

Joint Standing Committee on Treaties
Australia-India Economic Cooperation and Trade Agreement (AI-ECTA)
2022-2023

QUESTION ON NOTICE / Written

QoN 001 – 14 October 2022

Topic: Implication on the ability to change regulations for public policy reasons

Joint Standing Committee on Treaties

Question

Why has the general carve-out for qualifications/technical standards/authorisation/licencing in paragraph 4 of Part A to Australia's Schedule of Non-Conforming Measures (Annex 8F) not also been made in Part B?

What is the implication of this omission on the ability of Australia to change regulations for public policy reasons?

Answer

- The inclusion of Paragraph 4 in Part A of Australia's Schedule of Non-Conforming Measures (Annex 8F) has no impact on Australia's ability to change regulations for public policy reasons. Paragraph 4 of the Explanatory Notes to Part A is not a carve-out. Rather, Paragraph 4 informs the reader about Australia's approach to scheduling – specifically, that measures (laws, regulations etc) that conform with the Agreement have not been scheduled in Part A.
- Paragraph 4 was included in Part A because each entry in Part A relates directly to existing measures.
- Paragraph 4 has not been included in Part B because Part B carves out broader policy space (including for future regulation), and existing measures are identified for transparency purposes only (see paragraph 2(f) of the Explanatory Notes to Part B). The fact that Paragraph 4 has not been included in Part B has no impact on Australia's ability to change regulations for public policy reasons.

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QUESTION ON NOTICE / Written

QoN 002 - 14 October 2022

Topic: Outcomes in merchandise trade and services

Joint Standing Committee on Treaties

Question

Can you discuss whether the outcomes Australia and India have achieved in the AI-ECTA are commensurate in the following areas:

- merchandise trade
- services.

Answer

In **merchandise trade**, India's simple average applied MFN tariff in 2020/21 was 14.3 per cent (15.4 per cent if ad valorem equivalents are considered) (source: India's WTO 2021 Trade Policy Review https://www.wto.org/english/tratop_e/tpr_e/s403_e.pdf), with the highest tariff rate being 150 per cent. As at 2020, Australia's average applied tariff was 2.5 per cent, with almost all goods facing a tariff rate of either zero or 5 per cent ad valorem (5 per cent is Australia's highest tariff). The AI-ECTA tariff elimination outcome reflects these different starting points.

Proportion of imports entering AI-ECTA Parties under preference

	Prior to AI-ECTA entry into force		After AI-ECTA entry into force	
	Share of imports (%)	AUD m (2018-20 average)	Share of imports (%) (including TRQs)	AUD m (2018-20 average)
India imports from Australia	0.0	0.8	90.6	13,382
Australia imports from India	52.5	2,706	100.0	5,151

Based on historic figures of Australian exports to India (using average annual exports between 2019-2021), DFAT estimates savings of approximately \$2 billion over the forward estimates (until 2025-26) to Australian exporters after entry into force of ECTA. This compares with estimates provided by Treasury that forecast a reduction in tariff revenue from the elimination of Australian tariffs of \$482 million over the same period.

In **services**, the commitments from each Party is on par with the best commitments that Party has offered to its other FTA partners. Australia's commitments are more comprehensive insofar they are made in a negative-list format, which means all services are covered except where policy space has been reserved. However, while India has made extensive commitments in a positive-list format (meaning only listed services are covered) it has also committed to

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transition to a negative-list format within six years of entry into force of AI-ECTA. This is the first agreement in which India has committed to use a negative-list format. Further information is provided in the response to question 13.

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QUESTION ON NOTICE / Written

QoN -003 -14 October 2022

Topic: FTA negotiation to deal with barriers in service sectors and commodities

Joint Standing Committee on Treaties

Question

Australia is generally regarded as having an open economy and has offered significant concessions to India in the AI-ECTA in terms of tariff reductions, including in some sensitive areas for Australia, and in services.

On what basis might Australia negotiate a comprehensive agreement that deals with barriers in India in service sectors and commodities of significant interest to Australian exporters?

Answer

In the context of an ambitious CECA package, and guided by appropriate stakeholder consultation, Australia could consider offering greater concessions commensurate with our existing high-quality FTAs. Australia will seek to further reduce India's barriers to goods and services trade as part of a broader balance of concessions that retain sufficient policy space to address public interest needs and the right to regulate.

Australia will pursue further liberalisation for goods (such as dairy, grains, horticulture and certain non-ferrous metals) and services (such as education, professional services and environmental services). CECA negotiations will also address areas not negotiated under AI-ECTA, including digital trade, government procurement and other issues.

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QUESTION ON NOTICE / Written

QoN- 004 –14 October 2022

Topic: Proportion of measures at the border

Joint Standing Committee on Treaties

Question

With regard to barriers in India to Australian trade, what proportion would be measures at the border such as tariffs, and measures behind the border such as complex regulatory regimes, particularly at state and union territory level?

Answer

India has high tariff barriers and its regulatory regimes are complex. In 2020/21 India's simple average applied MFN tariff was 14.3% (15.4% if ad valorem equivalents are considered). From the period 2015 – 2020 (ending June), India notified 102 new technical regulations to the WTO. Over the same period, 24 Specific Trade Concerns were raised against India in the WTO Committee on Technical Barriers to Trade (https://www.wto.org/english/tratop_e/tpr_e/s403_e.pdf). Regulations at the state and union territory level are not reported by India but do add another level of complexity to India's arrangements. It is not possible to quantitatively compare tariff barriers to non-tariff barriers.

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QUESTION ON NOTICE / Written

QoN -005 - 14 October 2022

Topic: Technical barriers

Joint Standing Committee on Treaties

Question

What is the extent of technical barriers to trade in India? How does the AI-ECTA address these barriers?

Answer

It is not possible to numerically quantify the extent of technical barriers to trade in India. One approximation is the number of technical notifications notified by India to the WTO. From the period 2015 – 2020 (ending June), India notified 102 new technical regulations (https://www.wto.org/english/tratop_e/tpr_e/s403_e.pdf). Not all of these notified measures necessarily represent barriers to trade. However, over the same period, 24 Specific Trade Concerns were raised against India in the WTO Committee on Technical Barriers to Trade.

The AI-ECTA Trade in Goods Chapter includes a commitment that neither Party shall adopt or maintain any non-tariff measure on the importation of any good of the other Party except in accordance with the WTO Agreement or AI-ECTA. It also includes a commitment not to adopt measures creating unnecessary obstacles to trade between the Parties. AI-ECTA chapters on Technical Barriers to Trade and Sanitary and Phytosanitary Measures aim to ensure standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade. These include commitments relating to transparency, use of relevant international standards, and cooperation with respective regulatory agencies. Relevant committees established under the Agreement would provide fora for raising concerns with regulations perceived as unnecessarily trade restrictive.

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QUESTION ON NOTICE / Written

QoN 006 – 14 October 2022

Topic: Impact on Australian trade

Joint Standing Committee on Treaties

Question

How much of an impact on Australian trade do the tariffs, taxes and charges levied by India's states and union territories have?

Answer

India applies a range of taxes and charges at the state and union territory level. It is not possible to quantify their impact on Australian trade. WTO national treatment provisions do not prevent Parties from applying internal taxes, including at the state and union territory level, provided imported goods are treated no less favourably than 'like' domestic goods and the taxes are not applied to afford protection to domestic production. Consistent with Australian FTA practice, AI-ECTA incorporates the WTO national treatment provisions.

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QUESTION ON NOTICE / Written

QoN-007 – 14 October 2022

Topic: Frequent and unpredictable changes

Joint Standing Committee on Treaties

Question

Would the AI-ECTA address the frequent and unpredictable changes in tariffs and other charges imposed by India, particularly on agricultural imports?

Answer

AI-ECTA addresses the frequent and unpredictable changes in tariffs imposed by India by providing for the elimination of tariffs on around 90 per cent by current value of Australian originating goods and through a commitment that neither Party shall increase any existing tariff, or adopt any new tariff, on an originating good. Without ECTA, India is able to increase tariffs up to its WTO tariff bindings, which average over 48 per cent.

QUESTION ON NOTICE / Written

QoN 008 – 14 October 2022

Topic: Agriculture Infrastructure and Development Cess

Joint Standing Committee on Treaties

Question

India defines the base tariff rate as the base tariff rate plus the Agriculture Infrastructure and Development Cess [tax].

What is the Agriculture Infrastructure and Development Cess and what additional cost does it impose on Australian exporters? Are there any agreed limits on how this charge can be varied and possibly increased in future?

Answer

India introduced the Agriculture Infrastructure and Development Cess (AIDC) in February 2021 as a levy to help fund agricultural infrastructure investment. For most goods the AIDC was offset by corresponding reductions in the basic customs duty. The AIDC is a customs duty and, as the total level of customs duty remained unchanged, its introduction did not impose additional costs on Australian exporters to India. India's customs duties, including their AIDC components, are subject to the elimination and reduction commitments agreed under the AI-ECTA.

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QUESTION ON NOTICE / Written

QoN 009 – 14 October 2022

Topic: Transition period

Joint Standing Committee on Treaties

Question

The transition period during which the bilateral safeguard process can be used is 14 years after the elimination or reduction of tariffs is complete. Why have such a long transition period?

Answer

The transition period was a result of negotiations and was at the request of India. The agreement includes procedural requirements to ensure bilateral safeguards are not abused, including:

- a bilateral safeguard measure may only be imposed following an investigation by a Party's competent authority;
- a measure can only be imposed to the extent, and for such time, as is necessary to prevent or remedy serious injury and to facilitate adjustment of domestic industry;
- limitations on the period of application of a bilateral safeguard measure; and
- limitations on reapplication of a bilateral safeguard on the same good.

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QUESTION ON NOTICE / Written

QoN 010 – 14 October 2022

Topic: Advantage of bilateral safeguard process

Joint Standing Committee on Treaties

Question

What advantage does the bilateral safeguard process offer over the global safeguard process offered by the WTO?

Answer

Bilateral safeguards under AI-ECTA, and global safeguards under Article XIX of GATT 1994 and the Safeguards Agreement, have different scope and application. Both require proof of serious injury to a domestic industry, or threat thereof, and are subject to similar procedural requirements. However, a bilateral safeguard measure can only be applied during the transition period, where serious injury to a domestic industry results from increased imports of originating goods due to tariff elimination or reduction under the Agreement. Global safeguards address increased imports of a product causing serious injury, irrespective of source, and are not subject to a specified transition period. Bilateral safeguards cannot be applied to any good imported under a tariff rate quota established under the Agreement and can only be in force for a period of 2 years, with an extension provision of up to 1 year. In comparison, the WTO global safeguard can be imposed for up to 4 years with the possibility for extension up to a total of 8 years. The inclusion of bilateral safeguards in the AI-ECTA is not unusual. Australia has transitional safeguards in a range of its FTAs, including CPTPP, RCEP and our bilateral agreements with China, Japan, Republic of Korea and Peru.

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QUESTION ON NOTICE / Written

QoN 011 - 14 October 2022

Topic: Reduction of complexity in Indian customs system

Joint Standing Committee on Treaties

Question

To what extent would the AI-ECTA reduce the complexity in the Indian customs system?

Answer

As noted in answer to Question on Notice 7, the progressive reduction, elimination and binding of India's tariffs will help reduce complexity in India's customs system. The Customs Procedures and Trade Facilitation chapter of AI-ECTA will also provide more certainty and transparency for traders thus reducing complexity. AI-ECTA commits parties to release goods as rapidly as possible. Pre-arrival processing will be available to expedite the release of goods. Traders can apply for advance rulings so they know which tariff code will apply to their goods prior to shipment.

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QUESTION ON NOTICE / Written

QoN012 –14 October 2022

Topic: Identification of barriers to Australian service providers

Joint Standing Committee on Treaties

Question

Australia's services exports to India are almost entirely providing education services for Indian students in Australia.

What barriers have prevented Australian service providers accessing other areas of the Indian services market?

Does the AI-ECTA contain measures that address these specific barriers in a meaningful way?

Answer

Australian services exporters have cited regulatory uncertainty in the Indian market as a major obstacle to entering and expanding their operations in India. AI-ECTA binds market access into India across 10 services sectors, so Australian exporters have greater certainty in the operating environment for their business, and greater confidence they will not be discriminated against vis-à-vis local competitors. In 31 sectors and subsectors, India has also committed that any better treatment provided to future FTA partners will also be provided to Australian services exporters, meaning India has committed to not disadvantage Australian companies to foreign competitors.

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QUESTION ON NOTICE / Written

QoN 013 – 14 October 2022

Topic: Practical effect of movement in Schedules

Joint Standing Committee on Treaties

Question

With regard to Chapter 8, what would be the practical effect of India moving from its Schedule of Specific Commitments to a Schedule of Non-Conforming Measures?

Answer

India's services commitments are currently made through a Schedule of Specific Commitments, otherwise known as a positive-list format, meaning only listed services are covered. India has committed to make commitments through a Schedule of Non-Conforming Measures, otherwise known as a negative-list format, within six years of entry into force of AI-ECTA. Negative lists are more comprehensive insofar as India's commitments will apply to all services except where policy space has been reserved. Furthermore, the existing measures (laws, regulations etc) that India lists in Part A of its Schedule of Non-Conforming Commitments will be locked in, and should India liberalise those measures in the future, that liberalisation will automatically be locked in and cannot be reversed. India's Schedule of Specific Commitments does not lock in liberalisation.

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QUESTION ON NOTICE / Written

QoN 014 – 14 October 2022

Topic: Liberalisation of services provided for in Chapter 8

Joint Standing Committee on Treaties

Question

Given that Parties are required only to take reasonable measures that may be available to them to ensure the obligations are met at the regional and local level (article 8.2), how extensively does DFAT expect the liberalisation of services provided for in Chapter 8 to occur in India?

Answer

DFAT expects India will implement its obligations in AI-ECTA in good faith, including the obligation in Article 8.2. We note also the Agreement offers dispute settlement provisions (Chapter 13) as possible recourse for non-implementation of obligations.

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QUESTION ON NOTICE / Written

QoN 015 – 14 October 2022

Topic: Financial reserves necessary for economic development

Joint Standing Committee on Treaties

Question

In practice, does the recognition that a Party in the process of economic development may have to restrict services trade in order to maintain financial reserves necessary for economic development (article 11.4) mean that India may restrict trade in services in situations other than serious balance of payments and external financial difficulties? That is, does this particular provision lower the threshold for restricting trade in services? How broadly might ‘financial reserves necessary for economic development’ be drawn?

Answer

- No, this reference does not mean India may use Article 11.4 to restrict trade in services other than when it faces serious balance of payments and external financial difficulties (or threats of the same). In relation to trade in services, the reference to “particular pressures on the balance of payments of a Party in the process of economic development” clarifies that some countries face specific pressures on their balance of payments in light of their economic development processes, and that these pressures may justify restrictions on trade in services. The provision also makes clear that one of the types of services restriction that may be necessary (depending on the circumstances) are measures to maintain financial reserves adequate to implement a country’s development program. However, to make use of Article 11.4 India would still need to demonstrate that it faced serious balance of payments and external financial difficulties (or threats of the same).
- The term ‘financial reserves adequate for the implementation of its programme of economic development’ is not defined and would be interpreted in accordance with the usual treaty interpretation principles. Its scope would depend on the specific nature of a Party’s programme of economic development and the extent to which financial reserves of a certain level are sufficient to implement this.
- Note that any restrictions adopted under Article 11.4(1) must also comply with the requirements listed in paragraph 2 such as not exceeding what is necessary to deal with the relevant circumstances, being temporary, being applied on a non-discriminatory basis, and avoiding unnecessary damage to the other Party’s commercial, economic and financial interests.