

Trade, human rights and EU-India negotiations

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There is now an increasing recognition that the effects of trade and trade policy are far too great to be treated separately from other development goals such as human rights.

Over [80 per cent](#) of all trade agreements signed since 2013 include labour provisions, and more than [40 per cent](#) of agreements since 2000 include anti-corruption and anti-bribery clauses that go beyond WTO rules. This evidences that trade agreements worldwide are increasingly including clauses that require the partners to meet certain conditions on human rights which may include labour conditions, political participation, environmental issues and standards in relation to specific goods.

Re-launched trade talks

The EU and India agreed to [re-launch trade talks in May 2021](#), since negotiations were stalled in 2013 over differences including those on tariff reductions, patent protection and data security. Earlier economic assessments of a bilateral free trade agreement have pointed to [mixed welfare effects](#), with [divergence on various issues](#) as challenges. So, while trade policy and business will be frontline as negotiations go forward, to act on the commitments to democracy, freedom and respect for human rights made at the recent [India-EU Human Rights Dialogue](#), there will be a clear need for broader trade policy objectives within the context of EU-India talks to align to the importance of human rights. It is also important to consider how trade policy and human rights issues are intertwined – though much work is required in understanding this relationship. The [EU-India people's summit](#) discussed some of the aforementioned issues, focusing on converging points for [trade and human rights](#). In this blog, we discuss how the EU and India can address human rights concerns in any future trade agreements.

The Lisbon Treaty and the essential elements clause

Looking to the EU, the Lisbon Treaty is at the centre of its external relations, and the EU strives to have global influence on human rights enforcement, and it is certainly in a position of strength and leverage to do so. The EU committed to incorporating human rights standards into its trade policies. Core labour rights that form part of human rights in a broader sense are specifically covered in the more recent [Trade and Sustainable Development](#) Chapters of EU free trade agreements.

According to EU practice, human rights are included in EU political framework agreements under [‘essential elements’](#) clauses. This clause states that if no political framework agreement exists, essential elements clauses are to be included in FTAs, and serious breaches of the essential elements clauses may trigger the suspension in whole or part of the overall framework agreement and all the linked agreements, including the trade agreement (non-execution clause).

In the framework agreements, the clause is usually complemented by provisions on cooperation and dialogue between the parties on human rights. The ‘essential elements’ human rights clause enables one party to take appropriate measures in case of serious breaches by the other party. The clause, which also covers democratic principles and often

the rule of law, is more than just a legal mechanism enabling the unilateral suspension of trade commitments in times of crisis. It enshrines the parties' commitments to human rights and thus puts EU relations with third countries on a solid regulatory base, opening the path to dialogue and cooperation on human rights issues.

Human rights

The major route for trade and human rights in trade agreements is the EU's insistence on placing the non-trade issues such as human rights as part of trade policy, usually [done through two modalities](#): first, often preferential market access is conditional on compliance with such human rights objectives; second, EU's Generalized System of Preferences (GSP) – its unilateral scheme, also makes eligibility conditional on these. However, for trade policy as part of trade agreements, there is limited scope to enforce conditionalities, given the reciprocal nature necessary for these; but the GSP preferences can be suspended based on conditionality – yet there have been few cases where this has happened, examples being with [Myanmar and Belarus](#). So far the EU has preferred a constructive engagement to more restrictive measures, and has not activated the human rights clause to suspend trade preferences under any of its trade agreements. Civil society and the European Parliament have, however, encouraged the European Commission to use the clause in a more robust way to respond to breaches of human rights and democratic principles.

On the other hand, for India, its constitutional mandate governs understanding and interpretation of human rights. And while the current scenario needs to be acknowledged, with the voice of civil society and domestic groups undoubtedly diluted, India has had a [historically important role](#) in framing of the Universal Declaration of Human rights. In the absence of a trade agreement, India is party to EU's standard GSP – but the EU has not implemented any negative conditionalities against India. Perhaps, what has mattered are the considerable business to business linkages between the partners, and India is an attractive market for the EU, with the ever growing geopolitical nexus between them. Yet, for instance in the context of the pandemic, it will be important to prioritise the right to health and consider the sought flexibility from India along with others in Intellectual Property rights provisions to enable sufficient access to vaccines and other medicines.

So, as [EU-India trade talks are revived](#), in essence, there will be the need to identify some middle ground, and that will require different stakeholders to come together. Given the geo-political landscape and with both parties vying for commercial gains, negotiations around trade-offs for trade policy issues may have a better chance, and with obvious opportunities in digital trade and cross-border data flows. However, concerns about human rights should be seen as an important part of the EU-India trade talks. While the role of EU can be more persuasive at a broader policy level, a more robust institutional dialogue and enforcement mechanisms will be needed for stricter observation of human rights – considering especially where policies such as financial assistance, technical co-operation programs, etc. can be linked to compliance. Relatedly, non-trade policies such as financial assistance, technical co-operation programs etc. that are also part of trade agreements, may in fact have better feasibility to be linked with human rights clauses.

Human rights dialogue

Finally, there is a pressing need for continued dialogue on human rights, and a bilateral agreement cannot be skewed towards any one party – mutual understanding of each other's sensitivities will be key, along with respect for sovereignty in dealing with contentious issues. Both India and the EU approach human rights with different conceptions and approaches. These differences are normal and natural given the different histories, cultures, traditions,

political systems, worldviews, geographical and geopolitical realities, and because the two are at different levels of socioeconomic development. And this is where the EU-India Human Rights Dialogue, that was initiated since 2004 can provide the direction to a balanced approach. An immediate way forward for the partners may be a joint memorandum of understanding on human rights.

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