler må ikke inngås dersom en stor bredde av sivilbefolkningsorganisasjoner i landet det forhandles med går imot avtalen.

November 2010  
 Aksel Nærstad  
 Leder i Handelskampanjen

## List of abbreviations

**ACTA** – Anti-Counterfeiting Trade Agreement  
**CCE** – The Cooperation Council For The Arab States of The Gulf  
**CEPA** - Comprehensive Economic Partnership Agreement  
**EEZ** – Exclusive Economic Zone  
**EFTA** – European Free Trade Association  
**EU** – European Union  
**FAO** - Food and Agriculture Organisation  
**FICCI** - Federation of Indian Chambers of Commerce and Industry  
**FTA** - Free Trade Agreement  
**GDP** – Gross Domestic Product  
**GoI** – Government of India  
**IPR** – Intellectual Property Rights  
**LOP** – Letter of Permit  
**MFN** – Most Favoured Nation  
**NFF** – National Fiskworkers’ Federation  
**ONGC** - Oil and Natural Gas Corporation Limited  
**PAP** - Processed Agricultural Products  
**RoO** – Rules of Origin  
**RTIA** - Regional Trade and Investment Agreement  
**SPS** – Sanitary and Phytosanitary measures  
**TBT** - Technical Barriers to Trade  
**TRIPS** – Trade Related Intellectual Property Rights  
**UNCLOS** - United Nations Convention on the Law of the Sea  
**UNCTAD** – United Nations Conference on Trade and Development  
**UNFSA** - United Nations Fish Stock Assessment  
**UPOV-91** – Union for the Protection of New Plant Varieties of 1991  
**WTO** - World Trade Organisation  
**SICCFM** - South Indian Coordination Committee of Farmers Movement

## Introduction

India and the European Free Trade Association (from hereon referred to as EFTA) have been negotiating a Free Trade Agreement (FTA) since January 2008. The negotiations are taking place in a shroud of secrecy, apparently so that the economic interests of both the parties can be preserved. However, as this report highlights, several sectors – and, in consequence, people – stand to be affected by the bilateral trade regime promoted by this trade agreement.

This report gives an economic background to both India and EFTA, and places Free Trade Agreements and its use as a tool of trade liberalisation within that context. It studies the different sectors of interest to both sides, from within the chapters included in the EFTA-India FTA – mainly trade in agricultural; trade in industrial goods; trade in services and establishment; and intellectual property rights. In doing so, it highlights specific issues that emerge from a closer look at the reality on ground. As we highlight in this study, it becomes undeniable that several groups, such as farmers, fish-workers, urban and rural working poor and health patients, will be affected by the implementation of such an agreement, both in India and the EFTA countries. This raises serious questions on the legitimacy of holding secret negotiations when such a policy decision can have varied and wide-reaching impacts on people and communities. Also, is it justified to place specific economic interests over and above farmers' livelihoods and rights to seeds; fish-workers livelihoods and access to fishing grounds; labour rights; women's access to decent employment; patients' rights to health saving medicines; poor people's access to medicines; credit and telecommunication and communities' control over biological diversity and natural resources?

## 1.0 Conclusions

With the EFTA-India FTA opening up trade in agricultural goods resulting in the reduction of import tariffs, small farmers in EFTA countries will suffer a severe setback. While large exporters and distributors on both sides might benefit, small Indian farmers will not gain much either, undergoing similar onslaughts and competition from import surges.

The further opening of India's trade in industrial goods would impact employment through the destruction of small and medium enterprises. The export-oriented sector which would gain access to the EFTA market will be forced to compete with large EFTA corporations, increasing the possibility of severe labour right violations. Since this sector employs a large female workforce, essentially contractual and low-waged, any thrust on further liberalisation will only increase the burden on the workforce by heightening their exploitation. The denial of labour rights, including the right to minimum wages and unionizing will be used as a pre-condition to be competitive in the international market.

Within the liberalisation of financial services, the EFTA FTA would give equal access to official funding and refinancing facilities involving costly risks for India. Similarly, allowing 'new financial services' to be provided in the country would make India more vulnerable to future financial crisis. The provisions related to investments in services or provisions on competition-preventing measures would result in the dismantlement of the system of cross-subsidies of rural telephony which is currently in place and allows the access to telecommunication in rural areas. Stiffer competition through further liberalisation of the banking sector will lead to smaller domestic banks being squeezed out of business reducing access to credit in rural areas and to vulnerable economic actors, including women.

The rules on services contained in the agreement also forbid policy instruments that were used by Norway in order to build the energy industry as it is today. The FTA provisions on services liberalisation and establishment will only ensure that new regulations are more difficult to implement as they might be considered as 'trade blocks'. Provisions on domestic regulations in services would limit countries capacity to regulate the provision of services within the country, hence infringing on government's policy space. The demand by peoples' and farmers' organisations to include control over the price of seeds within the Seeds Bill under discussion in India would also run counter to the IPR provisions of the FTA, which is partly why the Bill has been kept away from being tabled in the Parliament. These are some examples of the limitation of regulation that will be created by this FTA.

The FTA provisions on trade in services limit the actual control over the use of natural resources, emptying the meaning of ownership which is left with the communities or the government from a large part of its content.

IPR provisions in EFTA FTAs undermine the production, registration and worldwide availability of essential generic medicines by allowing pharmaceutical companies to extend their monopoly position and continue to charge artificially high prices for drugs and patents, free from generic competition. Data exclusivity clause of the FTA will lead to withholding of safe and effective medicines from patients, solely for the purpose of proving something that is already known. In addition, repetition of clinical trials will take time and involve costs that the generic producers usually cannot afford. IPR 'enforcement provisions' will restrict the ability of the Indian judiciary to balance patent holders' rights with the right to health of patients. Finally, if the investment chapter extends the



definition of investment to include intellectual property it would allow for government's decisions related to public health to be challenged on grounds of IP infringement.

The intellectual property regime promoted by the FTA also allows for the appropriation of traditional knowledge and biological diversity, losing the fact that traditional knowledge is a collective heritage of people and communities, and should be part of the collective right to use, share, improve and further develop knowledge.

The FTA will also facilitate the entry of foreign fishing fleets into Indian waters with the same conditions as Indian fishing fleets, with small-scale fisheries bearing the brunt of intense competition from bigger and technologically more superior Indian trawlers and foreign vessels for fishing grounds.

The FTA provides for removing export restrictions as well as facilitates the operations of EFTA companies in India, which could result in large quantities of cheap fish being exported to Norway (and Iceland) to be used as fish meals, instead of being consumed by the poorest sections of the Indian population. A diversion of good fish from the local to the export market would create harder conditions for local fish sellers, affecting livelihoods and food security. Finally, the entry of highly organized retail due to services liberalisation would affect women fish sellers' capacity to access the local market, along with hawkers and small retailers.

Hence, many provisions that are likely to be included in the EFTA-India FTA are matters of great concern, considering that many of them imply amendments and changes in the Indian legislation, which will be applicable to any foreign country, like with respect to IPR, investment, government procurement and competition policy.

From a development perspective, therefore, this agreement would leave India's people, marginalised groups in particular, with high costs and low benefits. The attack on India's policy space will hamper the design and implementation of pro-people development policies and measures, with serious implications on more vulnerable communities.

Given the wide ranging implications of this agreement on varied sections of the Indian society and economy, the logic of placing economic interests above people and conducting negotiations in secret remains thoroughly indefensible and inexplicable. It is of utmost importance that the Indian Government conducts these negotiations in a transparent manner and consults stakeholders from communities and sections that will be affected. It is also important that such agreements which include binding commitments that limit policy maneuver and lead to changes in domestic laws be debated and agreed by the Parliament. It is imperative that such decisions that will impact scores of people are not taken in a hurried manner in the interest of narrow commercial benefits.

## 2. India: An emerging economic power?

India is portrayed by the media as an emerging economic power, sustaining a growth rate of more than 9% for several years and maintaining it above 6% even during the 2009 global economic crisis. However, one needs to look beyond the macroeconomic indicators, especially at the micro and social level to gain a more holistic picture of the situation on the ground, where contrasts to the 'India growth story' are particularly stark.

In 2006, India was the 12th largest economy in the world, if ranked as per its national income. Calculated as per its income per habitant, it was ranked 128th in the world. While India's GDP growth was 9.6% in 2006 and 9.2% in 2007, on the Human Development Index (HDI), it dropped from the 126th position in 2006 to the 128th rank in 2007. The HD Report of 2009 further exposes this crisis, reflecting a rank of 134 out of 182 countries, indicating that the economic growth has not translated into better living conditions for a majority of India's citizens.

The Information Technology 'boom' which is spoken of around the world gives an impression of wide spread transformation of the Indian economy. While it is true that the overall growth rate of the country is led by the services sector, it needs to be remembered that this sector only employs one-fourth of the total workforce of 516.3 million people. The IT sector in itself employs only 0.55% to 0.60 % of the Indian workforce (2.24 million people in 2009).

In contrast, 60% of the workforce is employed in the agricultural sector, which receives meager investments in terms of infrastructure, irrigation and access to domestic markets. More worrying is the fact that the absorption of the workforce or job creation rates are on the decline, giving India a 'jobless growth'<sup>1</sup>. In addition, inequalities of income and wealth of all kinds – between urban-rural sections, states and classes have only steadily increased. The economic growth has not percolated to sectors where labour is intensive and in states where poverty is acute, such as Bihar, Orissa, Madhya Pradesh and Uttar Pradesh. In consequence, despite the image presented by politicians and trade negotiators, the situation is grim with the possibility of becoming worse.

---

<sup>1</sup> The break of what had been called the Hindu growth rate of 3.5% took place not with the 1991 reforms, but around the 1980s when India's economic policies took a pro-business turn. The 1991 reforms, in the guise of International Monetary Fund loan conditionality and Structural Adjustment Programs was a neo-liberal, pro-market and pro-competition turn for the Indian economy.

### 3. EFTA: The Norway – Switzerland unholy association

While the foundations of what was yet to-be-European Union were being laid, another grouping of European countries started to organise themselves in a similar manner. In 1959, a European Free Trade Association Agreement was signed by seven European countries, creating the EFTA<sup>2</sup>. Both groupings evolved in very different ways. While the EU increased its membership and deepened its structure, EFTA limited itself in terms of membership and its agenda. Today, the EFTA is an intergovernmental organisation, which aims to (a) Promote free trade within EFTA countries, (b) Negotiate and maintain free trade agreements with other countries and (c) Facilitate (free) economic activities with the EU (through the administration of the European Economic Area<sup>3</sup>). In the updated EFTA convention signed in Vaduz, Lichtenstein in June 2001, broader functions have been assigned to the EFTA Council, to facilitate EFTA's free trade regime with partner countries<sup>4</sup>. The ideology of this institution is unmistakable.

With Iceland facing bankruptcy during the 2009 economic crisis and Lichtenstein being a protectorate of Switzerland in the matter of economic activities<sup>5</sup>, Norway is attempting to create an unholy alliance between Switzerland and itself. Switzerland and Lichtenstein are international financial centers and hosts to major multinational corporations like Nestle, Roche, Novartis, UBS and Credit Suisse..Switzerland is also a world leader in pharmaceuticals, biotechnology, banking and insurance services. Iceland and Norway, on the other hand, take leadership in fish production, metal industry and maritime transport. Norway's economic growth has been fuelled by petroleum exploration and production, hydroelectric power and fisheries. Other important sectors include telecommunication services.

Despite the fact that the mandate of EFTA is to deal with trade agreements and take into account the interests of all its members, there is evidence of both divergence as well as similarities of interests, which are worth noting. While Norway is rich in natural resources, Switzerland is primarily a trade dependent country. This creates a difference in interests regarding restrictions on the export of natural resources, as well as regarding rules that define the country of origin of a product (also called Rules of Origin<sup>6</sup>). Another area of dissenting views within EFTA concerns Intellectual property Rights (IPR). Since Switzerland has created a large part of its wealth on Intellectual Property rights income, it seeks stronger laws to protect the rights of patent holders. On the other hand, Norway has played a core role in linking the World Trade Organisation agreement on intellectual property rights (the TRIPS agreement) with the Convention on Biological Diversity thus arguing for limiting patent holders rights and the IPR regime.

2 In 1959, Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK established EFTA. Two years before, Belgium, France, Germany, Holland, Italy and Luxembourg had signed the Treaty of Rome, a precursor to the EU. Iceland and Lichtenstein joined EFTA in 1970 and 1991 respectively. By 1995 Austria, Denmark, Finland, Portugal, Sweden and the UK had left the EFTA to join the EU.

3 In 1992 the Agreement on the European Economic Area (EEA) was signed by three EFTA countries and rejected by Switzerland by referendum. EEA was formed to facilitate economic activities between its signatories and the EU (27).

4 "This is EFTA", page 6

5 As a result of the customs union established by the Treaty of 29 March, 1923 between Switzerland and the Principality of Liechtenstein, Switzerland represents the Principality of Liechtenstein in matters covered by EFTA FTAs.

6 In case of the former, it is in Switzerland's interest to remove export restrictions so that natural resources of other countries are accessible to them. In contrast, Norway has traditionally supported such export restrictions to protect natural resources of a country, as also their own. Regarding the Rules of Origin (RoO), Switzerland is interested in ensuring that the value added to a product within a country becomes part of and is core to defining the origin of that product, since this makes up for most of the Swiss contribution to a product.

In the sector of investments however, their position is similar, with specific sectors of interest for each. Finance, insurance and pharmaceuticals are of interest to Switzerland while Telecommunication and Energy services are of interest to Norway. It is worth mentioning here that Norway's interest in the latter sectors is contiguous to its own interests and history of economic development, especially if one is to look at the development of the oil industry. Similarly agriculture is a sensitive sector for both countries while fisheries is a sensitive sector for Norway. The legal framework in Switzerland provides higher protection to local producers, a provision which is hijacked by bigger (corporate) producers such as Nestle, Migros and Coop. Agriculture, on the other hand is seen as the soul of Norway, based on domestic family-farming production.

Within EFTA, Switzerland is seen to be playing the role of a bully, while Norway takes cognizance of public opinion within the country. This is very apparent in the case of the Free Trade Agreement between EFTA and Colombia which was to be signed in 2009. Issues of human rights violations were raised within the context of negotiations and while it became an embarrassment for the Norwegian government, to the point that the ratification of the agreement was halted, the Swiss government went ahead with its Parliament ratifying the agreement.

	EFTA *	India
Population	12,660,623 (2007 est.)*	1,198,003,000 (2009 est.)***
GDP (nominal)	\$743.3 billion (2007 est.)*	\$1.209 trillion (2008 est.)***
GDP/capita	\$58,714 (2007 est.)*	\$1,016 (2008 est.)***
Trade with the world	\$481.9 billion (2006)**	\$246 billion (2005-06)**

Main exports from EFTA to India (2006) Machinery and mechanical appliances, pharmaceuticals, precious stones and metals, ships and boats**
Main imports from India to EFTA (2006) Organic chemicals, precious stones and metals, knitted and woven apparel, textile articles**

\* From wikipedia, EFTA page: [http://en.wikipedia.org/wiki/European\\_Free\\_Trade\\_Association](http://en.wikipedia.org/wiki/European_Free_Trade_Association)

\*\* From Report of the India-EFTA joint study group

\*\*\* From IMF, Report for selected country and subject: India

## 4. India and Free Trade Agreements

India has been signing trade agreements since its independence. Traditionally these agreements were signed with neighboring countries and provided for very specific trading preferences given to partners. For instance, India has a trade agreement with Afghanistan under which import duties are decreased for a chosen list of goods. These trade agreements, limited in their scope and coverage, are called Preferential Trade Agreements or PTAs<sup>7</sup>.

After the failure of the World Trade Organisation talks at the Fifth WTO Ministerial Meeting at Cancun, in September 2003, the Government of India undertook a major policy shift<sup>8</sup>. In addition to multilateral trade negotiations in the WTO, bilateral trade negotiations were used as a way forward into economic globalisation. The Government of India (GoI) has been pursuing comprehensive economic agreements with various countries and economic blocs around the world. These have been given several names, from Comprehensive Economic Partnership Agreement (CEPA), Regional Trade and Investment Agreement (RTIA) or, as we will use it here, Free Trade Agreements (FTAs)

The FTAs between developing countries (also called South-South FTAs) tend to be less exhaustive and comprehensive (often limited to specific sectors or products) and less oriented towards an overhaul of national laws, but their impacts on farmers, workers and the environment can be equally devastating<sup>9</sup>. India's experience of South-South FTAs, like the one signed with Sri Lanka shows how even a limited trade agreement can have a debilitating impact on agricultural livelihoods, like in the state of Kerala as well as on certain sections in Sri-Lanka. The FTA signed with ASEAN threatens to wreak further havoc on the fishing and agricultural community.

In June 2005, the government signed a FTA with Singapore, the first time India has come to implementing a full-fledged FTA, and in August 2009 it signed one with South Korea, which was approved by the South Korea Parliament in November 2009<sup>10</sup>. In the last three years, India began talks for FTAs with industrial powerhouses like Japan (in February 2007), the European Union (EU) (in June 2007) and the EFTA (in January 2008). In September 2010, the Government of India (GoI) gave it's in principle agreement to an FTA with Japan, which is expected to be signed in Tokyo in October 2010. The negotiations with the European Union have been on a fast track for more than a year now and both

---

7 New Delhi has signed Preferential Trade Agreements, which provide for the reduction of tariffs on an agreed (short) list of items with Afghanistan (2003), Bangladesh (1980), Bhutan (1972), Maldives (1981), Nepal (1992), Chile (2005) and Mercosur (an economic grouping of countries that includes Argentina, Brazil, Paraguay and Uruguay as full members) (2004). India is also part of an interesting regional agreement, the Asia Pacific Trade Agreement or APTA, signed in 1975, which includes exchange of specific trade preferences and is under UN supervision.

8 Commerce and Industry Minister Murasoli Maran had been instrumental in bringing together developing countries to oppose developed countries within the WTO. After his departure in 2002, while there was a flux in the Commerce Ministry with frequent changes in leadership, the then Minister of External Affairs, Yashwant Sinha, pushed for Free Trade Agreements (FTAs) as the way forward into economic globalisation.

9 India has signed such (South-South) FTAs, which are to be expanded in their scope, with Sri Lanka (1998), Thailand (2003) and ASEAN (Association of South East Asian Nations, in August 2009). The signing of the latter has been strongly opposed, especially in South India, by workers, farmers and the fishing communities, with several protests and campaigns being held on the issue all over the country. On 2nd and 3rd October 2009, the South Indian Coordination Committee of Farmers Movement (SICCFM) held a South Indian Farmer's Convention against WTO and FTAs in Bangalore and issued a statement denouncing the Indian government's position on FTAs and criticising its multiple impacts on farmers' livelihoods. In October 2009, 2 million people in Kerala formed a human chain to symbolically stop the entry of imports from ASEAN into the state and in November, a coalition of fish-workers from Kerala protested in Delhi and handed over a Memorandum to the Prime Minister denouncing the ASEAN-India FTA and its impacts on the livelihoods of Kerala's fish-workers.

10 India is also part of a regional agreement called SAFTA, the South Asia FTA signed in 2004. However, the implementation of this has largely been a failure. Within the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), a framework for negotiating a Free Trade Agreement was signed in February 2004 with implementation of the agreement slated for June 2004, which has not begun yet.

sides have announced their intention to formalise the agreement at the next EU-India Summit, which is to take place in Brussels, in mid-December 2010. By October 2010, India would have signed 6 FTAs, most of them negotiated in less than two years, apart from being involved at various stages of talks for at least 18 more FTAs<sup>11</sup>.

FTAs shape international exchanges in ways similar to the World Trade Organisation (WTO), as they too provide for binding rules for trade liberalisation. FTAs not only build on what has already been negotiated in the WTO, in terms of agricultural and non-agricultural goods, services and intellectual property rights, but also go beyond these by including sectors which were earlier not allowed (mainly by developing countries) in the WTO such as investments, government procurement and competition policies. FTAs also go beyond the WTO by not allowing agreements to be asymmetric, through which developing countries would be able to use temporary import restrictions to protect local development<sup>12</sup>. This is especially true for FTAs between developing countries and developed countries or block of countries (also called North-South FTAs), such as the one with the European Free Trade Association<sup>13</sup>.

---

11 Bilateral FTA negotiations are also ongoing with the Gulf Cooperation Council (GCC), Malaysia and Mauritius. The Commerce Ministry is also in various stages of considering talks with Australia, Chile, China, Colombia, Egypt, Hong Kong, Israel, New Zealand, Russia, SACU (Southern African Customs Union), Uruguay, Venezuela and USA.

12 Thomas Johansen, *Bilaterale og regionale frihandelsavtaler* (2007)

13 Emerging countries, like South Korea and Singapore, follow a similar template for their agreements.

## 5. EFTA-India FTA negotiations: State of play

Negotiations for a FTA between India and EFTA, which includes Switzerland, Norway, Iceland and Lichtenstein, began in January 2008. The negotiations were based on the recommendations of the Report of the India-EFTA joint study group<sup>14</sup>. Since then, five rounds of talks have taken place in October 2008, December 2008, February 2009, September 2009 and the most recent one held from 17-19 August 2010, in New Delhi. The sixth round is scheduled for the end of 2010 but no specific date has been set as yet. While the Indian chief negotiator had initially indicated that he would like negotiations with the EFTA to conclude before the EU negotiations, negotiations on the EU-India FTA in fact have been fast tracked and pursued vigorously while the EFTA negotiations have been placed on the back burner. Yet, it is undeniable that both negotiations are closely linked.

The template used by the EU and EFTA are broadly similar (see below)<sup>15</sup>. As per the information gathered by various groups working on the issue in EFTA countries and India, negotiations on the EFTA FTA are partly built upon the negotiations with the EU, especially those concerning technical matters. As for the timeline, it can be expected that with the finalising of the EU negotiations, work on the EFTA FTA will resume at a brisk speed.

While the WTO is still the favoured means of liberalisation for the EU, EFTA countries, especially Switzerland, prefers FTAs, as it gives them a stronger negotiating position. Yet, EFTA believes that FTAs are complementary to the multilateral system of the WTO and believes in using fixed templates for its agreements in order to avoid the so called “spaghetti bowl effect” – a situation where an array of different (and sometimes conflicting) rules (can be created) through different FTAs. Such a template includes<sup>16</sup>:

1. Trade in agricultural products is dealt with in separate bilateral agreements as EFTA countries do not have a common agricultural policy. However, trade in processed foods is included within industrial goods negotiations;
2. Trade in industrial goods includes liberalisation of trade in fish, other marine products, processed agricultural products (PAP), as well as prohibiting limitations on exports from partner countries. This also includes minerals;
3. Provisions for the liberalisation of trade in services, also termed as de-regulation;
4. Provisions on investment, which includes rules for ensuring the same or better conditions for foreign companies compared to national companies and free movement of capital for foreign companies<sup>17</sup>;
5. Competition rules, which would mainly regulate government linked companies and provides for governments divestment in the same;
6. Public procurement<sup>18</sup>, which aims at opening up public-sector markets in areas such as health, education or public transport;

14 Available at: <http://www.regjeringen.no/Upload/NHD/Handelsavtaler/India%20forstudien%20final.pdf>

15 For a systematic study of areas covered in EU and USA FTAs, in comparison with the WTO coverage, see: Horn, H., Mavroidis, P.C. and Sapir, A. (2009): Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements. Bruegel Blueprint Series, 7, from [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_130306.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_130306.pdf)

16 European Free Trade Association, 2006, “This is EFTA”, Brussels, Pages 10-12.

17 Investment can be included in services liberalisation under the phrase of ‘establishment’, or be dealt with in a separate chapter. In this report we will take them together.

18 This is true since 2000 and reflects in the FTAs signed with Mexico, Singapore, Chile, the Republic of Korea and now with Colombia.



7. Provisions for “high standard” (or TRIPS +) of protection of Intellectual Property Rights (IPR) through longer periods and inclusion of new matters under protection coverage, including provisions on patenting of life forms and traditional knowledge ;

8. Provisions on dispute settlement;

9. Provisions for regular upgrading of the FTA to take into account development in WTO;

In March 2009, Norway ‘withdrew’ from talks on Intellectual Property Rights (IPR), over a difference in politics with Switzerland. As opposed to the latter, Norway’s position on the subject is that developing countries should not be pressured into accepting directives which limit their own policy space<sup>19</sup>. Talks on IPR are now being conducted without Norway’s participation. Interestingly, when asked about the consequences of a liberal IPR regime on India, an Indian negotiator answered that he was not even aware of Norway’s withdrawal<sup>20</sup>. Norway has kept the option of signing the text negotiated between the three EFTA countries and India, if the same is acceptable.

As has been mentioned before, all negotiations on the EFTA-India FTA took place without any public access to the Indian Government’s position, commissioned studies or the negotiating texts. The Government is yet to share the details of these negotiations with the Indian Parliament and its citizens. The Commerce Ministry has delegated the responsibility of the consultation process to the Federation of Indian Chambers of Commerce and Industry (FICCI), thus limiting the participation to only select corporate and commercial establishments in India. In the process, those likely to be adversely affected by this legally binding treaty, farmers, workers, fisher-folk, hawkers, indigenous people and marginalised communities, have been sidelined and kept in the dark.

Civil society groups in India voiced their concerns regarding this agreement through a statement published in February 2009 asking the Indian Government to halt the negotiations until:

- All existing negotiating positions, draft proposals and government commissioned studies are made public;
- All current proposals are debated and discussed in Indian Parliament and the public;
- The federal process of consulting with state governments is carried out and discussed in each state assembly, and an all party consensus is reached;
- Consultations are conducted with key constituents such as farmers’ and fish-workers groups, trade unions, women, dalit, adivasi and other peoples’ organisations, small and medium enterprises and cooperatives and hawkers, with at least six months allotted to this process;
- A white paper on the socio-economic and environmental impacts of all aspects of the EFTA-India FTA, especially addressing social inequality and discrimination be undertaken and released to the public. This should also be discussed in the Parliament.

The next section will look at and elaborate on the concerns raised above as well as other specific sectoral issues regarding this FTA.

---

<sup>20</sup> Rajgopal Sharma, Personal Communication, July 24th 2009.



## 6. Specific interests and concerns

### 6.1 Agriculture

Liberalisation of basic agricultural products is included under the (complementary) Agreements on Agriculture, which is to be negotiated between India and each individual EFTA State.

While India is interested in including a comprehensive agreement on agriculture based on a negative list approach<sup>21</sup>, the EFTA is reluctant to do so. While the agricultural community constitutes only a small percentage of EFTA's total population, it enjoys far more protectionist policies. In Switzerland, through democratic processes of votes, the population has opted for agricultural reforms which follow ecological and ethical principles. UNITERRE, a small farmers' union, supports production patterns which are ecologically and ethically sound, and denounces the incompatibility and rather the contradiction between a strict legal framework to implement the former and trade liberalisation. This incompatibility creates an unsustainable environment for small peasants in Switzerland and marginalizes them. In Norway, agricultural production is based on (mainly) family farming and small land holdings (comparative to neighboring countries, based on high productivity of land). With the FTA opening up trade in agricultural goods, which would result in the reduction of import tariffs, small farmers in EFTA countries would suffer a severe setback. Thus, EFTA countries are resisting opening up their agricultural markets.

In a personal exchange, Valentina Hemmeler<sup>22</sup>, Union Secretary, UNITERRE, an agricultural producers' union in Switzerland and a Swiss member of La Via Campesina (International Peasants' Movement), explains that the core issue is the systematic marginalization of small producers for the profit of distribution corporations. For distribution corporations (such as India-based Reliance Fresh, Switzerland-based Migros or Coop) a small number of big producers is more advantageous than numerous smaller ones.

In India too, similar effects threaten the large agricultural community, most of whom are primarily small and medium farmers with equivalent land holdings, apart from the large community of hawkers or street vendors<sup>23</sup>. India has introduced a Food Safety and Standards Bill, 2005 which introduces standards of food safety that are difficult to meet for small street vendors and will result in many of them moving out of hawking. This is of great concern to millions of livelihoods as many of the poor, migrating to cities or unemployed workers have found a livelihood in hawking and starting small retail shops or enterprises in India. Valentina explains that by marginalizing small vendors they will ensure a market for bigger corporations and distributors and push small producers into supplying to them and being dependent on them.

Indian negotiators seem to believe that vegetables and processed agricultural products would gain a market in EFTA countries through this agreement. Considering that the size of the EFTA market is rather small, and that subsidies, sanitary and phytosanitary measures have not being included in the negotiations which would increase the cost for export, the advantage of trade liberalisation in agriculture would be accrued mostly by large exporters and distributors. Small farmers and street vendors in India are not likely to gain at all by these provisions.

21 In a 'negative list' approach everything is committed to be liberalised unless specified as an exception in an annexure to the main text. In contrast, in the 'positive list' approach, only those items and products specified in the agreement, generally in a document called "the schedule of commitments", are committed for an agreed degree of liberalisation.

22 Personal exchanges, Valentina Hemmeler, Union Secretary, December 15th, 2009, Geneva.

23 A hawker is someone who travels about selling his wares (on the streets or at carnivals).

## 6.2 Industrial Goods

Liberalisation of trade in goods covers all industrial goods, but also includes a list of processed agricultural products as well as sea food products, like fresh or frozen fish and crustaceans (see Section 5.5, Fisheries). EFTA FTAs provide for the abolition of all custom duties on import and export of goods, except for a specified list of products (sensitive list)<sup>24</sup>, as well as the elimination of all import and export prohibitions or restrictions on trade in goods, other than custom duties and taxes. This includes elimination of export quotas and licenses, and the prohibition to introduce new import and export restrictions.

In the area of industrial goods, India seems to have presented a list of sensitive industrial goods (i.e. products that India is not ready to liberalise) which would represent close to 30% of the Swiss trade with India and more than 30% of Norwegian trade with India. In a personal communication with the author, the EFTA Chief Negotiator, Ambassador Ineichen said that such a move from India is against WTO rules, which require that FTAs have to cover “virtually all trade”. Moreover, according to her, this contradicts the EFTA approach which aims at zero tariffs for all goods. The concerned sectors included in the list are mainly the machinery industry, chemicals, pharmaceuticals and watches. The Indian argument is that that these sectors are either ‘infant industries’<sup>25</sup> or sectors comprising of mainly small and medium enterprises with a large workforce. In India, there has been a tradition to use import duties and quantitative restrictions to protect infant and other socially relevant industries, in order to create industrialization and protect employment. This meant for instance, that some products would be reserved for “tiny or micro” and small scale industries to produce, thereby ensuring industrial activity yet facilitating the growth of domestic or indigenous units. While much of this protective system has been dismantled since the economic reforms started in 1991, import duties are still used to protect infant as well as established companies<sup>26</sup>.

Another issue of concern for India are the non-tariff barriers included in the negotiations, which among other things include the Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary (SPS) measures. India emphasised the importance of substantial results in the area of TBT and SPS for a successful conclusion of the negotiations. Negotiators have expressed concern that these provisions, more than the tariff barriers, will hurt market access of Indian industrial goods in EFTA countries (since tariff barriers are already very low in EFTA countries). Another point of discussion is on the Rules of Origin (RoO)<sup>27</sup>. Interestingly, India has a more restrictive policy on this than EFTA countries in general and Switzerland in particular. Switzerland’s economy is rather focused on the end of the value- added chain, while India produces along the entire value chain and would like to have stricter and more restrictive RoOs. This is obviously not in the interest of Switzerland as many goods partly produced or processed in Switzerland may not comply with RoOs as per Indian standards, and therefore will not fall under the preferential treatment of the FTA<sup>28</sup>. Indian negotiators recognise that despite being a high-end market, EFTA is a

24 While the WTO provides for similar measures by binding the maximum level to which import duties can be raised, FTAs go much beyond them by providing for actual reductions in applied duties, often freezing the level of import duties as per their applied level at the time of signing the agreement.

25 In economics, an infant industry is a new industry in its early stages which is unable to compete with established competitors domestically or abroad, and hence requires some sort of protection

26 Government procurement is also used, by way of using social criteria for deciding of companies which will be procured from.

27 Rules of Origin (RoO) are used to determine whether a good will be regarded as produced within that country or not i.e. determining the country of origin, for the purpose of being granted preferential treatment under the FTA. Typical RoOs are based on a percentage of value added or on changes in the classification of the product in the international trade nomenclature, which consequently changes the tariff heading.

28 EFTA would also like to have an article on banning anti-dumping measures, to which India is opposed.

small market in size and therefore the advantages of possible economic gains from trade in industrial goods will be rather limited.

In the period of economic reforms that followed the prescriptions of the World Bank, the International Monetary Fund and the World Trade Organisation, there has been a decrease in the level of total employment creation in India, leading to more unemployment. The massive imports allowed as part of the economic reforms led to the displacement of local industries (also called de-industrialisation) resulting in the destruction of employment in the manufacturing sector. This in turn affected the household income of a large workforce employed in this sector. According to researchers, this process of de-industrialisation has caused an increase in “women’s need for employment”<sup>29</sup> in order to be able to respond to the household crisis<sup>30</sup>. In addition, these reforms have also made specific sectors in the manufacturing industry increasingly dependent on the export market, or export-oriented like electronics or textiles. According to Indira Hirway, neo-liberal policies, “have exposed... economies to global volatility, leading to increased employment insecurity, and to uncertainties and vulnerability”<sup>31</sup>. Export industries, linked intrinsically as they are to the global demand and supply chain are particularly susceptible to volatility of the markets, causing indentations and spurts in the labour employed. As a consequence, a flexible workforce was required to cope with such volatility and ensure a competitive edge for firms in the international market. Much of this competitive edge for export-oriented manufacturing industries situated in Asian countries, including in India, has been derived from a feminisation of the workforce. Women’s labour is seen to be flexible and docile while the income they bring to the household is seen as a ‘dispensable’ supplement to man’s income.

There are also concerns regarding labour rights that have been raised by trade unions and worker’s associations. Most of the workforce in export-oriented manufacturing industries and factories is employed under sub-contracted arrangements, i.e. they are not formally employed but are under contract where they are at the mercy of brokers who determine production and compensation rules. Such employment of a contractual nature forms part of the large unorganized sector and is outside the purview of most Indian labour laws. Several reports have highlighted the plight of these workers, especially women, in the export-oriented manufacturing sector, who work for long hours at wages that do not even meet their basic subsistence needs. Also, in many export oriented units, especially those located in the Special Economic Zones (locations deemed to be foreign territory for the purposes of trade operations, duties and tariffs) unionizing is restricted. A thrust on export-orientation and expansion of trade through FTAs threatens the rights of the labour involved in these sectors, whose exploitative work conditions will become the new norm. Hirway states that “this export oriented growth has largely generated poor quality employment and policies have only increased gender inequalities in the labour market outcomes”<sup>32</sup>. While India’s Government aim in FTAs is partly to gain export markets, it has to be asked what the costs of accessing those markets are for labour rights.

29 Women Speak (2000). In March 2000, at the initiative of six national level women’s organisation, approximately ninety women’s groups and organisations became signatories to a document prepared for the Global March 2000. This document, called ‘Womenspeak: United Voices against Globalization, Poverty and Violence in India’, was the first attempt at a comprehensive analysis of the adverse effects of the IMF and World Bank dictated Structural Adjustment Policies (SAPs) and globalization on women in India.

30 According to studies, if male employment declines as a result of import penetration, women’s labour supply may increase as a survival response to falling household income. In some circumstances, some of these women may find jobs in the expanding export sectors, often as contract workers, while others might work informally or in other precarious jobs which may not be reported into the employment census.

31 Indira Hirway, power point presentation titled ‘Trade and Employment’ presented at the Workshop on Trade and Development: India-EU Civil Society Round Table, India Habitat Centre, 24th September 2009, New Delhi.

32 Indira Hirway, power point presentation titled ‘Trade and Employment’ presented at the Workshop on Trade and Development: India-EU Civil Society Round Table, India Habitat Centre, 24th September 2009, New Delhi.

## 6.3 Trade in Services and Establishment

Given the importance of the financial sector for its economy and intense corporate lobbying, Switzerland in particular is pushing for the liberalisation of the financial and insurance sector. Norway, on its side, is looking at further penetration in the Telecommunication and Energy services. However, all areas are to be covered in the services chapter. For India too the services sector is of prime interest, especially Information Technology and the movement of professionals from India to EFTA countries.

In the area of Services, India has clear interests in liberalising regulations allowing the movement of professionals in services (called Mode 4 in trade jargon). However, it seems clear India's demands regarding the movement of lesser qualified personnel might be a difficult issue in many EFTA countries. Other sectors of interest for India include audiovisual, possibly construction, architecture and design.

According to sources, while both India and Switzerland would like to pursue an ambitious agenda regarding domestic regulations in services (based on ongoing negotiations within the WTO), it is the reservations of the Norwegian side that are encumbering the process<sup>33</sup>. As a result, EFTA takes a rather defensive position in this regard. Within the WTO, various provisions operate as necessity tests for domestic regulations to be tolerated. These provisions put a condition that regulatory measures have to be 'transparent', 'objective' and 'relevant'. Civil society groups have criticised these provisions arguing that they would set new grounds and limit countries' capacity to regulate the services within the country, thereby infringing on government's space to design and implement policies<sup>34</sup>.

### 6.3.1 Financial Services

While EFTA would like to go beyond respective commitments made in the WTO regarding financial services, the Indian side seems to have made clear that it is opposed to this idea. EFTA may propose a financial service annex similar to the one included in the FTA signed with GCC in June 2009. This would mean a comprehensive definition of financial services including an exhaustive list of activities such as insurance, banking, trading derivatives and securities. Not only does this imply greater penetration of the Indian market by EFTA financial services companies but such a FTA would also require national treatment for EFTA financial services suppliers in terms of access to official funding and refinancing facilities available in the normal course of ordinary business. The experience of Iceland during the financial crisis indicates the level of risks involved with such a provision.

India has so far successfully avoided financial instability and its harmful consequences in the recent global financial crisis, largely because of the restrictions imposed on the banks' ability to trade in derivatives. If India agrees to provisions on financial services which require many of these risky 'new financial services' to be allowed in the country, it is unlikely that the country and its people will be able to avoid being affected in the next financial crisis.

Furthermore, stiffer competition through further liberalisation of the banking sector will

33 Rules of non-discrimination require equal and on par treatment for both domestic and foreign companies, prohibiting and thus limiting domestic regulation of all service sectors, including those that govern licenses and qualifications, as well as technical service standards.

34 Objectiveness, relevance, transparency/necessity and conformity with international standards would be mandatory for domestic regulations to be compatible with the FTA. If they are not compatible, they could be challenged by the other party and would need to be removed. For more details, see South Centre, The Draft GATS Domestic Regulation Disciplines – Potential Conflicts with Developing Country Regulations, Analytical Notes, October 2009. Available at: [http://www.southcentre.org/index.php?option=com\\_content&task=view&id=1092&Itemid=67&lang=fr](http://www.southcentre.org/index.php?option=com_content&task=view&id=1092&Itemid=67&lang=fr)

only lead to smaller domestic banks being squeezed out of business. This is of significant concern as it is national and domestic banks which provide access to credit in rural areas and to vulnerable economic actors, including women. Big foreign banks have persistently displayed a natural bias towards wealthy customers, which was well articulated in a recent headline in the Swiss press: “Credit Suisse and UBS [two big Swiss banks] are after the rich Indians”. A recent study by Ranja Sengupta also shows that foreign banks lend less to rural areas and women<sup>35</sup>. Sengupta’s study shows that while foreign banks in India have a comparatively higher proportion of women account holders (23.8%), disbursement to women however is lower, at 7.9%, compared to regional rural banks with 19.6% of their credit given to women. Sengupta also shows that foreign banks avoid risks and limit lending in rural areas. In fact even within urban areas, 81.4% of their total lending is concentrated in metros with 17.9% to other urban areas.

### 6.3.2 Telecommunication Services

Norway is eagerly looking to enter the voluminous Indian rural market for telecom. Norwegian companies have already made inroads into Bangladesh, in the area of rural telecommunications, by collaborating with the Gramin Bank. This collaboration has been applauded for making mobile facilities accessible in rural areas. But India’s ground situation is very different from the one in Bangladesh. In India, as opposed to Bangladesh, the government offers several incentives to encourage private players to provide their services in rural areas while public companies also play an important role in ensuring access to telephony in rural areas and to low income consumers. A system of cross-subsidies in rural telephony exists in India. These incentives and the role of public sector could be questioned or become unsustainable with the implementation of FTA provisions related to investments in services or provisions on competition-preventing measures.

### 6.3.3 Energy Services

Norwegian companies in the energy service sector are rated as one of the most advanced in the world, especially in the areas of seismic and drilling equipment, underwater construction and floating production solutions<sup>36</sup>. According to the Norwegian Petroleum and Energy Ministry, the growth of Norwegian energy service suppliers relies on their capacity to grow internationally<sup>37</sup>. The Norwegian government actively pushed for liberalisation of energy services within the WTO, keeping the Norwegian offshore (oil drilling and exploitation) industry as a priority<sup>38</sup>. With FTAs becoming the new tool of economic liberalisation, Norway has explicitly asked India to liberalise its energy services sector, especially mentioning maritime services related to offshore petroleum production<sup>39</sup>. Norwegian companies such as Aker Kvaerner and NCC are already operating in India.

While energy services in the WTO are not negotiated as a separate sector<sup>40</sup>, there are 3 energy-related activities (or services) which are exclusive to the energy industry:

35 Ranja Sengupta and Narendra Jena (2009), *Women’s Access to Critical Resources and Services: Health and credit and the EU-India FTA*, Centre for Trade and Development (Centad), November 2009, New Delhi.

36 Petroleum and Energy Ministry’s website, Norwegian petroleum-related supplies.

37 Norwegian Petroleum and Energy Ministry website, Norwegian petroleum-related supplies.

38 Linn Herning, Norwegian economic interests and positions in energy services, January 2009.

39 Linn Herning, Norwegian economic interests and positions in energy services, January 2009.

40 There is an ongoing discussion within the WTO on the definition of energy services, in which the proposal for a definition of energy services would encompass a list of services relevant to the energy sector. All core activities for oil and gas production ranging from surveying to drilling, monitoring, processing, distribution and marketing would be included. Electricity related services are also to be included.



services incidental to mining, services incidental to energy distribution, and pipeline transportation of fuels<sup>41</sup>. Other energy-related activities are covered by services sectors such as transportation, distribution, construction, consulting and engineering. In EFTA FTAs with developing countries, liberalisation of energy services is not a separate annex and is covered through the overall trade in services (and establishment) chapter. However, it is known that within the negotiations with India, the energy sector, especially offshore drilling is high on Norway's priority list. Hence it can be expected that Norway's demands in this specific FTA will go beyond what is generally included<sup>42</sup>. This is possible as the provisions on liberalisation of establishment of EFTA companies in India (investment), includes the purchase or rental of real estate and property used for supplying the service – such as forested land over oil field.

Chapters on services liberalisation in EFTA FTAs generally include the 'Most Favoured Nation' (MFN), 'market access' and 'national treatment' clauses, as well as facilitation of payment and transfer of capital out of the country. Under the market access clause, it would be forbidden for the Indian Government to restrict or limit the number of EFTA service suppliers, the total value of their service transactions, the total number of their service operations, the number of personnel they employ (including any limitation based on the nationality of the employees), participation of EFTA foreign capital in terms of maximum percentage limit on foreign shareholding, as well as the requirement for specific types of legal entity or joint venture companies through which an EFTA service provider can supply a service.

These provisions are also problematic for EFTA countries, especially Norway in context of its oil industry. In fact, in order to build its oil industry, the Norwegian Government used several policy instruments which would now be considered as measures impeding market access, also called 'trade blocks'. Norway has clear requirements for foreign companies exploring oil on its territory. These include provisions for technology transfer through joint ventures with Norwegian companies, use and employment of local personnel as well as the compulsory use of part of the oil in the local market. All of these are prohibited by the provisions under the market access clause.

The same market access rules, including the prohibition to limit the number of service suppliers, service transactions and service operations apply to companies providing deep-sea petrol exploration and exploitation, tourism or so called eco-tourism services in environmentally fragile areas, the latter directly overstepping the rights of communities living and depending on the ecosystem and other natural resources, for example the use and access to forest resources in the case of mining. Conflicts between the Indian oil company ONGC and fishing communities have already taken place, as a 10-km range around an exploring platform in Mumbai has been demarcated and is now inaccessible to fish-workers. Such a development translates into a loss of fishing ground and hence of livelihood for the fisher-folk who have been demanding compensation and are in negotiations with the local government of Maharashtra and the Natural Gas Ministry. However, even though compensation has been given in some cases, the real concern of the fish-workers is the loss of livelihood, which is total and continues for perpetuity. Interestingly, the foundation or precedence for compensation to fish-workers

---

41 Within the WTO, only pipeline transportation of fuels is exempted from the Most-Favoured Nation (MFN) clause (i.e. non-discrimination).

42 According to sources, there were some disagreements amongst EFTA countries regarding investment related provisions. Norway suggested a text on the basis of the EFTA agreement with Colombia, which was not appealing to Switzerland partly due to the lack of a Most Favoured Nation clause. According to this clause, India would have to give EFTA countries' investors the best and similar treatment as it gives to any other country's investor. This is very problematic for India as it would automatically extend the provisions and privileges of other India FTAs to EFTA countries. It seems that Switzerland had asked Norway to also consider an opting-out alternative if no internal EFTA position on the investment chapter could be reached.

is Norwegian laws, which include provisions for compensating fish-workers (from the Norwegian Petroleum Directorate, NPD)<sup>43</sup>. Another cause of concern for fish-workers is pollution from exploration, as it is the main cause for the depredation of fish and fish stock. According to N.D.Kholi, from National Fishworkers' Forum (NFF), the Government of India pretends that oil extraction does not create any pollution. There are no regulations in place and an FTA will only ensure that new regulations are more difficult to implement as they might be considered as 'trade blocks'.

These raise serious questions and concerns on the right to regulate and ownership of natural resources. While the right to regulate is the mandate of any government, clauses such MFN and market access will jeopardize this and make it impossible to control or restrict their actions. While there is no explicit mention of the ownership of the natural resources used for the provision of a service – be it for oil exploration underwater and fishing grounds or mining activity and the forest area over ground, these provisions limit the actual control over the use of such resources. If there is no actual ability to control the level of usage, by limiting the number of service suppliers, service transactions, and service operations, then owning what is left with communities or with the government is meaningless. These are clear examples of how gains in term of expected market access can come at the cost of a long term reduction of the political maneuverability and policy space.

## 6.4 Intellectual Property Rights

Members of EFTA, particularly Switzerland, representing corporations like Sandoz, Roche, Novartis and Syngenta have strong interests in far reaching Intellectual Property Rights (IPR) regulations, which include supplementary protection certificates, data exclusivity, enforcement provisions, signing of UPOV-91 and the inclusion of biological diversity and associated traditional knowledge into the IPR regime. India's interests on the other hand focus on the disclosure of source and access and benefit sharing in the context of the Convention on Biological Diversity. In all cases, the impact on the poor and vulnerable groups and their access to medicines as well as the right to use traditional knowledge is far reaching with devastating consequences.

### 6.4.1 IPR and affordable access to medicines

The Trade Related Aspects of Intellectual Property Rights treaty (TRIPS agreement), which forced India to introduce a new product patent regime in 2005, has already curtailed the country's ability to produce low-cost generic versions of new HIV, hepatitis and cancer medicines. As a result, some new essential medicines have already been patented in India and cannot be domestically produced, leaving patients in India and across the developing world without access to affordable versions of these medicines. Still, India plays a key role in producing, registering and supplying essential medicines, not only to Indian patients but to most developing countries. Approximately four million people were able to start AIDS treatment between 2003 and 2008, largely due to the ability of Indian generic producers to produce low-cost quality medicines and supply majority of antiretroviral drugs in developing countries<sup>44</sup>. IPR provisions in EFTA FTAs will go beyond the TRIPS agreement of the WTO (hence the term 'TRIPS +'). Clauses like supplementary protection certificates on pharmaceutical products, introduction of data exclusivity and implementation of enforcement provisions on IPRs would undermine the production, registration and worldwide availability of essential generic medicines.

43 [www.ndp.no/regelverk/r2002/frame\\_e.htm](http://www.ndp.no/regelverk/r2002/frame_e.htm)

44 Indian-produced generic antiretroviral comprised 87 per cent of antiretroviral purchase volumes and accounted for 91 per cent of paediatric antiretroviral volumes in 2008. International AIDS Society Journal, "A lifeline to treatment: The role of Indian generic manufacturers in supplying antiretroviral medicines to developing countries", Geneva, 14 September 2010.

EFTA FTAs include patent term extension known as “supplementary protection certificates”. Simply put, this is a way to extend a pharmaceutical company’s monopoly by extending the patent life on a medicine beyond 20 years. If India accepts this clause, the years added to the patent in India are extra years in which the company can maintain a monopoly position and continue to charge artificially high prices for the drug, free from generic competition.

Exclusive rights over pharmaceutical test data, also called “data exclusivity” is generally part of EFTA FTAs. The current drug regulatory legislation in India allows generics to be registered with the Indian drug regulatory authority (Drug Controller General of India) using pre-existing safety and efficacy data. The provisions contained in EFTA FTAs will require India to amend its drug regulatory legislation thereby legally prohibiting India’s drug regulator from registering a generic medicine as long as the period of exclusivity over trial data continues (which does so for several years)<sup>45</sup>. “Generic producers will have to submit their own safety and efficacy data to register the generic. This will oblige generic companies to repeat clinical and pre-clinical trials. The repetition of trials raises grave ethical issues, as it would require withholding safe and effective medicines from some patients (the control group), solely for the purpose of proving something that is already known. This may not pass the scrutiny of ethical committees, making it difficult for generic companies to repeat the clinical trials. In addition, repetition of clinical trials will take time and involve costs that generic producers usually cannot afford”<sup>46</sup>.

Finally, IPR ‘enforcement provisions’ include a number of measures that attempt to govern the way disputes regarding patents and civil trademark infringements will be managed by Indian courts. For instance, as per these measures, IPR infringement is to be considered as a criminal offence. If India accepts these clauses, “the Indian judiciary will have its hands tied and will no longer be able to balance IP rights with the right to health of patients”<sup>47</sup>. These measures also include border enforcement measures, which were the cause for the seizure of consignments of generic drugs in transit through Dutch territory between June 2008 and June 2009, including consignments originating in India. The medicines were being routed to at least seven different developing countries in South America and Africa.

Finally, if the investment chapter extends the definition of investment to include intellectual property, the use of compulsory licensing, price regulation, as well as refusal to provide exclusive rights over test data would be considered as infringement of investors’ rights, as the benefits from their investments would be curtailed. For example, labelling requirements in the interest of public health can be challenged under such provisions. Phillip Morris of the Tobacco Company, has recently filed an investment dispute, alleging that Uruguay’s requirement to increase the size of pictorial warnings of the effects of tobacco on cigarette packets violate their trademark rights. This is just one instance of how investment provisions allow for government’s decisions related to public health to be challenged on grounds of IP infringement.

45 A study on the impact of data exclusivity in Jordan found that out of 103 medicines registered and launched since 2001 that currently have no patent protection in Jordan, at least 79 per cent have no competition from a generic equivalent as a consequence of data exclusivity. Data exclusivity in Jordan was introduced as a result of the US-Jordan FTA.

46 Open letter to Honorable Manmohan Singh, Prime Minister of India, National Association of People Living with HIV in Nepal, October 13th, 2010.

47 Personal communication with Prathibha Siva, Lawyers collective, February 2010.



## 6.4.2 IPR and genetic resources

According to sources, ever since the seizure of Indian medicines in transit in EU, Indian generic manufacturing companies have been displeased. India is in discussion with Brazil to ensure that such practices (also known under the name of ACTA, which makes the infringement of patent laws a criminal offence) are not legitimised through FTAs. This can explain why India has kept problematic provisions related to IPR and medicines out of the text it is negotiating with Japan. In Europe, the pharmaceutical companies have lobbied hard and succeeded partly on the issue of seizure of generic drugs. The trade off naturally will be between IPR on medicines and IPR on genetic resources.

Since new technologies, also called bio-technologies are incorporating or using genetic resources, its derivatives or traditional knowledge in new inventions, the biotechnology sector is pushing to include biodiversity, traditional knowledge and life forms into an IPR regime, to ensure that their monopoly over these “inventions” can be granted and protected. These include among other things the use of traditional knowledge in farming to create seed varieties or livestock breeds. “Bio-piracy” has now emerged as a significant part of the discourse on IPR regime, especially in the context of global biotechnology firms from developed countries creating new patents using traditional knowledge systems and/or associated resources originating in developing countries and owned by traditional communities.

In the last decade, the bio-trade discourse and negotiations have moved towards a global access regime. The idea behind this is the notion that bio-piracy is an illegal appropriation of biodiversity or traditional knowledge and the solution is to define internationally applicable legal ways to appropriate, or to get patents, on the same. This includes a paradigm shift on India’s position from prohibiting patents on life forms to granting patents on biological resources upon fulfilment of certain conditions. According to the Convention on Biological Diversity principles, the three conditions for accessing biological diversity and the related traditional knowledge are (a) disclosure of origin - patent applicants would have to declare where they obtained biological materials or traditional knowledge involved in their invention; (b) prior informed consent - patent applicants will have to show explicit clearance from traditional users to take and use these materials or this knowledge; and (c) benefit sharing - the patent applicant would need to show some arrangement made with the “source” of the materials or knowledge in order to share the IP proceeds with them. Rules on biodiversity and traditional knowledge in the EFTA-Colombia FTA are included in the IP chapter and sources reveal that EFTA is keen on including similar provisions in its FTA with India.

What is completely missing in the above discourse is the notion that appropriation of traditional knowledge, through any form of intellectual property regime, no matter what the underlying conditions, is actually the problem. Traditional knowledge is the collective heritage of people and communities, hence such a regime forces one to ask whether “rights” related to traditional knowledge can be categorised as individual rights to exclude, own and sell. Rather, should they be collective rights to use, share, improve and further develop knowledge in the context of local livelihoods? By assigning legal ownership privileges to individuals and companies that take crop varieties or livestock breeds developed by farmers or indigenous peoples, these IPR regulations on traditional knowledge and biological diversity undermine people’s rights in relation to biodiversity. EFTA FTAs also include a long list of controversial IPR treaties to which signature becomes compulsory. This includes UPOV-91 (Union for the Protection of New Plant Varieties of 1991). India had designed the Plant Varieties Act as a system for protection of farmers and their plant varieties. This would need to be amended if the FTA with EFTA is approved

and UPOV-91 is signed. The latter would restrict the use of seeds by breeders and farmers, with negative implications for India's food sovereignty and agricultural diversity.

This issue is of interest to EFTA and EU alike and the outcome of both negotiations will influence each other. India has vociferously spoken against UPOV-91 and hence cannot be seen as changing its stance. According to sources, as per now, EFTA seems to accept India's opposition to UPOV-91. But according to Bhaskar Goswami, Forum for Biotechnology & Food Security, it would not be surprising if domestic regulations are tinkered (autonomously) sometime in 2011, in order to accommodate the demands of seed companies<sup>48</sup>, which will also please EU and EFTA negotiators.

In India, there is a Seeds Bill under discussion which provides a framework for the marketing of seeds in the country. The Government has agreed to incorporate price control clauses in this Bill but the new draft has not been circulated as yet. Further, IPRs do more than just increase seed prices; they also breed seed monopolies. According to Bhaskar Goswami, instituting price control clauses is a domestic issue and will not run counter to the FTA. However the government will try to strike a balance between domestic laws and what the EFTA and EU are demanding. This is where provisions in the Seeds Bill can be tinkered with to accommodate EU's position on UPOV-91. This Bill has been consistently kept away from being tabled in the Parliament partly because this FTA may have implications on plant breeders' right (read seed companies rights - that's quasi UPOV 91). The same route will be followed for EFTA-India FTA as well. It is also feared that India may instead bring in regulations (similar to that of Philippines) that would be quasi-UPOV-91, in order to pacify the EU negotiation team without losing its own face<sup>49</sup>. In the negotiations between India and EFTA, if India wants to include provisions on biological diversity; EFTA would like to see provisions on patents for biotechnology.

## 6.5 Fisheries

One of the sectors keenly pursued by Norway is fisheries<sup>50</sup>. Both Norway and Iceland, with a sizeable fishing industry, have interests in India's market, fishing grounds and raw materials. According to the Food and Agriculture Organisation<sup>51</sup>, consumption is well covered by domestic supply while imports, especially of fish meals and oils, are mostly used as fish feed for farmed salmon; while most of the imported fresh and frozen fish is for re-export.

In India the marine fisher-folk<sup>52</sup> population according to Census 2001 was 3,519,116<sup>53</sup>. The importance of this sector lies in the large population of traditional fishing communities that are dependent on it for their livelihood, as well as in the contribution of this sector, in terms of population nutrition. Indeed, fish is especially important for the economically weaker sections of the population, providing a cheap and important source of protein,

48 Personal communication with Bhaskar Goswami, Forum for Biotechnology & Food Security, October 8th and 9th, 2010

49 Personal communication with Bhaskar Goswami, Forum for Biotechnology & Food Security, October 8th and 9th, 2010

50 According to the Norway Fishery Products Annual Report 2007, in 2006, Norway's fishing fleet was 7,313 vessels strong. The industry employed 13,933 fishermen, with 80 percent of them claiming fishing as their main occupation. Approximately 2,630 fish farming licenses were issued in 2006, employing about 3,489 workers in the aquaculture industry. The fish processing industry consists of small and medium sized companies. In 2006, 693 processing plants employed approximately 13,500 workers. Available at: <http://www.thefishsite.com/articles/344/norway-fishery-products-annual-report-2007>

51 <http://www.fao.org/DOCREP/005/Y4325E/y4325e0a.htm#TopOfPage>

52 The term 'fisher-folk' is used to include all individuals involved in the act of marine fishing and those who belong to the traditional fishing villages (not necessarily active full-time fishermen). The term 'fish-workers' is commonly used in social movements and trade union parlance and adequately encompasses the variety of work involved in fisheries, including the women.

53 The total fisher-folk population, including inland fisheries and aquaculture is estimated at about 36 million. The Working Group on Fisheries (2001): Report of the Working Group on Fisheries for the Tenth Five Year Plan, Planning Commission, Government of India.

hence contributing to India's food security<sup>54</sup>.

FTAs not only provide for reduction in tariffs on fish import but also for removing export restrictions. Indian tariff levels for sea products is 29.7%, while tariff levels for import of seafood products in Norway is zero (0%), both on unprocessed and processed seafood. In the framework of the EFTA-India FTA negotiations, UNCTAD India recommended a list of products which are to be considered as 'sensitive', based on a two-step economic analysis<sup>55</sup>. Fish products which are included in the recommended sensitive list include a wide range of species, indicating the possibility import surges from Norway into India, which will destroy local livelihoods. The list includes, among others, edible shark fins, fish maws, coalfish, croacker, grouper, hounder, hilsa, dara, ghole, pomfret, ribbin fish, seer fish, threadfin frozen, fresh or chilled; fresh or chilled sea bass and hake; dried but not smoked cod; herrings in all forms; frozen mackerel frozen salmonidae (other than Atlantic salmon, Danube salmon, Pacific salmon, red salmon and trout) and frozen halibut; as well as frozen livers and roes, including egg and egg yolk of fish including shrimp.

However, the impact of this FTA on fishing communities is not limited only to trade in fish. The FTA will also facilitate the entry of foreign fishing fleets into Indian waters, enjoying the same conditions as Indian fishing fleets. The Norwegian commercial fleet is the 6th largest in the world today, equipped with far superior technology. Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), coastal States exercise sovereignty in their 12-nautical mile territorial sea (Article 2). They have sovereign rights in the 200-nautical mile exclusive economic zone (EEZ) with respect to exploration and exploitation, and conservation and management of natural resources and certain economic activities (Article 56(1)(a)). According to a 2006 public notice No. 21004/1/2006-Fy (Ind) issued by the Ministry of Agriculture, Government of India, foreign equity collaboration for fishing in the Indian exclusive economic zone was allowed through holding up to 49 per cent share capital in an Indian company, provided the foreign national or company is in joint venture with an Indian citizen or company. Letter of Permission (LOP) are issued to vessels under this notice. Fishworkers under the aegis of the National Fishworkers Federation (NFF) are opposing the current LOP scheme, as the monitoring of operations of LOP vessels has not been effective and small-scale fisheries are now competing with foreign vessels for fishing grounds. While foreign equity collaboration has been made possible in India, it must be remembered, that according to the provisions on investment in services, which include national treatment for foreign companies, such measures will no longer be allowed and be rejected<sup>56</sup>. This would mean that foreign vessels would be allowed to operate in Indian waters, as well as land fish in India, without any conditions. At present, there are more than 700 applications for LOP pending with the government. An indiscriminate entry of all applicants into Indian waters will harm small-scale fisheries and women fish workers further, as this would mean that the Indian fishing community will not only have to grapple with foreign imports in the Indian market, but also compete with foreign vessels for their livelihood.

Additionally, the new Marine Fisheries (Regulation and Management) Bill, 2009, proposes the treatment of Indian fishing vessels at a par with foreign fishing vessels in relation to conditions of access to Indian maritime zones. This does not take into account

54 In 2003, the annual per capita consumption of fish in India was estimated at 4.8 kg.

55 This defines products for which India is comparatively less competitive in producing and compares the domestic prices with the prices of imported products in order to assess the price competitiveness of India vis-à-vis each of the EFTA member countries. Tariff lines which have very low global exports from EFTA member countries, which indicate insufficient capacity of production of these products in EFTA countries, were removed.

56 As per the modalities of the agreement, current norms on investment in services in India would have to be explicitly included as exceptions to the national treatment clause to be kept valid.

a difference in the size of the fishing vessel or its fishing history and fails to ensure access to small-scale and artisan fishermen and women fish-workers, as well as indigenous people (chapeau b of Article 24 of 1995 United Nations Fish Stock Agreement, UNFSA). Rather it creates a regulative framework more compatible with the FTAs that India is negotiating.

In farming of carnivorous fish, the cost of inputs per unit of fish weight is high because of the high cost of fish feed. Top-level carnivores, which include most salmon species, depend on fish feed, partly made of small fish, which live on the surface water (pelagic fish), like sardine, mackerel, tuna, etc. These fish varieties, especially pelagic and tuna fish have been over fished in European waters. The fish farming industry in EFTA and EU is constrained to ensure a continued access to this raw material and hence to newer fishing grounds. Proteins derived from vegetables have sometimes replaced fish meal in feeds, but have not been successfully incorporated into the diets of carnivore fish<sup>57</sup>. According to a FAO<sup>58</sup> report, there are divergent definitions of low value/trash fish across the South Asia-Pacific region along with the lack of sound statistics. However the report provides the following data for India: In 2003, 271 000 tonnes of low value/trash fish were produced, representing 10-20% of the total fish catch<sup>59</sup>. Only a little amount of this was used for livestock/fish feed. There are only a few companies in India producing fish meal, and hence this sector has a large scope for expansion. With the FTA facilitating the operations of Norwegian companies in India, this could result in large quantities of cheap fish being exported to Norway (and Iceland) to be used as fish meals. This will be at the cost of food security, as cheap and broken fish is usually consumed by the poorest sections of the Indian population, stretched along its long coastline, including fisher folks themselves.

Also, such a pressure on exports is likely to have severe effects on the future sustainability of fishing communities in India. The management of fish to be exported and fish to be used for the local market is already a concern. Fish catch landings are low, and, in consequence, individual fish sellers, mainly women, compete with each other. Additionally, they have to compete with traders, who resell on the wholesale, local or export market. The capacity of individual fish sellers' to absorb price variation and buy large amounts is lower than that of the bigger traders<sup>60</sup>. A diversion of good fish from the local to the export market will create harder conditions for local fish sellers, affecting livelihoods and food security.

Finally, while marketing in the fisheries sector has traditionally been the mandate of women, the entry of highly organized retail corporations would affect women fish sellers' capacity to access the local market, along with hawkers and small retailers. Currently, organised retail by foreign players is restricted by a cap on foreign equity ownership. This means that a foreign company has to get into a joint venture with an Indian company and has to do so on a minority ownership. However, as mentioned before, if these domestic regulations are not listed as exceptions to the agreement, they would have to be removed as they would be contrary to the rules of MFN, national treatment and market access.

57 Many cultured fish (tilapia, carp and catfish for instance) require no meat or fish products in their diets.

58 <http://www.fao.org/docrep/008/ae934e/ae934e05.htm>

59 <http://www.fao.org/docrep/008/ae934e/ae934e05.htm>

60 In a context where women's access to capital is subordinate to that of men, the possibility of women fish sellers becoming fish traders is low. The list of export traders also reflects a low representation of women owners of fish trading companies.

## 6.6 Other issues

EFTA usually includes in its FTAs, provisions for opening up government procurement (which comprises of nearly 13% of India's GDP) to its companies. This follows WTO ideas of transparency and national treatment.

In previous FTAs, transparency meant that public procurement procedures and systems should be predictable and understandable by foreign companies. However, EFTA FTA set binding rules regarding the public procurement system enabled through new rules and reforms that give access to foreign firms on details of terms and conditions of government bids and facilitates their participation. In all such cases, national treatment is to be granted immediately for all public contracts. This means that foreign firms are as free from explicit discrimination as possible, in terms of their eligibility for bidding and securing contracts as compared to domestic firms. Previous FTAs also include rules that allow firms to challenge government procedure and decisions under the phrase of 'enforcement provisions'. Such provisions, if included in the EFTA-India FTA would seriously undermine India's policy space to support small and medium enterprises, marginalized constituencies and poorer states. This is often done by channelling and awarding government contracts to local firms in local regions through a variety of measures, as well as for boosting domestic production during economic recession.

EFTA FTAs generally include competition policy rules. These are to create a level playing ground for foreign companies vis-à-vis government linked companies (designated monopolies and government enterprises), which include entities providing public service and state trading enterprises. Binding rules regarding government linked companies compels them to "act solely in accordance with commercial consideration", thereby reducing India's flexibility to design laws and policies suitable for its economic priorities and development.

[www.handelskampanjen.no](http://www.handelskampanjen.no)



**HANDELSKAMPANJEN**

Handelskampanjen c/o Utviklingsfondet

Miljøhuset | Grensen 9b | 0159 Oslo | Telefon: 23 10 96 00

Telefaks: 23 10 96 01

E-post: [handelskampanjen@handelskampanjen.no](mailto:handelskampanjen@handelskampanjen.no)

[www.handelskampanjen.no](http://www.handelskampanjen.no)

**ISBN 978-82-91923-27-7**