

# Investment lessons from the India-EFTA trade deal

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May 12, 2024

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### India needs a clear free trade agreement policy, especially in dealing with international trade and foreign investment laws

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Updated - May 13, 2024 01:38 am IST

Published - May 13, 2024 12:08 am IST

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‘It is too early to say that the India-EFTA FTA will be a bellwether for future FTAs’. Photo: PIB via ANI

India’s free trade agreement (FTA) negotiations with countries such as the United Kingdom and the European Union (EU) seem to be on ice due to the ongoing parliamentary elections in India. However, before election fever gripped the country, India managed to clinch a historic trade deal, in March, with the European Free Trade Association (EFTA), comprising Iceland, Liechtenstein, Norway and Switzerland. The newly minted Trade and Economic Partnership Agreement (which we refer to as FTA) between India and EFTA is expected to give a much-needed leg-up to the low levels of extant trade between the two sides. The FTA between India and EFTA is also important because, as economist Biswajit Dhar has argued, India has agreed to include issues such as environment and labour, which it has traditionally opposed incorporating in trade agreements.

Do India’s Free Trade Agreements with European nations benefit the country?

#### On investment

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Another reason sets this FTA apart from those India signed recently with countries such as Australia, the United Arab Emirates (UAE), and Mauritius. The India-EFTA FTA includes a somewhat detailed investment chapter, which is missing in the other recent Indian FTAs. This chapter focuses on investment facilitation issues, not investment protection. But it has a remarkable and unprecedented characteristic. India has managed to extract a promise from the EFTA countries that they shall “aim to” increase foreign direct investment (FDI) to India to \$50 billion within 10 years of the FTA coming into force, followed by another \$50

billion in the succeeding five years. Likewise, Article 7.1(3)(b) of the investment chapter provides that the EFTA states shall “aim to” facilitate the generation of one million jobs in India. In legal terms, these articles codify what is known as an obligation of conduct — an obligation to make an honest endeavour towards achieving a goal, notwithstanding the outcome or the result. This differs from an obligation of result, which would require achieving a specified outcome. In other words, the EFTA countries are legally obligated to make an honest effort to invest \$100 billion and generate one million jobs in India. They are not required to realise these outcomes. Nonetheless, the Indian negotiators need to be complimented for incorporating such path-breaking specified obligations of conduct in the investment chapter, which are typically not found in FTAs or investment treaties. Notably, this creates a template worth emulating in the ongoing negotiations with the U.K., the EU, and other countries.

## **Trade and investment**

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Economic theory has long demonstrated the inextricable linkage between trade and investment. This is truer in a world where the production process is scattered along global supply/value chains, a function of trade and investment. Thus, unsurprisingly, FTAs routinely contain binding rules on both trade and investment. India’s FTAs signed in the first decade of this century with countries such as Japan, Korea, Malaysia and Singapore are based on this economic logic. In addition to binding trade rules, they all contain an investment chapter with provisions for protecting investment. However, India departed from this model as part of its FTA 2.0 approach. In other words, India decoupled international trade law from international investment law. This is evident in its FTAs with Australia, Mauritius, and the UAE which contain binding trade but not investment rules. India’s approach seems to be to have separate agreements on trade and investment with the same country. This is most markedly seen in the case of the UAE. After signing the FTA with the UAE in 2022, New Delhi and Abu Dhabi entered into a bilateral investment treaty earlier this year. India follows a similar decoupling approach to the U.K., where trade and investment agreements are seemingly negotiated as two disparate treaties.

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In this context, the India-EFTA FTA, which contains an investment chapter within the trade agreement, assumes pivotal significance. Can it be said that India has decided to move away from the decoupling of trade and investment law in its FTAs and is going back to the template followed in the early 2000s? It is too early to say that the India-EFTA FTA will be a bellwether for future FTAs.

What’s the status of India’s Free Trade Agreements?

## FTA 3.0

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India needs a clear FTA policy, especially in dealing with international trade and foreign investment laws. Suppose India expects not just trade but also higher investment flows from a particular country, which is undoubtedly true with most of its FTA-negotiating partners. In that case, two critical elements must be incorporated into its FTA policy. First, India should negotiate trade and investment as part of one comprehensive economic treaty. Decoupling trade from investment is not a good idea. Combining the two would give India a clear negotiating leverage to strike a beneficial deal. For example, India can argue that it needs more concessions in trade in return for offering something on investment or vice-versa. Second, India should consider expanding the scope of investment issues from mere facilitation to effective protection, with an efficacious dispute settlement mechanism under international law. Providing enforceable legal protection to foreign investors under international law will boost their confidence. This is critical at a time when foreign direct investment levels in India have dropped. A clear and comprehensive FTA policy is imperative for launching India to a higher economic growth trajectory.

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