Opinion of the European Economic and Social Committee on ‘The role of civil society in the free trade agreement between the EU and India’ (own-initiative opinion)
(2012/C 24/10)

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On 14 September 2010 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The role of civil society in the free trade agreement between the EU and India.

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 October 2011.

At its 475th plenary session, held on 26-27 October 2011 (meeting of 27 October), the European Economic and Social Committee adopted the following opinion by 152 votes to 3 against with 5 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) believes an EU-India FTA could be advantageous to both Europe and India, with the potential to bring gains in the form of increased development, competitiveness, wealth and jobs. Trade is an important mechanism to support development and poverty alleviation. However, its economic, social and environmental impacts must be assessed carefully, transparently and comprehensively in the interests of all parties. In this context, civil society has a leading role to play.

1.2 The process for negotiating this FTA, including the identification of its potential impacts, has several weaknesses which need addressing on both sides before the FTA is finalised. The Commission Services position paper states that ‘more attention could have been paid to the impacts on informal employment’ and more analysis of the effects of the agreement on labour displacement would ‘allow more precise forecasts concerning other social impacts such as impacts on poverty, health and education’ (1).

1.3 The EESC recalls that, pursuant to Article 207 of the Treaty on the Functioning of the European Union, the EU’s common commercial policy must be conducted ‘in the context of the principles and objectives of the Union’s external action’, and that, pursuant to Article 3 of the Treaty on European Union, it must contribute, inter alia, to sustainable development, the eradication of poverty and protection of human rights. Trade is not an end in itself.

1.4 The EESC recommends the immediate undertaking of new studies that expressly take into account the true impact of the FTA on the EU and Indian civil society (in particular Mode 4, SMEs, labour rights, women, consumer protection, the informal economy, agriculture poverty and the impact on the accessibility of basic products such as live-saving medicines). In the interests of transparency, these studies should be conducted with public academic studies and workshops with civil society. The findings can then be taken into account as part of the negotiations, which are now in their final stages.

1.5 The EESC calls on the Council, Parliament and Commission to ensure that, prior to concluding an agreement, the EU:

— take into account the views and concerns of civil society in the EU,

— assess the impact on the likely Mode 4 scenarios covering the quality and quantity of work by sector and member state, in full consultation with social partners,

— comply with its legal obligations to ensure that the FTA does not increase poverty,

and that the agreement:

— is governed by an effective human rights clause in line with the EU’s past practice and stated policy,

— include an ambitious sustainable development chapter containing labour and environmental provisions enforceable by means of the normal dispute settlement procedures, with effective remedies,

— build in particular an ILO rights-based framework for those active in the informal economy,

— include a bilateral social safeguards clause that takes into account not only risks to domestic industry both in the EU and India, but also risks to society, including labour displacements.

(1) EC Services position paper - Trade SIA for FTA EU-India, 31.5.2010.
1.5.1 The EESC recommends that a civil society monitoring mechanism be established. The monitoring mechanism should be established with the power to make recommendations specifically on the need for activating the social safeguards clause to which the respective authorities should be under an obligation to provide a reasoned response. Training and capacity building for civil society should be supported in relation to this monitoring.

1.6 The contents of the EU-India FTA currently remain confidential and therefore its specificities cannot be discussed in this opinion.

2. Introduction

2.1 An EU-India Free Trade Agreement (FTA) would cover over a fifth of the global population, making it one of the most significant FTAs in the world. It has the potential to bring significant benefits for society to both the EU and India.

2.2 Both face important economic challenges, the EU, with its aging population and saturated markets, and India, with its huge population and increasing urbanisation. Liberalisation and the further opening of both markets, taking into account the unequal development of the two regions, has the potential to bring benefits populations on both sides.

2.3 EU and Indian business organisations recognise that some displacement may occur. However, by opening both markets further and through skills development, training programmes, the transfer of knowledge both ways, the development of infrastructure and supply chain provisions and joint ventures trade between India and the EU could bring sustained growth, increased competitiveness and more jobs in the long term. The European Business and Technology Centre (EBTC), established to provide practical solutions for businesses entering the Indian market, will play a leading role in addressing some of the challenges.

2.4 Promoting innovation through an FTA can ensure the future competitiveness of companies. Increasingly European and Indian companies are cooperating in technology developments in a range of sectors. India has a low-cost, highly educated workforce with substantial R&D capacity. However, both parties need an environment that can encourage sustainable investment in innovation. The experience and expertise of EU companies in India, and Indian companies in the EU can be an important asset to help fulfil these demands.

2.5 The FTA has important ramifications for foreign investment. Since 1991, India has been liberalising and simplifying its foreign direct investment FDI regime to attract higher funds, which has led to an increase in FDI inflows. The FTA would build on this foundation by providing EU companies with market access and legal security (\(^2\)). In the new context created by the FTAs, a careful assessment must be made of the impact on India of opening up to foreign direct investment and a gradual approach to this is needed.

2.6 This opinion does not review the potential economic benefits of the FTA. It is concerned with its uncertain social and environmental effects for the EU, especially in terms of Mode 4 and for the poorer segments of Indian society. These impacts are an important component of the due diligence and brand protection interests of EU businesses. CSR, labour and human rights issues extend beyond the borders of Europe for EU companies trading overseas.

3. The negotiation process

3.1 The negotiators have consulted large businesses in both the EU and India. However, the EESC, as the consultative body for all segments of civil society, is concerned that the negotiators are not consulting all societal stakeholders on an equal footing and would urge the EC to take all stakeholders' views fully into account on both sides. It calls on the EC to consult with: SMEs on potential impacts; trade unions on the lack of clarity surrounding labour guarantees and Mode 4, consumer groups and agricultural sectors on food safety and security, and the informal economy in India.

3.2 Many NGOs and trade unions, EU and Indian, alongside EU Foundations and Indian informal businesses, have raised concerns regarding both the potentially negative effects of the FTA and the way in which the negotiations were conducted \(^3\). While acknowledging the importance of confidentiality to trade negotiations, the EESC urges the EC to clarify any misunderstandings, by releasing its proposals on these issues, on the equally important grounds of transparency.

(\(^2\)) OJ C 318, 29.10.2011, p. 150.
(\(^3\)) Studies point to difficulties from the effects of: TRIPS-plus IPR provisions, liberalising and deregulating financial services, liberalising trade in goods, in the agriculture sector, entry of major retail chains, liberalised investment and government procurement practices, prohibition on export restrictions. See, e.g., S. Polaski et al, India's Trade Policy Choices: Managing Diverse Challenges (Carnegie, 2009), S. Powell, EU India FTA: Initial Observations from a Development Perspective (Traidcraft, 2008), C. Wichterich, Trade Liberalisation, Gender Equality, Policy Space: The Case of the Contested EU-India FTA (WIDE, 2009), K. Singh, India-EU FTA: Should India Open Up Banking Sector? Special Report (Delhi, 2009), CEO|India FDI Watch, Trade Invaders: How Big Business is Driving the EU-India FTA Negotiations (2010).
3.3 The EESC believes that trade cannot be omitted from the EEAS competence. European policy coherence is essential to retain European values and principles. The Committee recommends that all relevant Directorate Generals are kept informed throughout the negotiations.

4. Sustainability impact assessment (SIA)

4.1 The EC commissioned an SIA by independent consultants, which reported in 2009 (4). This SIA estimated that, for the EU, the social impacts of this FTA would be negligible, with no impact on wages, and only minor labour displacement (5), while for India there would be an increase in wages of skilled and unskilled workers of 1.7% in the short run and 1.6% in the long run, as well as some labour displacement in the direction of better paying jobs (6).

4.2 The EC places great store by this SIA when emphasising the overall FTA benefits (7). However, it is important to note that the same SIA also warns of the potential social and environmental risks.

4.3 EU trade unions raise concerns regarding labour rights in the EU and call for an impact assessment on the likely Mode 4 scenarios, before the negotiations are concluded. Such an assessment should cover the impact on the quality and quantity of work by sector and by Member State. It should also include full consultation with social partners, be carried out both before and after the introduction of the FTA, and provide binding recommendations on preventing or mitigating any negative impacts identified.

4.4 The SIA describes the FTA's effects on labour standards and working conditions in India as 'uncertain'. In the case of India, according to official government statistics, around 90% of India's economy is informal (or unorganised), which is projected to remain broadly stable in the near future (8). According to ILO/WTO figures, those in the informal sector live on less than USD 2 per day (9). The majority of women (over 95%) in the workforce are in the informal sector and disproportionately at risk.

4.5 The SIA highlights potential environmental effects, noting that there are likely to be moderate negative effects on the atmosphere (10), land quality (11), biodiversity (12), and water quality (13). The EESC considers that the SIA's own warnings need to be heeded.

4.6 The SIA's methodology is insufficient to capture the true impacts. The primary focus of the SIA was on the formal economy, for which economic modelling is comparatively simple (14). By contrast, its analysis of the social and environmental effects is based on a less transparent qualitative methodology. Nor does the SIA properly analyse the impact on carbon emissions, consumer safety or food security.

4.7 According to the Commission Services position paper, more attention could have been paid to the impacts of the agreement on decent work, informal employment, and labour displacement. This would 'allow more precise forecasts concerning other social impacts such as impacts on poverty, health and education' (15).

4.8 Surprisingly the SIA does not address the many other studies that have pointed to the potentially severe consequences of the FTA in India (16) nor the EU concerns, particularly of Mode 4 on EU employment.

4.9 The EESC recently adopted an Opinion on SIA which sets out guidelines for a best practice methodology to be used in assessing the full impact of an FTA (17).

4.10 The EESC recommends that new studies should be undertaken which, based on these guidelines, expressly take into account the impact of the FTA on EU and Indian society, including in particular labour rights, Mode 4, women, consumers protection, SMEs, the informal economy, environment, agriculture (including food security), poverty and climate change. These new studies should be conducted with independent public academic studies and workshops.

(4) ECORYS, CUTS, Centad, Trade SIA FTA EU and India – TRADE07/ C1/C01, 18.5.2009.
(5) ibid, pp 17-18. Labour displacement estimated between 250-360 per 100 000.
(6) ibid, Labour displacement estimated between 1 830 and 2 650 per 100 000.
4.11 None of this means that the FTA will necessarily have a negative impact. But it at least makes a prima facie case for the likelihood that the FTA might have this impact. This alone is sufficient to warrant a further examination by the EC, particularly given that as discussed below, the EU has a legal responsibility to assess the impacts of its external policies at home and on others.

5. The EU’s responsibilities

5.1 It is the primary responsibility of a government negotiating trade liberalisation to take into account the economic and social impacts of its policies. There is no doubt that India is primarily responsible for the effects of its policies on its population. The EESC recognises the challenges the EC faces in dealing with India, which rightly believes in addressing human rights, labour standards, sustainable development and its civil society in its own way. But this does not mean that the EU has no independent responsibility in this regard. Indeed, this is a legal obligation.

5.1.1 By virtue of Article 207 of the Treaty on the Functioning of the European Union (TFEU), the EU’s trade and development policies must be conducted in the context of the principles and objectives of the Union’s external action. These are set out in Article 21 of the TEU, and include, as principles, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

...and, as objectives,

foster[ing] the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty.

5.2 The EESC calls on the EC to comply with its legal obligations to ensure that the EU-India FTA complies with human rights and does not undermine efforts to foster sustainable economic, social and environmental development and the eradication of poverty. It insists on the importance of building an ILO rights-based framework for those active in the informal economy.

6. Monitoring and adjustment of the FTA

6.1 The EU must ensure that its policies are not likely to have negative effects on poverty and contribute to the eradication of poverty. This obligation can be satisfied by ensuring that there are clauses in the FTA, under which the trade liberalisation provided for can be modified in the event that these effects are manifested, and by establishing an effective monitoring mechanism on the basis of which such clauses can be activated.

6.2 Human rights clause

6.2.1 The EU has a record of including provisions in its bilateral agreements to ensure that the agreements do not undermine social objectives. Since 1995 the EU has a policy of including a human rights clause in every trade and cooperation agreement with third countries (19). More recently, a practice has developed of subjecting later agreements to human rights clauses in existing framework agreements. This may be legally effective, depending on the wording of the original human rights clause, and the wording of the ‘linking’ clause in the later agreement.

6.2.2 It is essential that this FTA is subject to an effective human rights clause, however this is achieved. The 1994 EC-India Cooperation Agreement contains a human rights clause, but of an early type. As the European Court of Justice has said, the function of this clause is to permit the suspension of the Cooperation Agreement (20). It does not permit the suspension of other agreements, such as the FTA (20). It is essential that, whether by way of a new human rights clause, or a carefully drafted linking clause, the FTA complies with the EU’s stated policy on human rights clauses.

6.2.3 The EESC emphasises that it is essential, whether by way of a new human rights clause, or a carefully drafted linking clause, that this FTA complies with the EU’s stated policy on human rights clauses. This position has also been endorsed by the European Parliament (21).

6.3 Sustainable development provisions

6.3.1 It is equally important that the EU’s best practice on the inclusion of environment and labour standards in FTAs be continued and reinforced. Both the EU-Korea FTA and Cariforum-EU Economic Partnership Agreement (EPA) contain provisions requiring the parties to ensure that ILO core labour standards are complied with (an absolute standard), and not

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(19) Communication from EC Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries, COM(95) 216.


(21) L Bartels, Human Rights Conditionality in the EU’s International Agreements (Oxford: OUP, 2005), 255. The position is arguably different for agreements in which the essential elements clause is accompanied by a ‘non-execution clause’ providing for ‘appropriate measures’.

(22) EP Resolution 26.3.2009, para 43, which ‘stress[ed] that human rights and democracy clauses constitute an essential element of the FTA’ see also the general policy reflected in the EP Resolution of 11 May 2011 in which the EP ‘firmly supports the practice of including legally binding human rights clauses in the EU’s international agreements, with a clear and precise consultation mechanism modelled on Article 96 of the Cotonou Agreement’ and the EP Resolution on the human rights and democracy clause in EU agreements (2005/2057(INI)).
to reduce their existing levels of environmental and labour protection (a relative standard), as well as other related provisions.

6.3.2 The EESC welcomes the commitment of Commissioner de Gucht who has expressed a commitment to social and environmental chapters (22). However, it also calls on the EC to ensure that, unlike the provisions in the above agreements, these provisions are accompanied by the same robust enforcement measures that are available for violations of other parts of the FTA or for example, equivalent provisions in US FTAs (23). The EESC also calls on the EC to create incentives through cooperation programmes or similar mechanisms, backed up by a system of effective fines for violation of these provisions, as recommended by the European Parliament (24).

6.3.3 The EC must include enforceable labour and environmental provisions in the EU-India FTA on both sides enforceable by means of the normal dispute settlement procedures, with remedies including the suspension of trade obligations as well as fines.

7. Social safeguards clause

7.1 All trade FTAs contain safeguard clauses permitting trade liberalisation to be suspended in the event of injury or disturbance to domestic industry. It is expected this FTA will include provisions to this effect. However, such provisions must be targeted at the risks in question.

7.2 The EESC calls on the EC to ensure the inclusion of a bilateral social safeguards clause that takes into account not only risks to domestic industry both in the EU and India, but also risks to society, including labour displacements. This clause should be modelled on Article 25(2)(b) of the Cariforum-EU EPA, which states that a safeguard measure may be taken when a product is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause disturbances in a sector of the economy, particularly where these disturbances produce major social problems.

8. Civil society monitoring mechanism

8.1 EU and Indian civil society are both very organised and proactive. It would be advantageous for authorities on both sides to provide a mechanism to increase transparency and consultation, as well as alleviate fears, by ensuring civil society has direct access to the decision-makers.

8.2 The EESC recommends that a civil society monitoring mechanism be established to include actors from business, trade unions, NGOs, academia and others as recommended in the SIA. The EESC could be part of this process (25). This could be established, on the models of the EU-Korea FTA or the Cariforum-EU EPA, which has a range of civil society stakeholders, trained and funded to provide an effective monitoring mechanism (26).

8.3 The SIA and EC Services position paper also both recommend a monitoring mechanism (27).

8.3.1 Such a monitoring mechanism should also have a concrete function in relation to the social safeguards clause. Normally, the effective application of safeguards clauses depends upon a degree of organisation of the affected industry. This is obviously much more difficult in the case of the informal economy.

8.3.2 The EESC recommends that the civil society monitoring mechanism be given the power to make recommendations specifically on the need for activating the social safeguards clause to which the respective authorities should be under an obligation to provide a reasoned response.

Brussels, 27 October 2011.

The President
of the European Economic and Social Committee

Staffan NILSSON

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(22) as 7.
(23) e.g. Art 17(2)(b) US-Jordan FTA.
(24) EP Resolution 25.11.2010: human right and social and environmental standards in international trade FTAs, para 2.
(26) as 18.
(27) as 4, p. 288; as 1, p. 2.