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Ms Jan Adams
First Assistant Secretary
Free Trade Agreement Division
Department of Foreign Affairs and Trade
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by email: indiafta@dfat.gov.au

Dear Ms Adams,

The Australian Industry Group (Ai Group) welcomes the opportunity to contribute the views of industry on the potential outcomes and impacts of the Australia-India Comprehensive Economic Cooperation Agreement (Agreement).

Ai Group supports the Federal Government's proposal to commence negotiations on an Agreement which is able to deliver clear benefits to Australian industry. We encourage the Government to pursue negotiations with those trading partners who are genuine about liberalisation and creating a level-playing field.

With the continued delay in finalising the Doha Round of the World Trade Organisation (WTO) talks, it is important that Australia continues to seek to broaden its market access with our key trading partners through high-quality, comprehensive bilateral, regional and plurilateral free trade agreements. Such agreements should go beyond existing WTO commitments to substantially include all trade in goods and services.

With an uncertain global economic outlook, it is also critical that industry gains unimpeded access to export markets, and furthermore, that this access provides Australia with competitive positioning in the complex system of international trade agreements. Australia must not fall behind our trade competitors in terms of preferential access to the Indian market.

Bilateral Trade

Over the past five years the importance of the Australian-Indian bilateral relationship has increased for both countries. India has seen sustained 8% plus economic growth for most of the past decade and recorded growth of 46.4% in exports during June 2011, at US$29.2 billion. (Indian Government Department of Commerce, media release 8 July 2011).

This has manifested in very strong growth in bilateral trade with Australia, with goods and services trade growing more than 20% annually. In 2009-10, India ranked as Australia's third-largest export market with $19.8 billion worth of goods and services representing 7.8% of our total export income.

For now, Australia's exports to India are dominated by coal, gold, copper and educational services. Our strength in exporting primary products, particularly minerals and fuels, positions Australia well to supply growing Indian industrial and consumer demand.

While India's exports in travel, ICT and business services to Australia have grown over the last decade, its largest export to Australia remains machinery and equipment. Other key merchandise exports included textiles and garments, vegetable products, gems and jewellery, base metals and chemicals, plastics and rubber and leather products.

Liaison between Australia and India already is well established and the prospects for further developing this relationship are promising. It is expected that with continued Indian economic growth the recent outstanding bilateral trade and investment growth will endure. As India's economy continues to grow and its Gross Domestic Product per capita lifts, there will be significant opportunity to considerably expand this relationship, both in pace and hopefully scope.

Market Access

In 1991, India set upon a road of trade reform and has made some significant progress. However despite recent reforms, major barriers to trade with India remain. The International Monetary Fund (IMF) highlights the importance of India's continued tariff reduction and the lowering of administrative barriers to trade.

Indian tariff rates and trade barriers more generally remain among the highest in the world, with an average applied tariff of 18.3% (37.6% on agricultural goods and 15.4% on non-agricultural goods).

In addition to tariffs, India has various duties, such as safeguard and anti-dumping duties, and non-tariff restrictions such as import bans and standards or certification agreements. India has a bureaucratic regulatory and approvals system which can hinder business, and corporate tax rates in excess of 40 per cent. Transparency International rank India 87^{th} in its 2010 Global Corruption Perceptions Index (down from 70^{th} in 2006). By comparison Australia was ranked 8^{th} (up from 9^{th} in 2006).

Therefore given the existing level of preferential access, complexity and difficulty in accessing the Indian market, it is essential that negotiations for the Australia-India Comprehensive Economic Cooperation Agreement (the Agreement) help broaden the current base of trade by eliminating substantially all merchandise tariffs and import quotas, as well as removing non-tariff barriers to services trade, facilitating investment and addressing informal behind-the-border restrictions on trade.

Negotiations should deliver a balance of benefits that is in Australian industry's favour and provide Australia with a competitive advantage or, at the very least, equal rights to other countries with preferential access to the Indian market. Of note are the free trade agreements under negotiation between India, New Zealand and the European Union.

Reducing barriers through liberalisation of bilateral trade and investment under comprehensive free trade agreements should always eliminate tariffs immediately on all but a minimum of sensitive items. Therefore, while the aim for negotiated market access outcomes should be reciprocal full tariff elimination, with asymmetry of timing, Ai Group acknowledges that certain items within manufacturing will require a phased tariff reduction period.

Australia's significant manufacturing sector (manufactured goods accounted for 16% of total exports and elaborately transformed manufactures make up 69% of total manufactured exports in 2009) would benefit from liberalisation and this Agreement should eliminate tariffs immediately on all but a minimum of sensitive items, to which transitional tariff reduction arrangements should be applied.

The Australia – India Joint Free Trade Agreement Feasibility Study 2010 (the Study) reported that India's largest export sector in its trade with Australia is manufacturing. Indian manufacturing exports rose from US$386 million in 1996-97 to US$745 million in 2006–07, constituting around 80 per cent of India's total exports to Australia. The Study concluded that while Australia's manufactured exports to India are substantial, they constituted a smaller proportion (52 per cent) of Australia's total exports to India.

The Study detailed Australia's largest manufacturing export to India as non-monetary processed gold, which represented 83 per cent of Australian manufactured exports in 2008–09. Other key manufactures that Australia exports to India are fertilisers, base metals, paints, machinery and instruments, electronic circuits and perfumery and cosmetics. Of Indian manufactures exports to Australia, major product groups are textiles and garments, base metals, gems and jewellery and machinery.

Australian manufactures exporters would benefit from Indian liberalisation. In particular, the Agreement should include elimination of tariffs on solar heaters, plastic layflat tubing, plastic film and packing machinery and parts.

Further, to maximise any benefits of tariff reductions achieved, Australia should also consider the need to streamline its export control processes in relation to low-risk dual use manufactures such as submersible water pumps. The whole-of-government coordination of export control policy would duly recognise India's trust trade partnership status, as conferred by the completion of the Agreement, and reduce any unnecessary Australian barriers to trade.

It is also noteworthy that, as many major global auto markets - including Australia, have recently experienced contractions, Indian carmakers have expanded their overseas presence with exports from the country registering a robust 33 per cent growth in 2009-10 (Society of Indian Automobile Manufacturers). However, Australia does not currently import any passenger motor vehicles from India.

The Study found trade between Australia and India in agricultural products, including forestry and fisheries products, to be relatively modest with two-way agricultural trade valued at US$456 million in 2008–09. However, over the last five years Indian agricultural exports (mainly tea, rice, cashew nuts and tobacco) to Australia have grown on average by 15 per cent annually. In comparison, over the same period Australia's agricultural exports (wool, chickpeas, almonds, paper products and wine) to India have increased minimally.

Mutually advantageous opportunities in the agricultural trade relationship are likely to grow. Preferential market access would improve the ability of Australia to meet domestic shortfalls in Indian production. There would be obvious gains to be made from Indian agricultural trade liberalisation for Australian exporters.

As India becomes a more regular importer of certain high-end niche food items, Australia will be well placed to provide items including high-value dairy products and ingredients like cheese and milk powders, which currently suffer very high tariff treatment between 20 and 60 per cent.

While India is the largest producer of milk in the world, domestic production cannot always meet domestic demand. Australia can assist India to better manage this supply challenge while increasing its food security of dairy supply. However, to do so competitively Australia will need improved market access across the full range of dairy products.

Another example of possible liberalisation benefits would be removal of the current 50 per cent import tariff on malt. Current beer market in India is in the order of 20 million hL per annum (Australia's is 17mhL), growing at a rate of 15 per cent. Although there is an excess of malting capacity in India, the barley selection does not meet the necessary standards. The current tariff rate creates a competitive disadvantage to unnecessarily protect local malt and results in minimal Australian malt exports into India. Should the current tariff be removed then exports of good quality Australian malt to India would be likely.

In addition, as India's food processing sector continues to expand, Australian food manufacturing expertise and agricultural inputs could play an increasingly important role in India's supply chain. However to do so, a range of technical barriers will need to be addressed.

In the food and beverage sector, new Indian food regulations at the national and state level will increase new microbiological testing requirements and stringent labelling requirements. In diary ingredients, for example, requiring a declaration on every package indicating whether the food is vegetarian would be unnecessary because it would only be relevant for the end product use. Another barrier is the requirement for the importer's name and address (rather than the exporter's) to be shown on the product.

India's food processing industry would benefit from a great understanding of the Australian food processing sector, which relies on both local and imported ingredients to supply both domestic and export demand. Further, it is vital that India has a greater level of understanding and acknowledgement of Australia's internationally recognised food safety regime.

Across the agricultural sector barriers remain and, in particular, current Indian customs procedures impose unnecessary political risk with the requirement for Ministry of Agriculture approval of import licences. Negotiations should seek an exemption for this requirement. Also, to ensure a level playing field for Australian exports entering India, negotiations will also need to consider barriers beyond tariffs to include unrelated taxes and various other charges imposed.

It is clear that industry benefit from any negotiated improved market access will be subject to resolution of non-tariff and technical barriers through the inclusion of effective and transparent sanitary and phytosanitary (SPS) mechanisms. Such mechanisms could include an implementation working group of respective government agencies which would meet on a regular basis to resolve any SPS and other technical issues acting as barriers to trade.

With its combination of English-language fluency and low-labour costs, India has built an exceptional competitive advantage for its Information and Communications Technology (ICT) services exports over the past decade. The Study also reported on the recently growing trend of services importation featuring in India's economy. India's import of services grew more than ten-fold during the period 1990-91 to 2005-06. The growth in services imports has been seen across most sectors, not just ICT.

India's world-leading ICT services sector may also represent opportunities for Australian companies such as:

- software products for vertical industries in health, transportation, insurance, finance, chemical, and engineering;
- IT-enabled services (particularly call centre project consultancy), systems and software such as automatic call distribution, interactive voice recognition, computer telephony integration, helpdesk and employee training;
- banking products such as risk management, centralised banking, nostro reconciliation, Internet banking;
- network and Internet security consultancy and products;
- SMART card and EFTPOS/point of sale equipment;
- products and services for radio/television broadcasting and the film industry such as digital studio production, equipment, software and transmission system;
- equipment and software for broadband and cable television industry
- E-governance projects; and
- joint research and development projects for emerging technologies and solutions around established technologies.

While India now faces competition from Ireland, Canada, China, Mexico and Russia, it is likely that it will maintain its global edge with major American companies committed to the Indian ICT sector.

India's non-coal mining sector has recently opened to private investment and, with this, significant opportunities are now possible for Australian mining-related services and equipment, including:

- mining technology and services for exploration, software and systems, safety, environment, communications and training;
- niche mining equipment; and
- technology and equipment for coal washeries.

Thus, negotiations will also need to deliver significant opportunities and scope for liberalisation of several services sectors such as engineering and legal and accounting services, as well as banking, insurance and retail. The Agreement will also need to set in place access for new services prospects as they continue to emerge in sectors such as ICT, mining, biotechnology, tourism, health, film and insurance. Services liberalisation must address barriers that impose additional costs on exporters and erode competitiveness.

Labour Mobility

As the resources sector continues to draw skilled Australian workers to the North and West, many non-mining related sectors are experiencing or will soon experience skills shortages across a range of professions and trades. With Australia's official unemployment rate remaining steady in June 2011 at 4.9 per cent (Australian Bureau of Statistics), the pressure to find qualified and experienced employees is not likely to abate in the near to medium term.

The negotiation of this Agreement with India provides an opportunity to formalise labour mobility arrangements, also known as General Agreement on Trade in Services Mode 4, which permits temporary stays of necessary skilled professionals.

We would support efforts by Australian negotiators to expand our current Mode 4 commitments to include contractual service suppliers from India. This would provide Indian professional the same access and a level playing field when compared with professionals from countries with which Australia has already implemented free trade agreements.

However, it would not behove Australia to include a positive or negative skills list in this Agreement because this would not be responsive to either Australia's current (beyond the existing available jobs data which demonstrates a lag effect) or future skills requirements.

Sensitive Sectors

As negotiations for the Agreement get underway, ongoing and extensive consultation with industry will be necessary to ascertain any risks to achieving the broadest trade in goods liberalisation possible. To date, Ai Group analysis indicates transitional arrangements may be necessary for items such as certain TCF (textile, clothing and footwear), automotive and machinery products.

Certainly the import sensitive industry sectors of automotive and TCF are currently dealing with restructuring in the face of unilateral tariff reduction (in line with Australian Government policy) and may require phased tariff reduction. It is essential that Australian vehicle and components manufacturers be provided with equitable access to the Indian market.

This does not preclude the possibility of zero-for-zero tariff arrangements being suitable on certain items within these manufacturing sub-sectors. However, any margin of preference allocated by Australia on Indian goods on items with retained tariffs should be matched by India. Ongoing and extensive consultation with industry is necessary to provide a definitive list of items requiring transitional arrangement.

Investment

Since the announcement of India's new industrial policy in August 1991, foreign direct investment (FDI) flows into India from Australia have risen from a low base but remain modest relative to value of bilateral trade. This reflects both regulatory and other impediments and possibly a lack of awareness of, or confidence in, business opportunities in the other country.

India's ongoing economic reform program has included changes to the tax regime and to the regulatory framework governing investment. Recent changes in these areas included the following:

- the proposed introduction of a Fringe Benefits Tax (FBT) and the imposition of a tax on cash withdrawals from banks are likely to have an effect on business operating costs. The proposed tax on cash withdrawals from banks could increase operating costs for companies who pay staff wages and other costs in cash;
- tax incentives introduced to encourage personal savings growth; and

- a services tax of 10% will be levied on services rendered outside India where the recipient of the services is situated in India - this could result in a cost burden for IT companies in Australia providing services to clients in India.

The Indian Government has also indicated that proposals for reform in the retail trade and pension sectors are under consideration. Some proposed reforms could potentially lead to an increase in investor uncertainty or create additional barriers to trade.

Therefore, to develop the trade and investment relationship and fully harvest the potential of any negotiated outcomes from the Agreement, a strong investment chapter which creates a secure investment environment is essential.

As India's legal system is still developing, it may be necessary to consider the inclusion of an Investor State Dispute Settlement (ISDS) mechanism. ISDS provides investors (including private companies and individuals) with a right to resort to international arbitration through an international arbitration centre like the International Centre for Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL) in the event that it believed the host government had breached an obligation under an FTA investment chapter.

The types of obligations that are typically contained in an investment chapter of an FTA include obligations not to treat foreign investors any less favourably than one's own nationals or nationals of third countries; obligations to afford investors and investments fair and equitable treatment and full protection and security in accordance with customary international law, and obligations with respect to expropriation.

The potential scope of disputes that could fall under ISDS is the subject of negotiation. Whatever the nature of the mechanism included, the Agreement will need to enhance transparency and strengthening investment enforcement and protections. A robust mechanism must be able to address these concerns through the assurance of investment certainty and ability to seek effective dispute resolution.

CEO Forum and Working Groups

We encourage the Government to fully leverage the Australia-India Chief Executive Officers' (CEO) Forum, to be co-chaired by Mr Lindsay Fox AC, to build the necessary political support for the completion of a high quality, comprehensive agreement. The Forum will provide a vital opportunity for business to engage with the Governments of Australia and India as they negotiate the Agreement.

There are also numerous existing joint working groups, bilateral cooperation agreements and memoranda of understanding covering areas such as : agriculture; air services; customs, visa, passport and consular issues; economic policy reform; education and training; information, communications and technology; intellectual property rights; investment; minerals and energy; science and biotechnology; taxation and tourism.

These groups, in some format, should be included in the implementation plan of the Agreement to ensure ongoing dialogue between Governments to provide mechanisms to resolve potential trade issues before they are realised.

Planning for Implementation

In preparing for this submission, we contacted member companies currently exporting to India. Their market access comments have been incorporated above. Beyond the desire for improved access to export markets through reduction of tariff barriers and addressing non-tariff measures, Australian exporters expressed their need for better Government assistance in order to harvest the potential benefits of an agreement to successfully compete internationally.

While the ability of the Department of Foreign Affairs (DFAT) negotiators to deliver the best possible market access outcomes underpins the effectiveness of any agreement, it is also crucial that non-tariff, technical and other behind-the-border barriers (formal and informal) do not erode the negotiated tariff outcomes once the Agreement is implemented. To ensure this damaging circumstance is avoided will require better coordination between DFAT and their Austrade counterparts.

In order to utilise the Agreement fully, industry must also obtain an intimate understanding of what has been delivered and how they are able to harvest the negotiated outcomes to their advantage. To impart this knowledge and thus to assist with perceived effectiveness of the Agreement going forward will require post-implementation industry outreach strategies for both nations to be considered and incorporated during the negotiation period.

In preparation to enter any foreign market, Australian exporters to India acknowledge they must be well prepared and cognisant of the local business culture to develop confidence through solid relationships and assist in reducing miscommunication.

For Australian exporters the Export Market Development Grants (EDMG) Scheme, administered by Austrade, is an effective support mechanism which provides financial assistance to small and medium Australian enterprises (SMEs) to develop new export markets. The Scheme provides critical funding to many SMEs during the costly and complex initial phases of identifying and establishing new export markets through the reimbursement of up to 50 per cent of their expenses incurred on eligible export promotion activities.

This year has seen a lower than expected level of EMDG claimants. Our analysis suggests this is, in part, due to ongoing uncertainty surrounding the EDMG Scheme. Recently there have been annual adjustments to the eligibility criteria and allowable expenses. This, as well as the inability to fund a fixed return percentage, has led to increased uncertainty for the Scheme users and created a growing aversion among SMEs to invest their limited funds to develop export markets. This trend, should it continue, may prove a bellwether for the ongoing health of the non-mining SME export sector going forward.

While understanding the current fiscal pressures on the Government budget, it is imperative that support for exporters is expanded.

Maintaining Competitiveness

Through the last two decades of unilateral trade liberalisation, Australia has become one of the most open economies in the world with average tariffs at less than 3.9 per cent. This domestic structural change has contributed to the liberalisation of the Australian economy, providing increased market access to importers and an almost free flow of imported goods and services.

In the current patchy economic times, Australian exporters are also carrying the burden of a post-float high Australian dollar. These factors are compounded by increased domestic cost pressures and interest rate sensitivity. Given global economic settings and expected continued high commodity prices, this situation is not expected to change in the near future.

In this increasingly competitive global environment, it is critical that the Government reduces barriers to Australian competitiveness wherever possible. It is critical that industry gains greater, unimpeded access to export markets and, furthermore, that this access provides Australia with competitive positioning in the complex system of international trade agreements.

In recent years, India has been particularly active in pursuing its own program of FTA negotiations. It has completed, or is currently negotiating, preferential trade agreements with: ASEAN, Canada, Chile, China, the European Union, Iran, Japan, the Republic of Korea, Malaysia, Mauritius, New Zealand, SAFTA (South Asian FTA - Bangladesh, Bhutan, the Maldives, Nepal, Pakistan, Sri Lanka and Afghanistan), Singapore and Sri Lanka. However, it is noteworthy that not all this agreements are high quality or comprehensively liberalised.

As our trading partners, like India, continue to negotiate agreements with our trading competitors, the timely completion of a highly liberalised, comprehensive, World Trade Organisation consistent free trade agreement with preferential access to the Indian market would go some way to assist supporting Australia's international competitiveness.

For this Agreement to be effective, once implemented, the Government must also strengthen the linkages between market access negotiations, trade and investment facilitation and market development, strategic consultation and resources for Australian companies to better realise these opportunities.

Ai Group looks forward to the announcement of the first round of formal negotiations with India, following the conclusion of the pre-negotiation consultation period. These discussions will hopefully lead to as broad an agreement as possible, which should be welcomed by the business community. Industry leaders will watch developments with continued interest.

Yours sincerely,

Heather Ridout
Chief Executive