

Westfälische Wilhelms-Universität Münster, Institute of Political Science  
University of Twente, School of Management and Governance  
– European Studies

## Bachelor Thesis

Bachelor in Public Administration (BA)

Bachelor in European Studies (BSc)

20 September 2013

Negotiation Analysis:

The Free Trade Agreement between the European Union  
and India

Presented by Heike Harling  
Moltkestr.48a, 48151 Münster

sNumber: s1345677  
Matrikelnummer: 371532

First Supervisor WWU Münster:  
Björn Goldstein

Second Supervisor UTwente:  
Tsjalle van der Burg

“It is easier to move from agreement to disagreement than from disagreement to agreement.”

(Hampson & Hart, 1995)

# Table of Contents

Abbreviations .....	
1. Introduction .....	1
1.1 Strategic partnership EU-India .....	1
1.2 Trade between India and the EU .....	2
1.3 Research question .....	3
2. Theoretical framework .....	4
2.1 Stages of international negotiations .....	4
2.2 Levels of negotiation: national and international .....	5
2.3 Strategies of negotiation: distributive vs. integrative .....	6
2.4 Modes of negotiation .....	6
2.5 What are possible delaying factors? .....	8
2.5.1 The problem of faithful implementation .....	8
2.5.2 The problem of reaching agreement .....	8
2.5.3 Deadlock .....	9
2.5.4 Internal vs. external factors .....	10
3 Methodology .....	11
3.1 Case selection .....	11
3.2 Hypotheses .....	11
3.3 Research Design .....	12
3.4 Operationalisation .....	12
4 Negotiation Analysis .....	12
4.1 What are the most important issues of the EU-India FTA? .....	13
4.1.1 Interests and Claims: Agriculture .....	14
4.1.2 Interests and Claims: Patent Law .....	15
4.1.3 Interests and Claims: Free Movement of Workers .....	16
4.2 Why is there a standstill? .....	17
4.2.1 Agriculture .....	17
4.2.2 IPR .....	19
4.2.3 Free Movement of Workers .....	21
4.3 What needs to be done? .....	21
4.3.1 Agriculture .....	21
4.3.2 IPR .....	22
4.3.3 Free Movement of Workers .....	23
4.4 Preliminary Conclusion .....	23
4.5 Suggestions .....	25
5 Conclusion .....	26

Bibliography.....	28
Declaration of Academic Honesty.....	31

## **Abbreviations**

AIDS	Acquired Immune Deficiency Syndrome
ASEAN	Association of Southeast Asian Nations
BATNA	Best Alternative to a Negotiated Agreement
BTIA	Bilateral Trade and Investment Agreement
CAP	Common Agricultural Policy
EC	European Commission
EEC	European Economic Community
EP	European Parliament
EU	European Union
FMW	Free Movement of Workers
FTA	Free Trade Agreement
GATS	General Agreement of Trade in Services
GDP	Great Domestic Product
GM	Generic Medicament
GSP	Generalised Scheme of Preferences
HDI	Human Development Index
IMF	International Monetary Fund
IP	Intellectual Property
IPR	Intellectual Property Rights
IT	Information Technology
MS	Member State of the European Union
NA	Non-Agreement
NTB	Non-Tariff Barrier
R&D	Research and Development
RQ	Research Question
SIA	Sustainability Impact Assessment
SPS	Sanitary and Phyto-Sanitary Measures
SQ	Status Quo
TB	Tariff Barrier
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
WTO	World Trade Organisation

## **1. Introduction**

Within the framework of the Global Europe Strategy the European Union (EU) wants to enable European enterprises to gain access to new and profitable markets in emerging nations by negotiating Free Trade Agreements (FTAs) (Bundesregierung, 2011, p.1) as over the next ten to 15 years 90% of the world demand will be generated outside Europe (European Commission (EC), 2013c). The currently negotiated FTA between India and the EU can be regarded as a part of this strategy. India wants to access new markets and would like to achieve a preferential position on the European market compared to its competitors, e.g. ASEAN. Both parties pursue a broad-based Bilateral Trade and Investment Agreement (BTIA) which shall lead to the extensive reduction of barriers to trade on both sides. The negotiations for a bilateral FTA between India and the EU covering foreign investment, competition policy and government procurement additional to trade in goods and services (Saini, 2012, p.189) started in June 2007. Until 2012 14 rounds of official negotiations took place. After the 12<sup>th</sup> summit held in New Delhi on 10<sup>th</sup> February 2012 both parties stated that more work needed to be done in order to make the FTA acceptable (Saini, 2012, p.187). Even if both India and the EU are aiming at accelerating the negotiations a discrepancy between the cooperation hoped for and actual results can be detected as “[...] EU India relations are not working well, in spite of all the efforts made by both sides.” (Wülbers, 2008, p.127).

### **1.1 Strategic partnership EU-India**

As members of the World Trade Organisation (WTO) India and the EU are parts of the discussion on a multilateral trade agreement in the Doha round. Even if such an agreement would be more beneficial for India than the EU-India FTA<sup>1</sup>, due to practical reasons bilateral negotiations are pursued at the moment.

“Given the uncertain outcome of negotiations at the multilateral negotiations under the Doha Development Agenda, the regionalism movement currently constitutes the most significant trend in international commercial policy.”  
(Plummer, 2007, p.1771)

Individually negotiated FTAs have the advantage that they include non-tariff and non-border policies that the WTO does not touch (Plummer, 2007). This is also

---

<sup>1</sup> cf. Ganesh-Kumar et. al., 2008, p.ix; p.57

characteristic for the “new generation of EU FTAs” (Ciortuz, Goddeeris, Natens & Wouters, 2013, p.16) which more directly impact non-economic issues.

However, EU-India relations already existed independently from the Doha round: in the early 1960s India established relations with the European Economic Community (EEC). The annual summits started in June 2000 in Lisbon with the aim to add a political level to the rapidly growing economic ties between both parties. Gröning (2012) characterises these summits as “starting point for political exchange with growing density regarding the content” (p.144). At the 5<sup>th</sup> annual summit at The Hague in November 2004 it was decided to upgrade the EU-India relationship to a “strategic partnership” (Saini, 2012, p.186). One year later the common “Action Plan” was signed by Tony Blair and Manmohan Singh. It includes a political chapter, enhancing political cooperation, a chapter treating the bilateral trade partnership, a chapter regarding the economic policy and one addressing the cultural cooperation.

## **1.2 Trade between India and the EU**

As already mentioned India and the EU are connected by strong economic ties. The volume traded between India and the EU was worth around 29 billion Euro in 2003, increased to 80 billion Euro in 2011, but shrunk to 75 Billion in 2012 (Ciortuz et al., 2013, p.4). The EU represents India’s biggest trading partner with 19.5% in terms of overall trade (Centad, Cuts & Ecorys, 2009, p.27), and 21.7% of India’s total exports got to the EU (ibid., p.28). Furthermore, the EU has been the biggest foreign investor in India with cumulative investments of up to €20 billion since 2000 (Saini, 2012, p.188). The main import merchandises for the EU are textiles and clothing while India mainly imports machinery, transport equipments and chemistry.

Even without the FTA India already has some advantages in trade with the EU compared to other states: India is the biggest beneficiary of the Generalised Scheme of Preferences (GSP) (EC, 2013a) which was introduced within the context of the EU-India development cooperation. The GSP allows India the customs-free export of non-sensitive goods to the EU and demands only reduced customs duties for sensitive goods, e.g. agricultural products. Altogether, it covers 50% of Indian exports to the EU (Gröning, 2012, p.172). This possibility of market access shall contribute to India’s economic growth. If the FTA is in action, India will no longer benefit from the GSP according to the reformed GSP applying from January 2014 (EC, 2013a).

Despite the existing cooperation, the Indian market is protected by various tariff barriers (TBs) and non-tariff barriers (NTBs) and remains one of the less open economies among large developing countries with average tariffs of 12.1% on non-agricultural products and 40.8% on agricultural products (Sharma, 2009, p.2). These barriers are relicts of the protectionism introduced by India after the colonial rule in order to enhance its competitiveness. During the process of economic opening India lowered its tariffs, nevertheless, they are still significantly higher than the EU's (EP, 2011, p.3). Due to this fact and as trade can be regarded as the EU's "raison d'être" (Gröning, 2012, p.89), it is its mission to negotiate a new beneficial trading agreement with India.

According to the Sustainability Impact Assessment (SIA) conducted by Centad, CUTS and ECORYS for the EC in 2009, an extended EU-India FTA would generate much more benefits for both partners in terms of economic, social and environmental gains (p.15) than the existing cooperation. The overall positive effects can be regarded as relatively small for the EU but are higher for India (ibid., p.16). Even if some sectors gain while others lose an overall reduction of poverty is predicted to take place. Expressed in numbers India would gain 4.9 billion Euro in the short run and 17.7 billion Euro in the long run, while the EU is expected to gain 4.4 billion € in the short run and 1.6 billion € in the long run (Sharma, 2009, p.12).

### **1.3 Research question**

By looking at the numerous rounds of negotiations and comparing those with other FTA negotiations it can be detected that the EU-India negotiations turn out to be more complicated and lengthy. For example, the EU-South Korea negotiations were also launched in 2007 as a part of the Global Europe initiative, but the FTA is already in force since July 2011 (EC, 2010). The fact that the EU-India negotiations have been taking such a long time might indicate more significant differences in interests than suspected. Therefore, the aim of this bachelor thesis is to find out why the parties do not come to an agreement and discuss how an agreement can be achieved. The split research question reads as follows:

**What are the factors deterring the FTA between the EU and India? How can an agreement be achieved?**

In order to answer these questions part two is going to explain several theories on negotiation analysis which are going to be the foundation for the later analysis. In the

third part, the methodology of this work is going to be figured out. The fourth part contains the main part of the analysis followed by the conclusion in part five.

## **2. Theoretical framework**

In order to answer the research question (RQ) several authors' techniques for negotiation analysis will be combined to detect and analyse the weak points of the EU-India negotiations. According to Spector (1993) the means of a successful negotiation are the ability to diagnose the situation, evaluate the cost-benefit of strategy options, assess the impact of the other party's strategies, and trade off the efficacy of alternative negotiated outcomes (p.184). This is what is tried to do in line with the given possibilities.

Gándara (2003) states that the danger of an abortion of trade negotiations is much lower than of other negotiations (p.21). This implies that trade negotiations are easier to handle than other negotiations as the participants are only rarely confronted with win-lose situations. Nevertheless, conflicts concerning the allocation of profits are much more likely to occur. This might not lead to an abortion of the negotiations but rather to stalemate which might be the case in the EU-India negotiations.

### **2.1 Stages of international negotiations**

Several authors make a distinction between different stages of negotiations. According to Hampson & Hart (1995) negotiations are marked by turning points (p.25) and talks must pass from one phase to another in order to proceed. These stages will be further explained in the following.

#### ***Prenegotiation***

The prenegotiation can be defined as testing or experimental phase before commitments are made to meet at the negotiation table to resolve a dispute (Spector, 1993, p.190). This process starts when one or more parties consider negotiation as a policy option and communicate this intention to other parties. It includes a diagnostic phase in which parties recognise that new solutions need to be invented in order to solve problems. The prenegotiation stage ends when the parties agree to formal negotiations or when one party abandons the consideration of negotiation as an option. Consequently, the sub-stages of the prenegotiation phase are the identification of problems, the search for options, the commitment to negotiate, and, finally, the agreement to negotiate (Hampson & Hart, 1995).



Prerenegotiations are inevitable for all parties, as they promise lower exit costs than formal negotiations, can serve to develop appropriate institutional structures for subsequent negotiations and may bring additional social benefits like building public support, satisfying allies, and avoiding potential crises. This phase is especially useful as it helps parties to evaluate, estimate, and simulate 'what would happen if' scenarios (Spector, 1993, p.191). Consequently, prerenegotiations can be regarded as a prelude to formal negotiation.

### ***Negotiation***

The main negotiation process includes an exchange of information, the discussion of alternative negotiation packages, moving from a general formula to the actual details of an agreement, and the search for implementation details. On closer inspection eight stages of the negotiation phase can be defined: the search for an agenda, the composition of the agenda and definition of issues, the establishment of maximal limits of the issues to dispute, the narrowing of differences, the preliminaries to final bargaining, the final bargaining, the ritual affirmation and the execution of the agreement (Hampson and Hart, p.27). In order to pass from one stage to another the negotiators' commitment is required. After successful conclusion agreement and implementation take place.

### ***Agreement and implementation***

In this stage of negotiations the parties reach a preliminary settlement and try to translate this settlement into a package of mutual commitments and undertakings. Nevertheless, last-minute vetoes or proposals can delay or prevent a final settlement. Furthermore, the important question of how the agreement is to be enforced needs to be clarified.

## **2.2 Levels of negotiation: national and international**

After discussing different stages of negotiations, it has to be paid attention to the levels. According to Putnam international negotiations are a two-level game where the government's negotiations at the international level are constrained by endogenous actors at the domestic level (Wehner, 2010, p.49). As what is negotiated internationally needs to be ratified domestically the necessary coordination between international and domestic level only leaves little room for agreement (Gröning, 2012, p.8). Furthermore, the coordination of both levels often leads to defection. Putnam makes a distinction between voluntary and involuntary defection (Wehner, 2010, p.50): voluntary defection can be defined as the breach of promise by a

rational egoist in the absence of enforceable contracts. Involuntary defection is the behaviour of an agent who is unable to keep a promise due to failed ratification. Regarding two-level games Putnam comes to the conclusion that „[n]either of the two games can be ignored by central-decision-makers, so long as their countries remain interdependent, yet sovereign“ (Putnam, 1988, in Wehner, 2010).

### **2.3 Strategies of negotiation: distributive vs. integrative**

In official negotiations different negotiation strategies can be pursued. A distinction is made between distributive and integrative strategies, i.e. between claiming and creating value, or between “us-and-them” orientation (Samsaran, 1993, p.287).

A strict distributive strategy is very egoistic. It starts with high opening demands. It does not include courtesy, exaggerates one’s own minimum needs and priorities and manipulates information to others’ disadvantage. Furthermore, this tactic includes worsening the other party’s Best Alternative to a Negotiated Agreement (BATNA), issuing threats and imposing penalties. This dominant kind of negotiating includes an increased probability of deadlock (Narlikar, 2010).

On the other hand, an integrative strategy is more harmonious. It includes sharing information relatively open to explore common problems or threats, proposing an exchange of concessions that might benefit more than one party and reframing the issue space itself in order to ease an impasse. This strategy focuses much more on communication and cooperation. Therefore, the probability of deadlock decreases.

Despite this argumentation it can be observed that many countries end up in distributive bargaining modes leading to deadlock. If this is the case in the EU-India negotiations will be analysed in part four.

### **2.4 Modes of negotiation**

Scharpf (1999) points out four modes of negotiation which are defined by the dimensions - distribution or production - affected by the problem negotiated:

#### ***Spot contrasts***

Spot contrasts can be defined as transactions in which neither the production of value nor the distribution is more important (Scharpf, 1999, p.125). The object of exchange is assumed to be well-defined, distribution issues are settled by reference to market prices and commitment and execution happen simultaneously or are close in time. In most cases spot contrasts are formulated as “take-it-or-leave-it” propositions as

further negotiations serve no useful purpose. Either acceptance or veto is the final word. The main advantage of this kind of processing is the minimal transaction costs. However, potential welfare gains might be ignored as only the “zone of common attraction” is considered (Scharpf, 1999, p.126).

### ***Distributive bargaining***

Distributive bargaining happens if the undertaking itself is not put into question, but only the distribution of costs and benefits. If both parties have a veto over projects proposed by the other side and the main bargaining process is about the amount of compensation, the offer of side payments is a possible measure. In the case of unilateral action, i.e. one party goes ahead with a project without offering compensation to the other party, only one party benefits. A solution to distributive bargaining can often be found in issue linkage or package deals. This means that projects can be combined in order to achieve a positive welfare balance. However, issue linkage is only feasible if actors interact at a “summit” level and are authorised to engage in negotiations spanning several policy areas (Scharpf, 1999, p.130). Therefore, the chances of success of this mode of negotiation depend on the degree of specialisation and decentralisation in the domestic policy processes. It is highly problematic if some elements of the package must be implemented by lower levels of government over which “summit” actors have no direct hierarchical control.

### ***Problem solving***

Problem solving focuses on value creation. Its central purpose is the joint creation of better projects. It is most likely to succeed if “the participants are able to engage one another in truth-oriented “arguing” about the best possible solution and the best way of achieving it.” (Scharpf, 1999, p.131). In this mode success depends on maximum openness, good communications skills, and mutual trust as well as on special psychological conditions, or on the neutralisation of issues of distribution. Due to its dependence on these conditions, problem solving is unusual. It only occurs in negotiations where distributional issues are irrelevant (ibid., p.132) and parties are motivated by convergent or compatible interests.

### ***Positive Coordination***

The term positive coordination combines the success in distributive bargaining and problem solving. It is often the outcome of the work of successful inter-ministerial project groups set up to deal with problems requiring policy instruments controlled by several departments. The establishment of such project groups includes very high

transaction costs (Scharpf, 1999, p.133) and requires the recognition of the simultaneous existence and legitimacy of problems and the willingness to deal with them.

**2.5 What are possible delaying factors?**

**2.5.1 The problem of faithful implementation**

Even if the implementation is the last step of successful negotiations, its faithfulness needs to be considered in advance as it may have a great impact on the negotiation process. In international trade negotiations negotiators often negotiate with limited rationality, consequently, trust plays an important role. Especially when there is no obvious settlement, the absence of an unquestioned authority forces the parties to negotiate under uncertainty and a prompt resolution is rare (Samarasan, 1993, p.3).

After finishing the negotiations, the outcomes associated with a faithfully implemented agreement must be superior to outcomes associated with non-agreement (NA) (Scharpf, 1999, p.117). Besides, it has to be considered that in some constellations, the benefits that one party can expect from the agreement depend entirely on the other party's contribution (exchange) whereas in others, the first party cannot benefit unless its own contribution is upcoming (joint production). Therefore, non-cooperative games might arise at the implementation stage (ibid.) which needs to be prevented by ensuring faithful implementation.

**2.5.2 The problem of reaching agreement**

A critical issue in international trade negotiations is the problem of reaching agreement. According to Scharpf (1999), there is a non-agreement point which a player can at least obtain

with multilateral action (p.119). No party will agree to an outcome that is less attractive to it than its NA. This point is not necessarily congruent with the status quo (SQ) and depends on the

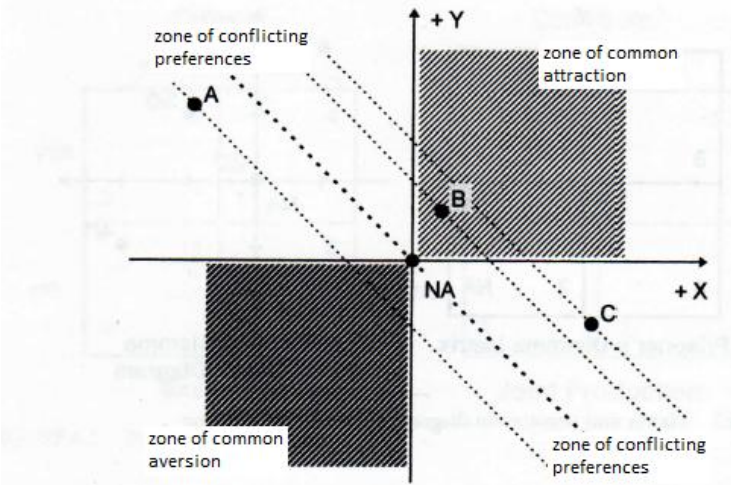


FIGURE 1 Negotiation space (Scharpf, 1999, p.120)

attractiveness of outside actions and the availability of credible threats (ibid., p.122). If one party is already favoured in the SQ it is relatively less dependent from gains in

trade and can more easily retaliate for failed negotiations. Negotiations might also stall because a zone of agreement does not exist. In order to avoid complications, the zone of agreement should be defined in the prenegotiation (Wehner, 2010, p.49).

According to the Coase Theorem in order to reach agreement the negotiators will adopt the solution located on the highest welfare isoquant (Scharpf, 1999, p.121) even if it is located in a “zone of conflict” (point C in figure 1) as the creation of value is independent from its distribution. Therefore,

“negotiated solutions will reproduce the existing distribution of advantages and disadvantages; they are not a tool for realising concepts of distributive justice that depend on redistribution” (Scharpf, 1999, p.123).

However, an issue benefiting one party might be balanced by another issue benefiting the second party. Scharpf (1999) states that “[t]he creation of value will be impeded unless the acceptable sharing of value is assured.” (p.121).

### ***The negotiator’s dilemma***

In the process of reaching agreement the “negotiator’s dilemma” might occur: in order to find a solution the negotiators reveal information which might serve the negotiations but might also make themselves more vulnerable for other participants’ attacks.

“The successful joint search for better overall solutions requires creativity, effective communication, and mutual trust, whereas success in the distributive battle depends on the strategic and even opportunistic, communication and withholding of available information.” (Scharpf, 1999, p.124)

This mutual trust might be disappointed if one party contributes most to the search for better solutions and lays itself open to exploitation by a party that concentrates its efforts on the distributive dimension. Furthermore, distrust against potential misinformation might be justified. Considering the reasoning above it is unjustifiable that the distributive dimension is completely ignored by the Coase Theorem as it can lead to high complexity and uncertainty (Hampson & Hart, 1995).

### **2.5.3 Deadlock**

A deadlock can be defined as a bigger set of problems of cooperation and conflict resolution or a special and narrow case of non-agreement and non-cooperation. A negotiation process is regarded as deadlocked if either an extended situation of non-

agreement exists, such as parties adopt inconsistent positions and are unable or unwilling to make the concessions sufficient to achieve a breakthrough on the particular issue or a landmark moment<sup>2</sup> in the negotiation process is unable to trigger the necessary concessions to ensure an agreement on the particular issue.

Narlikar (2010) differentiates between three different types of deadlock: The first one is “stalemate” which is not necessarily harmful to the negotiation but can quite the contrary provide the turning point to de-escalation and resolution. Turning points might be indicated key events like solving an impasse, signing a framework agreement, developing formulas or any other action moving the negotiation from one stage to the next (Narlikar, 2010). The second type is called “extended delay” which is the case if the state of NA over the particular issue area, persists for a long time, and might worsen over and beyond the landmark moments through missed deadlines, rejected compromise texts, and failed summits. This form of deadlock results in delayed benefits of the agreement, political disengagement and public apathy. The third type is called “complete breakdown” and happens if the deadlock persists and leads to negotiators abandoning the negotiations. This causes many sunk costs in the negotiation process and additional costs for the search for alternatives. The failure to break multilateral deadlocks can generate very high costs at the individual and common level. It can be concluded that deadlocks promise to move on but also have the potential to produce damage.

#### **2.5.4 Internal vs. external factors**

Delaying factors of international negotiations can be internal as well as external. As there is an extensive list of factors, only a few considered as most important will be mentioned.

Important internal factors according to Hampson & Hart (1995) are intrinsic interests, belief systems, and ideology as well as process-generated stakes. Intrinsic interests can be defined as the valuation of favourable terms of settlement on the issue independent of any subsequent dealings. They are usually independent from bargaining outcomes but can affect the possibilities of settlement. Furthermore, conflicting cultural values can create their own special obstacles and barriers to negotiation. A process-generated stake is for example the act of signing or proposing

---

<sup>2</sup> may be an “action-forcing-event” in the shape of a chair’s text or a deadline imposed by a mediator, or may be a natural landmark endogenous to the negotiation and recognised as such by the parties involved

which “implies a positive approval and commitment that would make it [the goal] more vulnerable to domestic criticism.” (Hampson & Hart, 1995, p.32). Furthermore, institutional devices and procedures, circumstantial factors, e.g., domestic politics, and random factors, e.g., unexpected events like crises, can have a great influence on the negotiations (Hampson & Hart, 1995).

An important external factor are crises threatening high-priority goals of the decision-making unit, restricting the amount of time available for response, and surprising the members of the decision-making unit by its occurrence. (Hampson & Hart, 1995, p.34). Those factors can not only delay but in some cases also accelerate the negotiation process.

### **3 Methodology**

#### **3.1 Case selection**

Some current phenomena like globalisation and demographic change lead to the increasing importance of international trade: While the population in the EU is slowly but steadily decreasing other nations like for example India are still growing. Therefore, the EU decided to task a FTA with India in order to benefit from the growing outlet area. In return, India might profit from Europe’s experience.

The negotiations toward an EU-India FTA are especially interesting as the two negotiators are extremely different regarding numerous aspects: Most member states (MS) of the EU are industrial countries whereas India’s emerging economy is still classified as a developing country. As already mentioned the EU is stagnating – demographically as well as economically – while India is growing.

#### **3.2 Hypotheses**

In order to facilitate the analysis of the EU-India FTA negotiations three hypotheses were formulated which are connected to the RQ and whose answer might help to find a final answer to the research question.

Regarding the numerous rounds of negotiations which already took place and the variety of different interests involved, the first hypotheses is that *“The influence of different domestic and foreign political factors which are in conflict/interplay retards the harmonisation between India and the EU.”* Having a look at these retardations, it can be assumed that *“The longer the negotiations last, the less likely is a result satisfying both parties”*. This might also have an impact on the EU-India

relations therefore the third hypothesis is *“The EU-India relationship is improving in the course of the negotiations due to frequent meetings and mutual problem-solving.”*. These Hypotheses are going to be evaluated subsequent to the main analysis part.

### **3.3 Research Design**

The research design consists of a review and qualitative analysis of several sources: The analysis is based on negotiation analysis models developed mainly by Wehner (2010), Narlikar (2010), Scharpf (1999) and Hampson & Hart (1995). Furthermore, the SIA (Centad, 2009), initiated by the EC, as well as several other documents are taken into account in order to support the argumentation. Finally, the results will be presented.

### **3.4 Operationalisation**

In order to answer the research question the analysis is focusing on three different issues: the agricultural sector, patent law, and the Free Movement of Workers (FMW). First, a descriptive part portrays the EU’s and Indias conditions and claims in each field. Then the analysis is conducted in compliance with the structure of the theory section. This means that at first the different stages of negotiations will be analysed followed by different levels and strategies and will then be tested for delaying factors. In the last step possible methods of resolution will be suggested followed by an overall conclusion which answers the RQ.

## **4 Negotiation Analysis**

As many negotiation situations are neither well structured nor repeated as they should be according to game theory, negotiation analysis seeks to overcome the limits of this theory. Negotiation analytic approaches typically expect intelligent, goal-seeking action by the other parties, but not necessarily full gametheoretic rationality. In order to conduct a successful analysis, changes in the perception of the “zone of possible agreement” have to be considered as well as the distribution of possible negotiated outcomes. As the parties’ goals and preferences will often change due to revealed information or due to the effect of exogenous events it is essential to focus on a dynamic analysis.

Especially in complex negotiations which are characterised by points of dispute involving a high degree of uncertainty, high costs and risks caused by practical experimentation with solutions, the desire for a prompt resolution and a return to



friendly, or at least stable, relations (Samrasan, 1993, p.2), negotiation analysis is necessary in order to avoid unwanted consequences. As the EU-India FTA negotiations are already put into operation the course of the negotiations as well as each party's claims are going to be analysed in the following in order to identify the crucial issues of disagreement.

#### **4.1 What are the most important issues of the EU-India FTA?**

Prior to the analysis of the EU-India FTA negotiation it needs to be clarified why countries strive for FTAs at all: according to Wehner (2010) countries start FTA negotiations because they perceive mutual gains and complementarity between their economies (p.53). The aim of an FTA is the clearing of a crucial hurdle for the permanent liberalisation of commodity flows (Gröning, 2012, p.334). In addition, deep integration can be pursued. This term describes trade agreements that include not only rules for customs duties and conventional NTBs, but also provide a general framework of economic activities (Claar & Nölke, 2010, p.1) including socio-political consequences. As the EU generally combines deep integration with topics like market access and foreign aid (ibid., p.2) the EU-India FTA deals with topics exceeding the simple abolishment of NTBs.

According to Gröning (2012) the EU and India are equipped with a favourable starting position as they can be regarded as "natural partners" (p.3). This declaration is based on the fact that both pursue similar social and political commitments, long-term objectives and domestic issues, and on the congruency regarding the democratic concept of state. Like the Indian federation, the EU is based on the principle of shared sovereignty.

However, in the EU-India FTA negotiations both parties' initial position is quite different, and so are their claims and notions. The EU demands extensive tariff reductions especially on agricultural products, e.g. poultry, dairy, oils, food preparations, some processed fruit and vegetables (Singh), as well as wines and spirits. Besides, broad measures of liberalisation, investment in public procurement, extensive protective mechanisms for patent law, protection of IPR and geographic labels (e.g., Darjeeling tea, Basmati rice) (Gröning, 2012, p.185) are requested. Furthermore, the EU focuses on reciprocity: Its market will only be opened to the extent to which India opens its markets to the EU (Sharma, 2009, p.7).

In contrast, Indian companies are interested in the reduction of NTBs (Sharma, 2009, p.9). This applies especially to the trade with or cross-border transfer of services, the liberalisation of visa requirements respectively the strict migration regime for a qualified workforce and the opening of the agricultural commodity market which implies the abolishment of strict rules for the export of certain products (e.g. fruits). In addition, India pursues the reduction of agricultural subsidies within the EU (Gröning, 2012, p.242).

According to both parties there is much more need for negotiation regarding several aspects. The three most important issues will be explained and analysed in the following.

#### **4.1.1 Interests and Claims: Agriculture**

India is in an early stage of rural-urban transition (Ganesh-Kumar, McDonald, Panda, Polaski, & Robinson, 2008, p.6). Almost two-thirds of Indians still live in rural areas and over half of the population works in the agricultural sector, where growth has stagnated at less than 3% for the last decade (ibid., p.viii). India's agricultural sector is in a deep crisis (ibid., p.1) which is indicated by slow growth rates, persistent rural poverty, and widespread farmer suicides.

Since 1980/1981 the *green revolution* led to an increase in agricultural output and due to the *white revolution* in the dairy sector India is regarded as the world's largest producer of milk. In 2001 one quarter of economic activity in India took place in the agricultural sector (ibid., p.4). It is labour intensive and uses land and unskilled labour with only small amounts of capital involved. This means that 55% of the Indian workforce continues to depend on agriculture as the major source of livelihood, although it contributes only 19% to overall GDP. Still, there is a huge unutilised work potential in rural areas. This is why

“[w]hile taking advantage of opportunities offered by increased economic integration, they [the Indian government] must manage the challenges that a more open economy will pose for the majority of Indian workers and farmers.” (Ganesh-Kumar et al., 2008, p.VII)

The trade of agricultural products between the EU and India is heavily influenced by Sanitary and Phyto-Sanitary Measures (SPS). The WTO SPS Agreement determines, in short, that Member Countries are encouraged to use international standards, guidelines and recommendations (harmonisation) but are allowed to set their own

(higher) SPS standards for food and health safety, that SPS standards should only be applied to the extent necessary to protect human, animal or plant life or health, and that they should not arbitrarily and unjustifiably discriminate between countries with similar conditions (Centad et al., 2009, p.222).

While EU exports of SPS related products only make up a small share of total exports to India, SPS harmonisation might result in bigger advantages and better access to the EU market for India (ibid., p.230). Furthermore, for India, technical assistance from the EU in harmonising its SPS standards with international standards can be very beneficial (ibid., p.236).

#### **4.1.2 Interests and Claims: Patent Law**

As can be observed within the European Union, the EU attaches much importance to patent law and IPR protection. Therefore, the EU demands protection of IP exceeding the WTO assignments made in the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (Sharma, 2009, p.3). The TRIPS agreement came into force on 1 January 1995 and is the most comprehensive multilateral IP agreement, setting minimum standards for IP regulation of member nations' legal provisions (Centad et al., 2009, p.258). According to the WTO improving and providing for common rules in the area of IPR will help to reduce NTBs.

A topic touched by the TRIPS is Generic Medicaments (GMs). India is classified as the "pharmacy of the poor" (Speckmann, 2013) as more than 80% of the AIDS medication used by doctors without borders to treat people in poorer countries are GMs from India (Euractiv, 2011). There are enormous price differences: while the price for medication per capita in Western countries is 10.000US\$/year, it is only 100US\$/year for GMs from India (Ciortuz et al., 2013, p.11). As the EU has realised the importance of GMs from India, the European Parliament (EP) (2011) asks the EC and the responsible Indian authorities to develop a common definition of fake medicaments which is not hindering the access to vital medicaments and to take coordinated action against fake medicaments which might jeopardise the patients' health (p.4).

In general, EU investors criticise India's relatively weaker IPR enforcement system compared to the EU due to its negative effect on doing business in India in sectors that are highly reliant on IP protection. India, in contrast, has already enacted several legislations and drafted amendments to existing legislations with regard to the

protection of IPR in harmony with international practices and in compliance with India's obligations under the TRIPS (Centad et al., 2009, p.260). Nevertheless, Europe's longer history of IP protection and more experience in the enforcement of IPR is still visible.

For the EU IPR harmonisation is just one measure which will reduce NTBs. Especially R&D and innovation-intensive sectors such as IT and computer services, as well as pharmaceuticals will be affected and might gain significantly from a NTB reduction: in India, the IP protection is expected to encourage innovation by rewarding the inventor. Furthermore, stronger IP protection regimes may promote the diffusion of knowledge and technology development in countries that are technology followers (ibid., p.265).

#### **4.1.3 Interests and Claims: Free Movement of Workers**

The third topic which is going to be examined is the FMW. While IP protection is a topic especially pursued by the EU, FMW is particularly important to India. More than half of India's population is under the age of 25 (Ciortuz et al., 2013, p.7), therefore, job creation and a future-oriented education are more significant than the mere boost of exports. Due to mutual recognition agreements it is hard for Indian investors to employ Indian professionals in subsidiaries or branches in the EU (Sharma, 2009, p.10). The EU already realised that India shows interest in the liberalisation of Mode 1 (cross-border supply) which is for example important for call centres and Mode 4 (presence of a natural person) of the General Agreement of Trade in Services (GATS) and that agreement might not be reached without mutual consent concerning Mode 4 (EP, 2011). The EU is hesitant regarding this issue as the services sector contributes more to economic growth and job creation than any other sector within the EU. It accounts for three quarters of the European GDP and over 75% of EU jobs are in the services sector (EC, 2013c). As a concession, the EU suggests mutual recognition of certificates and entry requirements which is regarded as a point which can be easily included in the FTA. Furthermore, the mixed High level group settled by the EU-India summit of 2000 argues that "[...] Indian migration flows should be seen as an extraordinary opportunity for EU countries, making cultural dialogue a broader issue [...]" and wishes for an easier visa policy (Telo, 2008, p.108). It suggests student exchange programmes in the framework of "Erasmus mundus" and increased networking of EU and Indian universities.

## **4.2 Why is there a standstill?**

This part deals with the analysis of the EU-India FTA negotiations. Looking back at the different stages of negotiations it can be stated that the EU and India at the moment are in the main negotiation phase. Both parties have already agreed to formal negotiations and now they are exchanging information and discussing the details. Wehner (2010) differentiates between formula and detail phase where “[t]he formula phase is cooperative and integrative by nature, the detail phase conflictual and distributive.” (p.53). This seems to apply perfectly to the EU-India FTA negotiations. As negotiations can only move on if they pass from one stage to another, the question is why the next phase of negotiations - agreement and implementation - has not been reached yet. Referring to the definition of deadlock given in 2.5.3 it can be stated that the EU-India FTA negotiations are in a deadlock as they are stagnating due to “a bigger set of problems of cooperation and conflict resolution or a special and narrow case of non-agreement and non-cooperation”. The most obvious reasons for this standstill are first that the potential gains are modest while the risks are not insignificant (Ganesh-Kumar et al., 2008, p.IX) which means that both parties need to calculate the risks and decide whether they are worth to be taken, and second, secondary topics like human rights and climate protection on which a common approach cannot be achieved.

Apart from these overall reasons there are disputes in the three areas already mentioned which are going to further analysed.

### **4.2.1 Agriculture**

As already pointed out the agricultural sector is an important part of the Indian economy. This is not necessarily due to its great contribution to the GDP but more due to its significance for the rural population. One reason why the negotiations on this issue turn out to be difficult might be the number of levels affected. The politicians on the international level consider the problems and benefits for whole India as India is in a transitional stage where weaknesses in food safety and agricultural health management have a great impact on productivity and competitiveness. Meanwhile different lobbies, e.g. the dairy sector, are focused on the interests of their branch. For example, RS Sodhi, the manager of the Gujarat Co-operative Milk Marketing Federation (GCMMF), states that “the EU is actually anticipating a huge market opportunity once the comprehensive free trade agreement is ratified...[...] by entering into FTA with EU, India's export may increase slightly

to EU, but imports will grow much more” (Ganguly, 2013). In the case of market opening the Indian dairy sector is likely to face heavily subsidised EU imports. On the lowest level the simple farmer fights for daily survival. He is highly dependent on certain agricultural products and not flexible enough to switch to products with different duty rates only because conditions have changed (Sharma, 2009, p.13). At the European side there are just as many different groups of interest. Consequently, the diversity of the agricultural issue and the big number of persons concerned leads to complications in the process of finding agreement.

It is hard to determine whether the negotiators pursue a distributive or integrative strategy. It might be a mixture of both: Of course both parties are determined to make as much profit as possible as this is a trading agreement; nevertheless, it is obvious that especially the EU also wants India to benefit in order to support it as a developing country. India aims at being self-reliant as well: it already reduced the number of donor countries for foreign aid (Gröning, 2012, p.233) in order to be less dependent on others. The EU’s partly integrative strategy might be more productive, however, it also more dangerous as it forces the EU to reveal lots of information.

The relevant mode for this issue is distributive bargaining. Distributive bargaining can be observed as the FTA itself is not put into question, but the distribution of costs and benefits is the controversial issue. In the case of market opening, the informal Indian sector would have to compete with the professional European agricultural sector and deal with the export of subsidised milk powder, butterfat, and poultry (Speckmann, 2013) from the EU to India. On the other hand, the EU does not allow the import of Indian dairy products, citing its strict SPS. Even some promising export-commodities for India like coffee, pulses, spices, fruits, marine, poultry etc. may have to comply with certain stricter rules and regulations. Due to the removal of TBs, there is a tendency to use SPS standards as veiled protectionism instead of TB protection. The higher standards promoted within the EU magnify compliance costs for Indian exporters. In the Indian exporters’ perception many of the measures are imposed with protectionist intent rather than with the purpose to ensure food safety. The EU-India FTA can only make positive contributions provided small farmers are better equipped to face the challenge of standards compliance. If this is not the case, the EU’s benefits will be much higher than India’s. But there are also concerns on the European side. Over the years India has developed an elaborate system of inspection and certification (Centad et al., 2009, p.225). However, for most product

groups European SPS standards are higher than Indian standards (ibid., p.224) therefore, European products often automatically comply with Indian standards. Besides, private standards in food safety, e.g. GLOBALGAP, become increasingly important (ibid., p.225) as there is a demand-driven tendency towards high standards of food safety especially in the Western countries.

As already pointed out above there are lots of contentious points on which neither party wants to give in, therefore, it can be stated that a deadlock occurred. Now, it is questionable due to which delaying factors the deadlock happened. The deadlock at hand can be further characterised as an extended situation of non-agreement where parties adopt inconsistent positions. Another cause to be named is faithful implementation. Due to the absence of an unquestioned authority (Samarasan, 1993, p.3) neither party can be sure that the FTA will be implemented according to their conditions. Especially in the agricultural sector the creation of new NTBs is a big problem as India is lacking in regulating, implementing and monitoring the same level of health and safety standards that are applicable in the EU (Centad et al., 2009, p.227). On the other hand, EU firms and legislators are worried about the ad hoc approach of the Indian government and standard-setting bodies in imposing health and safety legislation that is not necessarily based on scientific evidence or that applies standards in different areas than for which the standard was originally intended (ibid., p.239). Consequently, these issues need to be clarified in advance and perhaps binding sanctions have to be introduced. Further ideas on if and how the deadlock can be solved will be introduced in 4.3.1.

#### **4.2.2 IPR**

As already pointed out, IPR are another controversial issue. Here, it might be important to notice that both parties seem to be stuck in different stages of the negotiation: Whereas the EU is already in the negotiation stage and ready to discuss the details of IPR protection, India seems to regard this issue as an obligatory point of the FTA which would not be discussed if the EU did not insist upon it. Therefore, India might not have left the prenegotiation stage as it is not sincerely committed to negotiating this issue. It fears to lose its status as most important producer of GMs (Gröning, 2012, p.186) and lobby groups for the protection of public health are opposing in order to protect the interests of cancer and HIV/AIDS patients (Sharma, 2009, p.35).

Numerous levels are affected by this issue. But most actors seem to act in concert: The Indian government, pharmaceutical industry and population as well as humanitarian organisations are not willing to agree to strengthen IPR protection in opposition to the EU's claims. Therefore, it can be stated, that India pursues an integrative or even defensive strategy in order to find the lowest common denominator while the EU acts distributive and links the success of the whole FTA to this issue.

However, recently there seems to have been a change in mind on the European side: In its paper "Access to medicines. The EU-India Free Trade Agreement Negotiations" the EC (2013a) states that changes in the Indian IPR legislation regarding pharmaceuticals are not required (p.1) – at least no changes exceeding the assignments decided upon within the TRIPS agreement. India's right to manufacture and export GMs to other developing countries is acknowledged and only provisions going beyond TRIPS which are already present in the Indian legislation might be included in the FTA (ibid., p.2). Even if this implies that India needs to have a closer look at the TRIPS provisions and that GMs are not allowed to be exported to the EU but only transit it, this is a major concession compared to the EU's initial intentions. India's relentlessness might have paid off in this case. Nevertheless, it needs to be kept in mind that this change of opinion only applies to GMs.

In general, despite the doubts voiced above IPR protection is said to foster innovation and investment by ensuring that the creators of new inventions, trademarks and industrial design are going to benefit. Thus, good IPR protection will promote innovation, creativity and investment, which in turn are important factors for competitiveness and employment. The requested data exclusiveness shall delay the competition caused by generic medicaments (Shrama, 2009, p.34). However, the "evergreening effect"<sup>3</sup> might cause huge damage to the Indian economy.

According to Centad et al. (2009) the income effects are expected to be positive for both, India and the EU, in the short as well as long run (p.257). Here, advantages for India are expected to be larger than for the EU. Furthermore, the deeper the FTA, the larger are the effects projected to be. It has to be considered that for India, the long

---

<sup>3</sup> variety of legal and business strategies by which technology producers with patents over products that are about to expire retain royalties from them, by either taking out new patents (for example over associated delivery systems, or new pharmaceutical mixtures), or by buying out or frustrating competitors, for longer periods of time than would normally be permissible under the law



run effects are much bigger than the short- run effects, while for the EU this is the other way around.

#### **4.2.3 Free Movement of Workers**

The last issue to be discussed is the FMW. This issue is in the negotiation stage as the details are going to be discussed. Here, predominantly the international level is affected as it deals with the movement of workers from one country to another. Both countries seem to pursue a distributive strategy as India is focusing on lowering the visa requirements for highly qualified while the EU wants to save their own markets by distributing visa by decisions on a by-case basis. The mode in this case is definitely problem solving as India wants the permission to send workers to the EU as “[e]xperience is more valuable than sheer theoretical knowledge...” (p.98) and the highly educated Indians can benefit from the Europeans’ experience. This is especially applicable to the IT sector. According to Kumar Bose (2008) Indian young professionals are “just raw material” (p.99) which needs to be finished with the right treatment. For the EU it is questionable to what extent it can profit from the proposed arrangement. Therefore, more attention needs to be paid to distributive bargaining in order to clearly define the EU’s as well as India’s benefits.

Regarding this issue the EU and India are facing the problem of reaching agreement. They do not seem to be able to define a common zone of agreement. This might be due to the fact that their claims are not clearly defined. Having a closer look at Mode 4 of the GATS might help as its scope is limited to service suppliers who move temporarily and therefore does not concern access to local labour markets (Ciortuz et al., 2013, p.8).

### **4.3 What needs to be done?**

As discussed in the theory section it sometimes makes sense to exclude certain issues from the negotiations in order to reach agreement more quickly. In the following it is going to be examined how likely an agreement in the three chosen issues is in order to determine, whether it might be more beneficial to leave certain issues out of the FTA.

#### **4.3.1 Agriculture**

Referring to the analysis above it can be stated that in the agricultural sector especially the distributional aspects lead to conflicts. Even if TBs are reduced, with this reduction and cutback of traditional barriers “legitimate” trade restriction measures such as SPS are becoming increasingly important trade distorting measures

that can protect domestic producers (Centad et al., 2009, p.234). Nevertheless, in contrast to the Indian perception that these NTBs are created to exclude them from the European market, those can also be regarded as an opportunity. Some developing countries have been able to turn the challenge of increasingly high food safety and agricultural health standards into an opportunity, by specialising in the expanding market of high-value food products. In addition, most of the potential gains of complying with stringent SPS standards and of improved SPS management by Indian producers are long-term. Benefits such as productivity gains, reduced wastage, and market access in third countries may not be realised immediately, but they will lead to an improved output. This output from the agricultural sector might be redistributed to sectors where higher returns can be made.

In order to achieve these positive results for India agreements on issues like quality and food safety standards need to be pursued. If India was assured of its long-term benefits, it would be easier for the EU to access the Indian market as well. The EU states that in the agricultural sector, a balanced overall concept has to be developed which considers India's interests in terms of developments politics as well as both parties' economic interests (Bundesregierung, 2011, p.5).

In order to accelerate the decision-making process, it might be useful to exclude certain particularly controversial issues from the negotiations. For example, as figured out above, it is very unlikely to reach agreement in the dairy sector due to the huge lobby in India and great subsidies in the EU. Therefore, it would make sense exclude this topic.

#### **4.3.2 IPR**

IP protection is a very controversial issue in the EU-India FTA negotiations. According to the EU this topic is essential to come to an agreement at all, but even within the European Union "harmonisation, for example in the field of patent law, is still proceeding"(Centad et al., 2009, p.261). Upcoming Indian IPR laws seek to protect IPR which shows that India tries to comply with the EU's or WTO's demands. Due to these changes, the Indian private sector has started investing in R&D and investment has increased in the pharmaceutical and IT sector. It can be stated that the focus on IPR protection has an encouraging effect on the Indian industry. According to the SIA (ibid., 2009) in the long run India stands to gain more than the EU from stronger adherence to IPR legislation and IPR harmonisation and regulatory convergence mainly because the EU system is more advanced than the

Indian. Nevertheless, the direct effects on EU real income are estimated to be small whereas the indirect effects which will come from higher R&D investments and innovation are hard to estimate but considered significant (Centad et al., 2009, p.267).

As the restructuring of the Indian pharmaceutical sector and the development of own R&D facilities might take some time, it is important consider an appropriate period of conversion. Hampson & Hart (1995) suggest dealing with issues sequentially. As the GMs issue seems to be solved, other topics can now be tackled. In order to achieve a harmonisation of patent law and IPR protection in the end, the EU needs to help India to phase in the necessary regulations smoothly.

#### **4.3.3 Free Movement of Workers**

Regarding the FMW issue, the EU needs to pursue holistic thinking: Whereas the EU faces the shrinking workforce of an aging population India possesses a young workforce in great abundance (Kumar Bose, 2008, p.102). This offers the chance for both partners to exchange experience and knowledge for young professionals. Of course the movement of a qualified workforce *within* the EU should be treated preferentially to the exchange with India but as the EU's possibilities are limited it might be beneficial for both partners to cooperate regarding this issue. In order to avoid the exploitation of a certain arrangement, regulations preventing brain drain<sup>4</sup> need to be made. If an Indian professional comes to the EU for further education which is financed by the EU it needs to be assured that he contributes to the European economy at least to work off his debts before going back to India. This way both parties are going to benefit.

Besides, agreement could be reached by implementing a package deal: The EU could demand better labour standards in India in exchange for more liberal regulations concerning the FMW. If this deal is acceptable to India, both parties would profit.

#### **4.4 Preliminary Conclusion**

From the analysis above it can be concluded that even if the negotiations are taking place at a summit level various interests, actors and factors need to be considered. For example in the case of IPR not just an agreement between India and the EU has to be reached, but also needs the TRIPS agreement to be respected, has to be paid attention to the claims of humanitarian organisations and the people using GMs all

---

<sup>4</sup> large-scale emigration of a group of individuals with technical skills or knowledge

over the world. Furthermore, even if the decision-making happens on the summit level, domestic forces need to take care of the implementation. Therefore, especially considering Putnam's two-level games, the first hypothesis can be justified.

In order to comment on the second hypothesis a statement made by Hampson & Hart (1995) seems to be suitable: "It is easier to move from agreement to disagreement than from disagreement to agreement." Applied to FTA negotiations this means that the longer the negotiations persist, the harder it is to solve the problem. In the beginning, both parties have agreed to negotiate based on a common perception that the benefits of the FTA are higher than the transaction costs. However, in the course of the negotiations more and more controversial issues emerged which deters the movement from one stage of negotiations to the next. Therefore, it can be stated that with the length of the negotiations the probability of agreement decreases. Hypothesis two can be verified. Nevertheless, external factors might help to give fresh impetus to the negotiations.

The third hypotheses can be regarded from two sides: On the one hand, the negotiations might help India and the EU to get to know each other. For example, before the negotiations started, India was more accustomed to interactions with particular MS and influenced by prejudices voiced by Anglo-American media (Ciortuz et al., 2013, p.14). In the course of the negotiations each party has the possibility to form an opinion about the other. On the other hand, this opinion is not necessarily positive: India might be regarded as stubborn by the EU while the EU might appear as very dominant and demanding. The more controversial issues occur the more negative impressions might be collected. However, a successful agreement might lead to a very positive perception. Therefore, it can be stated that the relationship during the negotiations depends on the impression both parties make and that reaching agreement might in fact lead to an improved relationship. This hypothesis can neither be justified nor falsified.

The evaluation of the three hypotheses implies for the RQ that the number of different actors and levels might lead to deadlock and that it might be due to the long-drawn negotiations itself that agreement has not been reached yet. External factors like upcoming elections might accelerate the negotiations as well as forthcoming negotiations with bigger players (Wehner, 2010, p.55). As India is in negotiations with other partners it could formulate a take-it-or-leave-it proposition

and this way find out how much importance the EU attaches to the EU-India FTA. This is risky as it might change the EU-India relations for the worse, on the other hand reaching agreement might eventually have a positive impact.

#### **4.5 Suggestions**

According to Hampson & Hart (1995) several measures can be undertaken in order to reach agreement and solve problems. An important aspect is a suitable formula<sup>5</sup>. Therefore, it might be essential for reaching agreement in the EU-India FTA to define a new formula where both parties sum up only their most important claims as simplicity and clarity are essential for a formula.

Furthermore, as an overall compromise, the EU could support India through joint venture projects as India is dependent on a sound infrastructure in the field of telecommunications, transport, road systems, power supply to let IT and IT enabled services grow or maintain their status. This could also enhance technology transfer. In order to promote foreign investment, India needs to ameliorate the investment climate further by reducing foreign ownership restrictions, adaptations to competition policy, engage in more trade facilitation and improving transparency of customs procedures and enforcement of the IPR system (Centad et al., 2009, p.303). This way, the “marriage of convenience” could change to a “marriage of purpose” (Kumar Bose, 2008, p.103) which is pressed ahead actively by both negotiators.

Another important issue is society’s approval as according to the analysis conducted society embodies an important level of decision-making.

“Support for the FTA throughout Indian society and its regions is crucial for its success. Therefore, the EU and India need to take care to involve, listen to and react to concerns in society and regions and create ownership among the Indian population in order to achieve sustainable development.” (Centad et al., 2009, p.285)

According to theory there is also the possibility to link or separate issues from the negotiation to create joint gains or to enhance leverage (Sebenius, 2009). In this case tactics like “agenda packaging”, “placement” and “stalking horse” proposals (Hampson & Hart, 1995) can be implemented. For example, the EU and India could examine whether it would be fair if India agrees to stricter IPR protection and the EU

---

<sup>5</sup> shared perception or definition of the conflict that establishes terms of trade, the cognitive structure of referents for a solution, or an applicable criterion of justice

in return lowers its visa requirements. Nevertheless it needs to be kept in mind that according to the SIA (Centad et al., 2009, p.269) an *extended* FTA will bring India and the EU most economic benefits in form of welfare gains, production, international trade, wage increases, and productivity increases. Therefore, it should be paid attention to the fact that not too many aspects are excluded from the FTA, so that a far-reaching harmonisation can take place. However, regarding the amount of money and time both parties have already invested in the negotiations, an FTA pleasing both negotiators, but excluding several issues should be regarded as superior to no agreement at all.

## **5 Conclusion**

The RQ asks for the reasons deterring agreement in the EU-India FTA negotiations. Various – partly very specific - reasons were revealed in the analysis, which are not going to be repeated now. Instead one last approach is going to be introduced: According to Samarasan (1993) effective negotiation is characterised by three attributes legitimacy, feasibility, and efficiency. Legitimacy can be defined as the parties' perception that their right have been respected. Feasibility is the possibility of successful implementation and efficiency is causing minimal transaction costs in order to achieve Pareto-optimality (p.13).

As already mentioned above due to the numerous rounds of negotiations and efforts made by both parties transaction costs are already quite high. Consequently, efficiency is not given in the EU-India FTA negotiations. Furthermore, due to the absence of an omnipotent sanctioning mechanism and the non-existence of a common legislation, feasibility is not given either.

However, the most interesting aspect is legitimacy. Analysis showed that India as well as the EU are “[...] victims of stereotyping and prejudices, which have a strong impact on the actual potential of their interaction.” (Wülbers, 2008, p.127). Both might perceive the other party in a different way than they see themselves. Whereas India is still regarded as a developing country by the EU, it perceives itself as an equal partner and therefore, will not give in to arrangements which are not equally beneficial. It “has acquired the reputation of a hard-line negotiator with a defensive strategy, not easily giving in to trading partner demands” (Ciortuz et al., 2013, p.1) and apparently had success with this strategy regarding the manufacturing and export of GMs. The EU is perceived as a trade fortress by Indian public opinion (Telo,

2008, p.107) which wants to impose its standards on India, while the EU regards all its own actions as beneficial for both parties. Due to these perceptions mutual trust cannot be developed and there is no reason to believe that the other party is going to act properly and respect their counterpart's rights.

Therefore, the only positive aspect of the long-lasting negotiations between the EU and India should be utilised: the possibility to learn. In almost all negotiations, the parties make discoveries over the course of their interactions. During the learning process received information is interpreted and evaluated, and added to the already known in order to learn more about own expectations and preferences, about the opponent's expectations and preferences and possible outcomes. Ideally, the negotiations are accelerated by both parties learning to understand their counterpart and respect his claims. This way "the wheels turn and the vehicle moves" (Hampson & Hart, 1995, p.37) – the negotiations can be pushed to the next stage and come closer to agreement.

## Bibliography

- Bundesregierung (2011). Antwort auf die Kleine Anfrage der Abgeordneten Thilo Hoppe, Uwe Kekeritz, Kerstin Andreae, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN. Drucksache 17/4288.
- Centad (Centre for Trade & Development); Cuts International; Ecorys Research and Consulting (2009). Trade Sustainability Impact Assessment for the FTA between the EU and the Republic of India. TRADE07/C1/C01 – Lot 1. Final Report. Rotterdam.
- Ciortuz, F.; Goddeeris, I.; Natens, B. & Wouters, J. (2013). Working Paper No. 102 – February 2013. Some Critical Issues in EU-India Free Trade Agreement Negotiations. KU Leuven. Leuven Centre for Global Governance Studies. retrieved September 19, 2013, from [https://ghum.kuleuven.be/ggs/publications/working\\_papers/new\\_series/wp101-110/wp102-wouters-goddeeris-natens.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp101-110/wp102-wouters-goddeeris-natens.pdf)
- Claar, S. & Nölke, A. (2010). Regionale Zusammenarbeit. Tiefe Integration. retrieved July 20, 2013, from <http://www.dandc.eu/de/article/obwohl-tiefe-integration-entwicklungslaender-staerken-koennte-ist-diese-strategie-politisch>
- Euractiv (2011). EU-Freihandelsabkommen: Massenproteste in Indien. retrieved August 1, 2013, from <http://www.euractiv.de/globales-europa/artikel/eu-freihandelsabkommen-massenproteste-in-indien-004458>
- Europäisches Parlament (2011). Entschließungsantrag. Entschließung des Europäischen Parlaments vom 11. Mai 2011 zu dem Stand der Verhandlungen über das Freihandelsabkommen EU-Indien. B7-0214/2011. retrieved August 1, 2013, from <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0291&language=DE>
- European Commission (2010). EU-South Korea Free Trade Agreement: A Quick Reading Guide. October 2010. retrieved September 17, 2013, from [http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc\\_145203.pdf](http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf)
- European Commission (2013a). Access to medicines. The EU-India Free Trade Agreement Negotiations. retrieved September 19, 2013, from [http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\\_150989.pdf](http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150989.pdf)
- European Commission (2013b). Generalised Scheme of Preferences (GSP). retrieved September 19, 2013, from <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>
- European Commission (2013c). Goods and Services. retrieved September 19, 2013, from <http://ec.europa.eu/trade/policy/accessing-markets/goods-and-services/>
- European Commission (2013d). The EU's free trade agreements – where are we? retrieved August 1, 2013, from [http://europa.eu/rapid/press-release\\_MEMO-13-282\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-282_en.htm)
- Gándara, P. (2003). Internationale Freihandelsabkommen: eine Analyse der Verhandlungen zwischen Chile und der EU einerseits und Chile und den USA andererseits. Is Free Trade for Sale?



- Ganesh-Kumar, A.; McDonald, S.; Panda, M.; Polaski, S. & Robinson, S. (2008). India's Trade Policy Choices – Managing Diverse Challenges. Carnegie Endowment for International Peace.
- Ganguly, S. (2013). Amul calls for a relook at EU-India Free Trade Agreement. retrieved August 1, 2013, from [http://articles.economictimes.indiatimes.com/2013-03-27/news/38041233\\_1\\_dairy-farmers-eu-india-free-trade-agreement-dairy-products](http://articles.economictimes.indiatimes.com/2013-03-27/news/38041233_1_dairy-farmers-eu-india-free-trade-agreement-dairy-products)
- Gröning, P. (2012). Die politischen und wirtschaftlichen Beziehungen zwischen der Europäischen Union und Indien. Strategische Partnerschaft oder freundliches Desinteresse? Münster. Monsenstein und Vannerdat.
- Hampson, F.; Hart, M. (1995). Multilateral negotiations: Lessons from arms control, trade, and the environment. Johns Hopkins University Press. Baltimore.
- Kumar Bose, S. (2008). The European Union and the Indian Sub-Continent. A Marriage of Convenience. adapted from Wülbbers, S. (2008). EU India relations. A critique. pp. 97-103. Academic Foundation, New Delhi.
- Mauer, S. (2012). Freihandelszone. Hohe Hürden zwischen EU und Indien. retrieved August 1, 2013, from <http://www.handelsblatt.com/politik/international/freihandelszone-hohe-huerden-zwischen-eu-und-indien/6202860.html>
- Narlikar, A. (2010). Introduction, in A. Narlikar: Deadlocks in Multilateral Negotiations. Cambridge. Cambridge University Press.
- Plummer, M. (2007). 'Best Practices' in Regional Trading Agreements: An Application to Asia. The World Economy.
- Putnam, L. (2010). Negotiation and Discourse Analysis. Negotiation Journal. April 2010. pp.145-154.
- Saini, R. (2012). 12th India-EU Summit: An Appraisal of India-EU Relations. Jindal Journal of International Affairs pp.185-190. Jindal Global University.
- Samarasan, D. (1993). Analysis, Modeling, and the Management of International Negotiations. Theory and Decision 34: 275-291, 1993. Kluwer Academic Publishers. The Netherlands.
- Scharpf, F. (1999). Games Real Actors Play. Actor-Centered Institutionalism in Policy Research. Westview Press: Oxford. pp.116-150.
- Sebenius, J.(2009). Negotiation Analysis: From Games to Inferences to Decisions to Deals. Negotiation Journal. Volume 25, Issue 4, pages 449–465, October 2009.
- Sharma, S. (2009). Die Fesseln des EU-Indien-Freihandelsabkommens. Die indische Wirtschaft im Visier der Europäischen Union. Hrsg.: Evangelischer Entwicklungsdienst e.V. – EED & Weltwirtschaft, Ökologie & Entwicklung e.V. – WEED. Bonn & Berlin.
- Singh, K.: India-EU FTA: Where is the Europe's Trade Agenda Headed? retrieved August 1, 2013, from <http://madhyam.org.in/admin/tender/India1.htm>

- Speckmann, G. (2013). Freihandelsabkommen zwischen der EU und Indien. Märkte für Milliarden. Jungle World Nr. 17, 25. April 2013. retrieved August 1, 2013, from <http://jungle-world.com/artikel/2013/17/>
- Spector, B. (1993). Decision Analysis for Practical Negotiation Application. Theory and Decision 34: 183-199, 1993. Kluwer Academic Publishers. Printed in the Netherlands.
- Telo, M. (2008). European Union and India. A Longue Duree Approach to the Evolving Relationship between two Civilian Powers. adapted from: Wülbers, Shazia Aziz (2008): EU India relations. A critique. pp. 105-125. Academic Foundation, New Delhi.
- Wehner, L. (2010). Explaining Failed Free Trade Agreement Negotiations. Cases from Latin America. Nomos. Baden-Baden.
- Wülbers, S.(2008). Identity Configurations in India-Europe Relations. adapted from: Wülbers, Shazia Aziz (2008): EU India relations. A critique. pp. 127-136. Academic Foundation, New Delhi.

## **Declaration of Academic Honesty**

I declare that the attached Bachelor Thesis is wholly my own work, and that no part of it has been copied from any work produced by other person, provided by other students, taken from other persons program or copied from any other source.

I declare that all referenced work from other people have been properly cited and documented on the reference list.

Münster, 20.09.13

---

(Heike Harling)