



A knowledge report on India – UK ongoing FTA negotiations



Key Updates

India –UK will likely conclude its FTA by the end of 2023, according to the Indian commerce secretary, Sunil Barthwal. There have been 12 round of talks already held but it can be extended if required.

During the 11th round of talks both sides worked on ironing out differences on issues including investment treaty, intellectual property rights (IPRs) and rules of origin. According to the Indian Commerce Secretary, Sunil Barthwal, it will be India's most complex FTA agreement till date and will serve as a standard template for future FTA negotiations.

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In Britain, Rishi Sunak, of Indian Origin, is the Prime Minister of the country. His wife, Akshata Murthy, daughter of IT giant Infosys founder Narayana Murthy's daughter is now the biggest road block to India – UK Free Trade Agreement (FTA).

UK Labour MP, Darren Jones, chair of the cross-party House of Commons Business and Trade Select Committee, has raised questions, how the FTA deal with India could benefit IT services giant Infosys. Sunak's wife, Akshata Murthy, owns Infosys shares worth 500 million pounds and the Indian negotiations team is seeking provisions to gain easier access to the UK for several thousand contract workers in sectors like IT and AI (artificial intelligence).

India at present is negotiating for a

social security agreement and a fresh bilateral investment treaty (BIT) under the FTA. But what shape would the BIT finally take is matter of question.

The UK is the largest European market for IT services from India. Visas and visa liberalization are, however, not in the ambit of the FTA, and are separate immigration issues, UK Secretary of State for Business & Trade, Kemi Badenoch clarified. That is managed by the UK Home Office and their points-based (visa) system.

After 19 months of negotiations, on several issues, 19 out of 26 of the FTA now appear to be concluded. After the G20 ministerial meeting, Badenoch travelled to New Delhi to hold meetings with business representatives and her Indian commerce and industry counterpart, Piyush Goyal.

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The UK is India's 15th largest trade partner at present. According to data from the Ministry of Commerce and Industry, India's merchandise exports to the UK reached a total of US\$10 billion between April 2022 and February 2023, accounting for 2.5 percent of the overall export share. During the same period, merchandise imports from the UK amounted to US\$8 billion, representing 1.3 percent of all imports. In terms of total trade volume, the UK ranked as India's 15th largest trading partner during this period.

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a total of US\$10 billion between April 2022 and February 2023, accounting for 2.5 percent of the overall export share. During the same period, merchandise imports from the UK amounted to US\$8 billion, representing 1.3 percent of all imports. Out of this £34 billion, total UK exports to India amounted to £14.8 billion in the four quarters ending at Q3 2022, indicating an increase of £6.4 billion or 75.5 percent in current prices from the same period the previous year. Meanwhile, UK imports from India were valued at £19.2 billion in the previous year's four quarters.

According to data from the **UK Department for Business & Trade:** Total trade in goods and services between the UK and India was £34 billion in the four quarters to the end of Q3 2022, showing 51.7 percent growth or £11.6 billion in current prices from the four quarters to the end of Q3 2021.

However, in the FTA negotiations, while India is agreeing to cut tariffs on British car and Scotch imports. The UK has reportedly agreed to relax some visa rules for Indian professionals. These discussions are currently private per government sources. Both India and the UK will hold national elections in 2024.

Points of negotiation:

- Tariffs may be cut by 75% on cars but this will not cover small capacity cars. There will be also limits to the number of British cars sold under the lowered tariff duty. It has been reported that one strategy India could be willing to adopt to allow UK passenger vehicle imports via a

tariff rate quota (TRQ). India has one with the UAE, for example, for **gold imports**. The TRQ would place a ceiling on the number of vehicles imported from the UK at a concessional FTA tariff rate. The import duty structure would ultimately be phased over a specified period of time. However, it remains to be seen if this strategy would be acceptable to UK trade negotiators and industry.

In the automotive sector, India's customs duties for fully assembled vehicles vary between 70 percent and 100 percent, depending on the specific category. Domestic passenger vehicles sales in 2022-23 were 3.89 million.

- Discussions are also underway on **import duty reductions on Scotch whisky**, which may be slashed to 100 percent above the minimum import price instead of the existing 150 percent. Additionally, ongoing negotiations involve the possibility of gradually lowering customer duty on bottled Scotch over a 10-year period, with the target of reaching 50 percent eventually. It is speculated that India might agree to an MIP of US\$4 per bottle, which could lead to a potential influx of Scotch imports from the UK. . India's whisky market share is 97 percent and Scotch whisky makes up only 2.8 percent of the market.
- Although Badenoch claimed that the issues of Visas will not come

under the FTA negotiations and it will be seen by the UK Home Office, given that one-in-three residence visas are being granted to Indian workers and net migration to the UK reached 606,000 in 2022, Prime Minister Rishi Sunak will be under pressure to not grant too many concessions. It is likely that the FTA talks center on introducing time-bound business visas for highly skilled workers from India.

- New Delhi is also eager to incorporate a social security arrangement into the FTA with the UK. This would ensure that Indian professionals working in the UK for a brief duration do not incur losses (**half a billion pounds** worth, per Indian officials) in social security contributions that they are unable to avail benefits from.

Indian and British investments how far reciprocated?

Invest India notes that UK companies have made substantial investments of approximately US\$33.87 billion in the Indian market, while it is estimated that 900 Indian firms operating in the UK contribute a turnover of \$68 billion.

The Indian Government red lines

As the talks continue between trade negotiators to the India-UK FTA, the Indian government has reportedly established certain 'red lines' where it will not compromise. These include the production of generic medicines, regulatory data protection, and the inclusion of small and medium enterprises (SMEs) in government



procurement.

Non-negotiable stance on clinical drug trial data

Regarding Intellectual Property Rights (IPR), India is actively engaged in discussions with the UK. However, India will not yield to demands for data exclusivity and patent term extensions, as these would hinder the production of affordable life-saving generic drugs within the country. This is a stance that cannot be compromised.

Data exclusivity grants exclusive rights to companies over their drugs' clinical data and can prevent other manufacturers from introducing cheaper generic versions, even in the absence of patent protection. Effectively, data exclusivity could be exploited to extend the patent life of a drug beyond its original term by making minor adjustments to its formulation and securing rights over the clinical

data. Patent term extension involves granting a longer period of patent protection to compensate for the time spent awaiting regulatory approvals.

Data protection

India also refuses to undertake any commitments in the realm of data protection and related areas, such as data localization. The absence of a digital policy in India necessitates the inclusion of a carve-out specifically addressing this concern within the proposed Free Trade Agreement (FTA), as per Indian terms.

Government procurement

Government procurement is another area where India is open to negotiations but its public procurement policy is designed to support and foster small and medium enterprises, and any compromise in this regard is not acceptable, as per Indian terms.

However, during the ongoing FTA negotiations between the UK and India, the UK Parliament has raised concerns about the lack of information sharing by the UK government regarding the trade talks.

Areas of concern include India's Digital Data Protection Bill, which could impose data localization requirements, non-tariff barriers faced by UK automotive exports, and market access relaxations for India in various sectors, such as textiles, apparel, footwear, and horticultural products. Such relaxations could potentially impact the preferential access that the UK currently provides to developing countries in South Asia, Southeast Asia, and East Africa.

Digital trade and investor protection key issues of talks

However, British stakeholders are hoping that regulatory barriers are cleared to facilitate trade through digital services and digitally enabled services. A data bill could impact the FTA negotiations. The UK-Japan free trade deal addressed data localization, customs duties on digital transmissions, and recognition of digital signatures. A deal with India could refer that template.

Other sticky issues include investor protections for British businesses, who seek early arbitration in case of disputes rather than get stuck in Indian courts. Further, UK demands for duty concessions on Scotch whisky and automobiles are still hitting a wall with India. Meanwhile, the corporate sector will be looking for progress on visa and mobility issues.

Foreign lawyers and international law firms can practice in India

Among key issues for UK negotiators was getting **India to approve legal practice for foreign lawyers and international firms in its jurisdiction**. After several rounds of discussions, the Bar Council of India (BCI) announced the "BCI Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022" on March 10.

Foreign lawyers and law firms can now practice foreign law, engage in international arbitration matters, and advise on international legal issues in non-litigious matters in India on the principle of reciprocity. Further, they can practice transactional and corporate work, such as joint ventures, mergers and acquisitions, intellectual property matters, and drafting contracts, among other related matters. However, they will not be allowed to appear before any courts, tribunals, or other statutory or regulatory authorities in India. If found guilty of misconduct, their registration in India will be cancelled.

It should be noted that the UK has claimed to have authorized Indian lawyers and law firms to establish offices in England and Wales, allowing them to practice Indian law, international law, and provide legal advice under English law. The Bar Council of India has stated that it will verify these claims and reciprocate accordingly.

Negotiations with India continue on fashion and beauty

Top British fashion and beauty brands embark on first-of-its-kind trade mission to India

The UK Department for International Trade notified on February 27 that top UK brands will join India's Fashion Forum 2023, the country's largest fashion retail intelligence event. The British delegation will seek to tap into India's rising demand for high-class beauty and fashion products.

British brands **participating** in the sales mission include cosmetics retailer Lush, luxury knitwear brand John Smedley, and fashion brands like Wormser, Organic Apoteke, Lilly and Sid, Legology, Benny Hancock, VENIA Cosmetic Ltd, Jennifer Young Ltd, and ByErim Ltd.

What is the UK trade mission in India looking for?

The trade mission, the first of its kind, is organized by the Department for Business and Trade to facilitate British brands in showcasing their expertise in luxury, heritage, and innovation to potential buyers and distributors.

India accounts for 1.7 percent of total UK exports and India was the 12th largest export market for the UK in the four quarters to the end of Q3 2022.

The UK Business and Trade Secretary Kemi Badenoch also expressed optimism about business and export trade prospects with India, saying:

"India's growing economy and middle class represent an enormous opportunity for enterprising UK companies looking for new markets."

India is poised to become the third largest economy in the world by 2050, with a projected middle class cohort of 250 million consumers. According to luxury lifestyle magazine Robb Report India, in 2021, the Indian luxury goods market was valued at over US\$5 billion, and expected to grow by another 10 percent over the next five years.

The Indian High Commission **organized** an investor showcase to highlight opportunities for UK businesses in India's infrastructure and green mobility, among other sectors. Technical discussions were held across 11 policy areas over 43 separate sessions.

UK's FTA stance post Brexit

UK Secretary of State for International Trade Kemi Badenoch **discussed** possible concessions on matters like business mobility but firmly rejected an FTA modelled on the country's post-Brexit agreement with Australia.

The UK allows under-35s from Australia to live and work in the country – but is not interested in negotiating that kind of free movement with India. Badenoch made it a point to say, "We left the EU (European Union) because we didn't believe in free movement, we didn't think it was working." She also said, "...what people from the UK want to do when they travel to Australia is probably slightly different from what they do when they travel to India, and vice versa as well."



A reciprocated approach

India and the UK agreed to a reciprocal UK-India Young Professionals Scheme, which would annually offer visas to 3,000 graduates in the 18 to 30-year-old cohort to live and work in either country for up to two years. It would appear the British government does not intend to facilitate more.

Unlike previously, the India-UK FTA negotiations under Saunak's government will not be chasing a deadline.

As per Indian government officials speaking to the media, **three-four chapters** are currently being discussed for final completion. Chapters yet to be concluded involve intellectual property and goods.

Politics a barrier

However, in the midst of negotiations, political situation in UK slowed down, which impacted on the momentum of FTA talks with India. But the momentum seems to be back.

Sunak's FTA intent

Sunak has mentioned in the past that an

India-UK FTA would boost the financial services sector (prospects for fintech and insurance, for example) – something the city of London is entirely keen upon. However, the recent months has brought unprecedented economic pain to the UK with rising living costs and high energy bills.

The UK is keen to gain India market access for transport equipment, electrical equipment, medical devices, chemicals, motor vehicles and parts, wines, Scotch, and spirits, some fruits and vegetables – which could impact local industry players and/or boost the manufacturing ecosystem. On its part, India wants to increase exports of textiles, food and beverages, pharmaceuticals, tobacco, leather and footwear, and agricultural items like rice – to the UK. Digital services and ICT sectors will also benefit and drive the expansion of bilateral trade under the FTA.

The Russian tweak in India –UK FTA negotiations

The Russian invasion of Ukraine has delivered many curveballs, and major economies in the Western sphere have been particularly hit due to their position on Moscow's activities and imposition of sanctions. In Q1, as per data from the UK Office of National Statistics, petroleum products dominated Indian exports to the UK with shipments worth £888 million. The upcoming FTA could unlock further expansion of Indian exports of refined petroleum products.