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Research Report

India and EFTA: Pioneering novel FDI commitments

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India and EFTA: pioneering novel FDI commitments

by

James J. Nedumpara and Pushkar Reddy *

India and the European Free Trade Association (EFTA—Switzerland, Norway, Iceland, Liechtenstein) recently concluded the Trade and Economic Partnership Agreement (TEPA). It includes commitments on broad areas such as sustainable development and government procurement, but its most interesting feature is [Chapter 7--Investment Promotion and Cooperation](#) (Investment Chapter). It contains a novel commitment by EFTA to aim to [increase FDI to India by US\\$100 billion over a period of 15 years, resulting in the creation of one million jobs](#) within the same timeframe. This is a [watershed moment](#), not just for India's trade and investment policy, but also for providing a template for negotiating investment-promotion commitments in agreements between developed and developing countries.

The primary objective of trade agreements is to offer preferential treatment to trade partners by liberalizing tariffs and removing other restrictive barriers on commerce. However, an agreement that only focuses on tariff liberalization may not provide reciprocal benefits to India, given the asymmetrical tariff structures. For instance, Switzerland has completely eliminated all industrial tariffs from [January 1, 2024](#). Consequently, India would have gained limited benefits in engaging in a traditional trade agreement with EFTA.

The Investment Chapter differs from traditional investment-protection commitments. Such commitments generally ensure protection of covered investments against a gamut of state measures, including expropriatory, unlawful and discriminatory actions. Investment-protection commitments also provide for damages for breach of obligations, including through the controversial investor-state dispute-settlement mechanism. [Capital exporting countries typically assume no obligations](#) for ensuring capital flows to partner countries in trade or investment agreements.

Against this background, TEPA's Investment Chapter contains binding commitments on investment flows and employment generation, as mentioned above. The targets are not arbitrarily set, but are based on realistic projections linked to India's past and current economic growth rates as specified in footnote 7 of the Investment Chapter. Although this may appear, on its face, as a "best endeavor" provision, non-fulfilment of targets could lead to India unilaterally rebalancing concessions given to EFTA in the Schedule of Commitments in the Trade in Goods Chapter after a defined period and subject to completing a three-stage government-to-government review. The three tiers represent varying levels of seniority and rank among the officials representing the parties.

Under international law, the [modern concept of state responsibility as derived from the ILC Draft Article on Responsibility of States for Internationally Wrongful Acts](#), does not require states to be responsible for the flow of private investment. In that context, a commitment that EFTA "shall promote" the investment and employment targets specified in Article 7.1.3 is significant. [While the terms "shall aim to increase" and "shall aim to facilitate" in that Article are hortatory](#), Article 7.2 refers to binding obligations for fulfilling the "shared objectives", the satisfaction of which is subject to structured reviews and subsequent consultations.

If the targets are not achieved by the final review, and if India determines that EFTA's obligations are not fulfilled, the consultation process commences. While the Investment Chapter permits India to unilaterally suspend concessions in the event EFTA fails to meet the targets, the focus is not on retaliation, but to nudge EFTA to meet the targets. The novelty of the review mechanism is in prompting and encouraging periodic reviews and assessments, with a view to resolving concerns related to the targets. It is important to note that India can only suspend concessions after the end of the consultative process, which cannot be initiated in the first 15 years after TEPA's entry into force. Importantly, there is no state-to-state dispute settlement under this Chapter. The evaluation of commitments, particularly whether FDI from EFTA has led to the creation of direct employment, will likely require nuanced consideration and a degree of flexibility.

Moving forward, it is important to recall that India and EFTA have a shared responsibility. India must foster a favorable investment climate for EFTA investors, while EFTA shall promote investment to fulfil the investment and employment generation targets. India and EFTA can fulfil their respective roles through close collaboration on the cooperative activities outlined in Article 7.3. Measures of particular importance include identifying investment opportunities, addressing bottlenecks to investments, involving private sector stakeholders in high-level meeting between India and EFTA, technical cooperation, and conducting regular investment-promotion events.

Additionally, parties can use various [incentive mechanisms to encourage outward FDI](#). For example, the Economic Affairs Start-up Fund (SSF) of the Swiss State Secretariat could finance operations by micro, small and medium-size enterprises in emerging markets. Among the EFTA countries, Switzerland is poised to play an important role in achieving the targets,

given its substantial FDI presence in India. Considering the [importance of TEPA to Switzerland's leadership](#), India can leverage SSF's role in financing in emerging economies.

On the whole, TEPA illustrates a new frontier in economic cooperation, breaking away from the norm of investment protection chapters or agreements. A firm commitment to promoting FDI and job creation through trade or investment agreements can be particularly attractive to developing countries, which traditionally compete for FDI. Thus, TEPA can potentially serve as a template for investment commitments between developing countries and capital-exporting countries.

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