



March 2010
AK Position Paper

Trade and Investment Agreement between the EU and India

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 – amongst others unemployed, persons on maternity (paternity) leave, community- and military service – of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel
President

Werner Muhm
Director

Executive Summary

We would like to point out once again that the AK is very critical of bilateral free trade agreements, as the benefit of such agreements for workers is not evident. We are against negotiations at bilateral level in particular with respect to investments, public procurement and services. Furthermore, the AK regards a comprehensive sustainability chapter as an essential part of a free trade agreement with India. This must include compliance with the eight ILO Core Labour Standards as well as the application of the general dispute resolution procedures.

The EU demands in the Free Trade Agreement with India that the subject matters 'Services' and 'Investments' are negotiated in a joint chapter. That way, the comprehensive liberalisation provisions from the "mode 3" sector would also apply to the primary and secondary sector. India has to draw up a list of obligations, which will apply to both services and investments. This new "combined format" presents the governments with even greater challenges, which increases the probability that legal mistakes will be made when the list is prepared. This will further make the aim to protect public interests at national, regional and local level through adequate regulations even more difficult.

The AK would like to comment on the current concrete negotiation document as follows.

The AK position in detail

DS 1024/10 on Services - mode IV (cross-border provision of services through the labour force)

The AK is against opening the labour market within the scope of Mode IV compared to the current obligations of the CARIFORUM Agreement. Therefore, from the AK's point of view, the demands of India have to be rejected for the following reasons:

The currently bad economic situation does not allow for any further concessions in this area. From mid 2008, the international financial market and economic crisis hit the Austrian economy with full force. Although there was an indication of a trend reversal from mid 2009, economic experts, however, regard it as very unstable and subject to further risks.

In accordance with economic experts, Austria would need an economic growth of over 2.5 % to reduce the constantly rising unemployment figures. However, according to current economic forecasts, such high growth cannot be expected for the near future. The WIFO prognosis of December 2009 expects an increase in real GDP of 1.5 % in 2010. No acceleration is expected for 2011; in fact, a maximum increase of 1.6 % has been forecast. This upwards trend is not strong enough to reduce the high unemployment figures. The WIFO expects almost

300,000 unemployed and another 70,000 persons engaged in training measures in 2011. This means an increase of the unemployment rate of persons working under employment contract to 8.1 % – the highest rate since 1953. Thereby the unemployment situation, which was caused by the recession, is in danger of taking a firm hold. To aim at any further liberalisation in the labour market within the scope of an economic and investment agreement during such a tense economic period, is not in the interest of the workforce.

Apart from that, the seven-year transition period with regard to free movement of labour to the 2004 EU enlargement countries expires in 2011. This means additional challenges for the Austrian labour market.

In our opinion, the possibility to grant spouses an independent legal title, as proposed by India, has to be rejected. This would mean an expansion compared to the current agreements (GATS, CARIFORUM) and would result in a no longer controllable opening of the labour markets. The EU Immigration Law regulates the provisions for third-country family members – this means the right to family reunification and access to the labour market after one year, including spouses. We think that this offer is sufficient and should not be stretched beyond this. We also

reject India's additional categories "short-term service suppliers" and "seller of goods". The term "advisor" (Article 2.1.(f)) is also ambiguous. Should this mean the introduction of a new category resp. the expansion of the current obligations, we also reject this.

We are currently only in possession of an extract of the negotiation text of the Trade and Investment Agreement between the EU and India. We would therefore like to point out that the so-called **Labour Clause**¹ has to be a component part of this Agreement. It must be included either as an introduction in the chapter on Services or alternatively in the list of obligations in the Appendix to this chapter.

¹ All requirements of the laws and regulations of the EC Party regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements even if not listed below. Commitments on key personnel and graduate trainees do not apply in cases where the intent or effect of their temporary presence is to interfere with, or otherwise affect the outcome of, any labour/management dispute or negotiation.



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