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Analysing developments impacting business

INTERNATIONAL TRADE | TRADE & ECONOMIC PARTNERSHIP AGREEMENT | INDIA – EFTA STATES

15 March 2024

Background and Impact

India and the Governments of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (EFTA) recently signed a Trade and Economic Partnership Agreement (TEPA), which is set to substantially reduce tariffs on trade of goods and also give zero duty access to major portion of India's exports to the EFTA states.

The negotiations between EFTA and India started in 2008. 21 rounds of negotiations were needed to reach an agreement on 10 March 2024.

Duties on substantial number of goods imported into India from EFTA countries, *i.e.,* Switzerland, Norway, Iceland and Liechtenstein, including chocolates, watches, smartphones, olive oil, corn flakes, machinery, textiles, medicines, cod liver oil, tuna, trout and salmon, will be phased out by India under the TEPA. The TEPA is also focused on providing better access for professionals and service providers in information technology and information technology-enabled services collaboration and includes a commitment on investment promotion and job creation.

The EFTA States are India's significant trading partners. During 2023 India's goods exports were worth EUR 3.213 million broadly covering organic chemicals, woven and knitted apparel or clothing accessories, electrical machinery, aluminium and articles thereof. In terms of goods imported from EFTA States total items were valued at EUR 2.329 million with major imports to be comprising of machinery, mechanical appliances, pharmaceutical products, electrical machinery, optical, medical, surgical instruments, and clocks and watches. The TEPA also includes a specific commitment from the EFTA States for, (i) increase of foreign direct investment into India from investors of the EFTA States by USD 50 billion within 10 years and an additional USD 50 billion in the succeeding 5 years; and (ii) facilitate generation of 1 million jobs in India within 15 years from the effect of TEPA, resulting from inflows of foreign direct investment from investors of the EFTA States into India.

Key Aspects

India and the EFTA States have negotiated a comprehensive Chapter on Trade in Services, supplemented by Annexes on Financial Services, Telecommunication Services, Maritime Personnel, Recognition of Professional Qualifications, and Movement of Natural Persons. Besides incorporating and affirming GATS practices, the Chapter includes disciplines aiming to ensure the sustained competitiveness of EFTAs' services suppliers in India, and to extend the FTA's benefits to permanent residents.

The investment promotion and cooperation chapter in the TEPA also provides for a regular review by a specially appointed sub-committee with a three-stage consultation procedure which can be invoked by India if the defined target has not been reached after 15 years.

Under the TEPA, trade and sustainable development has been given very significant importance, the parties agree to promote international trade in a manner that contributes to sustainable development and to integrate this objective in their trade relationship. The parties have also committed to not derogate from or fail to effectively enforce their respective environmental and labour laws. the parties have re-affirmed their commitment to implement the multilateral environmental agreements to which they are a party, while the same commitment regarding the United Nations Framework Convention on Climate Change and the Paris Agreement is incorporated into a specific article on *'trade and climate change'*. A sub-committee on sustainability is also established to monitor and review the implementation of the commitments in the chapter along with the right to seek consultations to address any matter under the aspect of Trade, Sustainability and Climate Change.

India has offered tariff concessions to the EFTA States on various products such as coal, medicines, dyes, textiles, apparels, iron and steel, fish oil, cocoa, malt, instant tea, machinery, bicycles, clocks, watches, olives, avocado, apricot, coffee, caramel, chocolate, medical equipment, smartphones, sugar and cut and polished diamonds. The tariff concessions are phased over different periods ranging from immediate elimination to 10 years, depending on the product and the sensitivity of the domestic industry with very specific and well-defined product specific rules of origin.

A key concern always is that the EFTA States should not be misused by entities from third countries to ship their products to India at concessional import duties negotiated under the TEPA and the rules of origin criteria under the TEPA are strictly satisfied and not circumvented. Rules of origin determine where goods originate, *i.e.*, not where they have been shipped from, but where they have been produced or manufactured. As such, the *'origin'* is the *'economic nationality'* of goods traded in commerce. The tariff classification, value and origin of a good are determining factors based on which the customs tariff treatment is applied. The rules of origin provided under the relevant Trade Agreement and the related rules, determine whether goods qualify as originating from that country for which the special arrangements under the Trade Agreement apply. Only where all the requirements are met, the imported goods are provided with a Certificate of Origin (COO) and are eligible to be imported with a beneficial customs duty rate.

The rules of origin under the TEPA allow for bilateral cumulation between the parties and the use of EUR 1 certificates as well as for self-declaration of origin under certain conditions for EFTA exporters. The product-specific rules are relatively detailed, often with a value-added criterion as an optional rule provided for in parts of many industrial chapters, and the main alternative chemical reaction rule is provided for chapters 28 to 40.

With the enforcement of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR) in India which came into force on 21 September, 2020, the possibility of abuse of preferential tariff arrangements has significantly reduced along with higher scrutiny and risk management protocols at Customs. Under the provisions of the CAROTAR, an importer is, *inter alia*, mandated to undertake due diligence before importing the goods and ensure that they meet the prescribed originating criteria under the relevant trade agreement and related rules. Under certain circumstances, the Customs can deny the preferential duty rate claimed and also require verification of the COO from the partner country.

Exporters and importers may consider prompt alignment with provisions of the CAROTAR and specific attention to compliance policies for ensuring accurate implementation of rules of origin criteria. The agreement has also provided a permanent safeguard mechanism, which will safeguard exporters and businesses from both countries from any unwarranted surge in volumes of any particular product.

Conclusion

Overall, the India-EFTA TEPA is a significant step forward in strengthening economic ties and promoting trade. The deal has the potential to benefit Indian businesses and consumers, while also attracting foreign investment and fostering sustainable growth.

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