

UK-India trade negotiations

27 February 2022

Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Society's Trade Policy Working Group welcomes the opportunity to consider and respond to the House of Lords International Agreements Committee (IAC), on the UK-India trade negotiations. The working group has the following comments to put forward for consideration.

The inquiry welcomes short submissions which address any of the following:

We welcome broad responses to general questions, as well as specific responses in relation to one or more of the key areas set out below.

- What are the potential benefits for the UK of an FTA with India, and what are the potential downsides?
- In what ways may the UK or specific sectors (e.g. education and research) benefit from relaxed visa rules for Indian citizens? Might India's demands for relaxed visa rules go beyond what would benefit the UK economy? If so, how could such risks be mitigated?
- How might an FTA with India impact the UK's devolved nations and English regions, and how could their interests be best protected?
- How do you evaluate the Government's Negotiating Objectives (Outline Approach) and initial economic scoping assessment included in the Government's strategic approach? Are the UK Government's aims sufficiently ambitious? If you represent a sector, we would be interested to hear about any objectives your sector would like to see achieved. What should UK negotiators be aiming for on tariffs, rules of origin, services, digital trade, intellectual property, mutual recognition and mobility?
- How should consumer interests be promoted and protected?
- What specific protections should be sought on the environment and climate? What is your assessment of how goods and services traded under an agreement with India could affect both countries' carbon (and other greenhouse gas) emissions?
- What protections should be sought on human, labour, women's and minority rights?
- What are the UK's key defensive interests, i.e. sensitive areas where the UK should not make concessions during the negotiations?

- What risks could a trade agreement with India pose to the UK's food safety standards, animal and plant health or animal welfare standards? How could any such risks be mitigated?
- How may an FTA with India affect UK trade with other developing countries; if there is a risk of trade diversion, how could this be mitigated?
- The UK-India joint statement on the launch of the negotiations states that "both Governments will consider the option of an Interim Agreement that generates early benefits for both countries". How desirable would it be for the UK to agree to such an interim or 'early harvest' deal?
- How would you rate the Government's mechanisms for engaging with stakeholders and seeking input into the negotiations? What is your assessment of how well Government departments are coordinating with each other to help deliver the best outcomes in the negotiations?

Response

The importance of legal services

The legal services sector facilitates trade across all other sectors as well as being an important contributor to the UK economy in its own right. This includes contract negotiations for the provision of goods or services and also extends to advice on matters such as intellectual property protection.

Businesses of all types are increasingly international in focus and global in reach and lawyers must be able to provide their services accordingly, whether this is through expansion of their own offices or partnering with firms in other jurisdictions on an ongoing or case-by-case basis. Furthermore, trade agreements create legal rights and obligations and it is therefore imperative that individuals and business have access to legal advice to allow them to exercise those rights and meet the requirements of their obligations.

Recognising and promoting Scottish legal services

Scotland has a strong market for professional services, including legal services. Furthermore, legal services support and facilitate trade and investment in other sectors. In terms of Scottish legal services, arbitration and other forms of international dispute resolution are seen as a potential growth area. Again, trade agreements should recognise that the Scottish legal industry, as with Scots law, offers many of the same advantages more frequently advertised in relation to England and Wales, while also retaining its own characteristics.

Ensuring coordination by facilitating sector-specific discussions encompassing relevant stakeholders would be helpful. For example, discussion of legal services should ensure that the reputation of the Scottish courts as impartial and independent, the offerings of the Scottish Arbitration Centre and the strengths of Scots law are harnessed alongside promotion of the high quality legal services offered by the Scottish legal profession.

Barriers to access the Indian Market

It is worth noting that in general terms India's market access commitments on professional services under the GATS are currently very small and in broad terms India has many restrictions on providing professional services by foreign nationals.

Specifically the India's Advocates Act 1961 section 24, means that only an Indian citizen can be enrolled to practice law. Consequently, foreign lawyers cannot be enrolled and cannot practice law in India.

Foreign lawyers have been permitted to provide legal advice on foreign law involving some international legal issues but only whilst on 'casual' visits to India. Whether a visit is a casual or not is something that would be debateable on a case to case basis. Certainly it would have to be a non-recurring visit but far more clarity is needed here before solicitors could rely on this.

Equally foreign lawyers are not specifically prevented participating in international arbitration but a supreme court ruling of 2018 means that such lawyers would need to abide by the legal codes of practice for India rather than the more normally accepted standard that foreign lawyers can freely practise.

Visa systems

In practical terms, an efficient business visa system which allows Scottish solicitors to enter a country for the purposes of meeting their clients face-to-face is key. If a solicitor has to wait a long time for a business visa to be authorised this could act as practical barrier to provision of legal services for clients.

We would support any provisions that would increase the ability of Scottish solicitors to conduct business in India. The existing ASEAN-India FTA resulted in a number of GATS commitments (such as business visitors being allowed to enter for a period of 180 days) which are welcome and any deal should build upon these. We would support measures that speed up and streamline the application process for business visas in particular.

Interim Deal

Whilst we welcome any interim deal that is in the interest of the UK and the legal sector in Scotland we would like to express our concerns that such a deal should not undermine the UK's position to secure a more wide reaching deal covering services later on. The UK must not concede too much to India in early negotiations as that would remove any motivation for them to offer an agreement that would enable UK services to seriously develop their business in India.

Human Rights

Whilst we recognise the desire for the UK to capitalise on the economic opportunities within India we would also strongly urge the UK Government to use any negotiations to promote human rights in the country and across the region.

Free Trade Agreements, Scotland and Devolution

We emphasise the importance of recognising that Scotland is a distinct jurisdiction with its own law, court system and separately regulated legal profession. This should be taken into account in pursuing all trade agreements.

We also underline that a coordinated and holistic approach to trade promotion is of fundamental importance, both within and across economic sectors to maximise opportunities, for example the suite of professional business and advisory services, including legal services, which support investment. This comprehensive approach should also highlight broader benefits of doing business in Scotland, incorporating the availability of talent and cultural factors, such as quality of life.

As set out in our response to the consultation on the UK's future trade policy, we believe that a whole of governance approach should be taken when considering trade negotiations. The concept is also of particular relevance trade agreements which may or will have an impact on domestic law. In this context "whole of

government” should be interpreted as “whole of governance” to include not only the UK Government but also the Scottish Government, the Northern Ireland Executive and the Welsh Government and external stakeholders.

In order to create a comprehensive and inclusive trade policy, conduct negotiations and implement trade agreements, it would be helpful were the UK government to engage with the devolved legislatures. This will be important where trade agreements may result in implementing legislation that may need to be carried out by the devolved administrations or engage the legislative consent convention.

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