

## IN BRIEF

# INDIA-UK FREE TRADE AGREEMENT: TRADE, TECH AND PROCUREMENT IN TRANSITION



### Introduction

On September 20, 2004, India and the United Kingdom (UK) established the Joint Economic and Trade Committee (JETCO) to develop strategic economic relations with a meeting of the said committee taking place annually since then<sup>1</sup>. In the 15<sup>th</sup> JETCO meeting held on January 13, 2022, both countries initiated the discussion on a UK-India Free Trade Agreement (FTA).<sup>2</sup>

Pursuant to the above, on May 6, 2025, India and the UK concluded their negotiations on the historic FTA, marking a significant milestone in this economic partnership after 14 negotiation rounds over 3 years<sup>3</sup>. The FTA is expected to have over 27 chapters covering various aspects of trade, investment, services and regulatory cooperation spanning across sectors like textiles, marine products, sports, automobile, organic chemicals, etc. For India, the FTA promises enhanced market access, economic growth and deeper integration into global value chains.

Based on the UK Government's summary<sup>4</sup> of the proposed FTA (UK Summary) the press release dated May 6, 2025, issued by the Indian Government (Press Release), states "we aim to analyze certain critical issues in relation to the FTA

that may require a closer review".

While it is understood that the FTA is yet to be ratified and a final version is yet to be made available in the public domain, below is a preliminary analysis of some of the critical issues.

### Key Issues Warranting Closer Review

An analysis of some of the issues pertaining to the proposed FTA which would be critical from a trade and technology perspective include:

#### A. Carbon Border Adjustment Mechanism (CBAM): A Looming Tariff Barrier

While the FTA marks a significant milestone in liberalizing bilateral trade, a critical gap remains in its treatment of climate-linked tariff barriers, particularly the UK's adoption of CBAM, which is slated for implementation by 2027<sup>5</sup>.

Originally introduced by the European Union (EU) in 2023 and swiftly mirrored by the UK, CBAM is designed to impose carbon taxes on carbon-intensive imports such as iron, steel, aluminum, cement, fertilizers, and hydrogen. The stated objective is to prevent carbon leakage whereby domestic industries face unfair competition from countries with less stringent emissions regulations while reinforcing the UK's own decarbonization goals. For Indian exporters, however, this mechanism could become a significant trade barrier, undermining market access and competitiveness in critical industrial sectors.

Despite the high relevance of CBAM to India's export interests, the UK Summary and the Press Release contain no provision addressing this looming trade barrier. Chapter 4.9 of the UK Summary, however, titled 'Environment', states that parties should "*strive not to waive or derogate from environmental laws to encourage bilateral trade or investment*" a clause that, while broadly framed, implicitly reaffirms the UK's right to maintain or introduce mechanisms like CBAM.

Once CBAM is operational, the products of the UK will continue to enjoy

<sup>1</sup> <https://commerce.gov.in/wp-content/uploads/2020/09/Agreement-between-India-and-United-Kingdom-for-establishment-of-a-Joint-Economic-and-Trade-Committee.pdf>

<sup>2</sup> <https://www.pib.gov.in/newsite/erecontent.aspx?relid=6526>

<sup>3</sup> <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2127321>

<sup>4</sup> [https://www.gov.uk/government/publications/uk-india-trade-deal-conclusion-](https://www.gov.uk/government/publications/uk-india-trade-deal-conclusion-summary/uk-india-trade-deal-conclusion-summary#fn:1)

[summary/uk-india-trade-deal-conclusion-summary#fn:1](https://www.gov.uk/government/publications/uk-india-trade-deal-conclusion-summary/uk-india-trade-deal-conclusion-summary#fn:1)

<sup>5</sup> <https://www.gov.uk/government/consultations/addressing-carbon-leakage-risk-to-support-decarbonisation/outcome/factsheet-uk-carbon-border-adjustment-mechanism>

duty-free access to the Indian market under the FTA. In contrast, Indian exports will be subject to CBAM-linked tariff which dramatically tilts the balance. In the absence of a clear exemption from CBAM, transitional mechanism or adjustment support for developing countries, Indian businesses might face substantial compliance costs. These would include the burden of reporting embedded emissions, investing in carbon reduction technologies, and navigating complex regulatory process costs that may prove prohibitive for many exporters, especially Micro, Small and Medium Enterprises (MSME).

As however mentioned in the UK Summary, there will be a ‘bilateral safeguard’ mechanism in the FTA. Pursuant to this, both the UK and India will have the right to temporarily increase tariffs or suspend respective concessions, in case the tariff exemptions provided by the FTA cause a surge of imports and threatens serious injury to the domestic industry/businesses. This ‘bilateral safeguard’ mechanism should be carefully captured in the FTA such that Indian Government may use this bilateral safeguard to rebalance the trade and protect the interest of Indian entities.

It is recommended that detailed provisions related to CBAM be addressed in the FTA to avoid any future disputes.

#### B. Government Procurement: A Cautious Opening with Broad Implications

A standout element of the proposed FTA is the inclusion of the Government Procurement Chapter, a second in India’s trade architecture. Historically, India has shielded its vast public procurement market from foreign competition and is not a signatory to World Trade Organisation’s (WTO) Government Procurement Agreement<sup>6</sup>, which aims to create open and transparent procurement regimes among member countries.

This makes the FTA only the second instance, after the India-UAE Comprehensive Economic Partnership Agreement (CEPA)<sup>7</sup> in 2022, where India has partially opened its public procurement sector to a foreign partner. Under the CEPA, India granted limited access to UAE entities, carefully excluding sensitive sectors such as defence, railways, and atomic energy, and omitting all state-level procurement. Importantly, India retained the flexibility to preserve local preference policies, impose value thresholds, and protect MSMEs and strategic industries. This cautious approach may serve as a model for the FTA as well.

As per the UK Summary, UK companies will now be eligible to compete for around 40,000 tenders annually and UK firms will also be granted free access to India’s e-procurement portal, simplifying participation in Indian Government procurement. In such cases, the procuring entity<sup>8</sup> purchases

goods and services from external parties by issuing tenders against which interested third parties submit their applications on the said e-procurement portal. Post the acceptance of offers from these external parties, the tender is awarded to the most suitable party based on its internal policy.

As per the Public Procurement (Preference to Make in India) Order, 2017 dated June 15, 2017<sup>9</sup>, issued by Government of India, as amended from time to time, Class-I Local Supplier means a supplier or service provider, whose goods, services or work offered for procurement, have a minimum of 50% local content<sup>10</sup>. Class-II Local Supplier means a supplier or service provider, whose goods, services or work offered for procurement, have a minimum of 20% local content<sup>11</sup>. In terms of the said notification, Class-I Local Supplier’ is given preference over Class-II Local Supplier as well as Non-Local Supplier. As suppliers from outside of India fall under the category of Non-Local Supplier<sup>12</sup> and therefore, not given preference during the tender evaluation and allotment process.

In terms of the UK Summary, however, a special carve out is being made for UK-based suppliers. UK suppliers with 20% UK-origin content will now qualify as a ‘Class-II Local Supplier’ under the said notification, a classification previously reserved for only suppliers providing Indian origin content. This classification allows them to compete in tenders that offer preferential treatment to local players. The existing preference however for ‘Class I Local Suppliers’, offering 50% or more Indian content, may remain in place.

This shift may raise some concerns for Indian suppliers as the entry of experienced, capital rich foreign competitors equipped with global tendering expertise and technological advantages might have a competitive edge over Indian suppliers particularly in high-value contracts. Managed prudently, however, this could serve as a catalyst for modernizing India’s procurement framework, fostering greater transparency, competition and cost efficiency.

It is to be noted that while UK entities are being granted relatively broad access to Indian Government procurement, Indian entities may find it difficult to penetrate the UK’s decentralized, standards-heavy procurement ecosystem. Therefore, robust reciprocal commitments should be negotiated and captured in detail in the final FTA.

Further, drawing from the India-UAE experience<sup>13</sup>, it could be inferred that India is likely to retain important safeguards in the FTA, including:

- value thresholds below which foreign bidders are ineligible;
- retention of domestic supplier preferences, especially for MSMEs and startups;

dated May 13, 2021, P-45021/2/2017-PP (BE-II)-Part(4)Vol.II dated July 19, 2024.

<sup>10</sup> Local content means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

<sup>11</sup> Ibid.

<sup>12</sup> Non - Local supplier means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for ‘Class-II local supplier’.

<sup>13</sup> <https://commerce.gov.in/wp-content/uploads/2022/03/Chapter-10.pdf>

<sup>6</sup> [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_app\\_agree\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm)

<sup>7</sup> <https://www.commerce.gov.in/international-trade/trade-agreements/comprehensive-economic-partnership-agreement-between-the-government-of-the-republic-of-india-and-the-government-of-the-united-arab-emirates-uae/>

<sup>8</sup> Procuring entity means a Ministry of department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act, 2013.

<sup>9</sup> Issues vide Order No. P-45021/2/2017-B.E.-II dated June 15, 2017 and amended by Order No. P-45021/2/2017-PP (BE-II) dated May 28, 2018, P-45021/2/2017-PP (BE-II) dated May 28, 2019, P-45021/2/2017-PP (BE-II) dated June 4, 2020, P-45021/2/2017-PP (BE-II) dated September 16, 2020, P-45021/2/2017-PP (BE-II)

- the right to amend or exclude certain entities; and
- the flexibility to maintain local content and technology transfer requirements where strategically necessary.

With the precedent of the CEPA, India's commitment to a cautious, calibrated approach will be tested not just in the UK-FTA, but in the broader rebalancing of its trade relationships with other countries going forward.

### C. Digital Trade: Source Code Restrictions

India has been cautious about its engagement with digital trade in its Free Trade Agreements. Of the 19 free and preferential trade agreements<sup>14</sup> signed as on July 2022, only 2 of such agreements, with Singapore and UAE, contain chapters specifically focused on digital trade. The proposed FTA with the UK marks a significant departure, introducing a more expansive and binding digital trade framework. Provisions on cross-border data flows, prohibition of customs duties on electronic transmissions, and most notably, restrictions on source code access, represent a deepening of India's digital trade obligations. These commitments under the FTA might have far-reaching implications for India's digital governance policies and are likely to influence its ongoing negotiations with the EU and the United States, both of which place heavy emphasis on digital trade norms.

One of the most debated elements of the digital trade chapter is the protection of UK entities from forced transfer of their source code. As per the explanation (v) of Section 43 of the Information Technology Act, 2000, computer source code means "*the listing of programme, computer commands, design and layout and programme analysis of computer resource in any form*". Source code is a set of instructions codified for any computer programme/ software and can vary from simple code like sentences to very complex code.

As stated earlier, the UK Summary posits that UK entities will be protected from forced transfer of their source code. If enforced, this would constrain Indian authorities, regulators, or third parties from requesting access to source code including that used in software and proprietary AI systems as a condition for market entry or regulatory approval, thereby limiting India's ability to scrutinize imported digital technologies.

India has already recognized the challenges of unregulated digital imports. For example, the Indian Telecom Security Assurance Requirements (ITSAR)<sup>15</sup> mandate source code disclosures for imported telecom equipment, citing national security and data protection concerns. Similarly, the National Strategy for AI (2018) underscores the need for transparency, accountability, and auditability in AI systems, highlighting the importance of understanding the internal logic and functioning of these technologies before deployment.

While this protection from transfer of source codes will attract more UK entities to establish their businesses in India, it might be difficult for Indian Government authorities to ensure technological accountability. Retaining the right to scrutinize foreign technologies could be extremely critical especially as India moves to digitize its economy and scale AI adoption

across sectors. Therefore, it would be interesting to observe how the final version of the FTA addresses these issues to protect the interest of both owners of source code as well as concerned people/ consumers.

## Conclusion

For the first time an Indian free trade agreement has been negotiated on such wide array of themes like labour rights, environmental protection, consumer welfare, gender equity and anti-corruption, etc. This reflects a maturing and confident economic identity, one that embraces global standards of transparency, sustainability and inclusivity. While there are still grounds to cover, this shift signals a promising future where India's trade policies are not only drive growth but also uphold shared global values. It reflects India's growing influence in global trade, offering significant opportunities for sectors such as manufacturing, services and professional mobility.

As we head towards finalization of the FTA, the understanding between India and the UK on key concerning issues like CBAM, Government procurement and digital trade need to be adequately captured in the final FTA along with clear rights and responsibilities of both the parties to protect the interest of both the countries. Effective implementation, coupled with proactive policy adjustments, will be crucial for harnessing the FTA's complete benefits.

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### ***This newsletter has been contributed by:***

Prateek Bedi, Partner, Rishabh Halwai, Senior Associate and Anukriti Prakash, Associate, Dua Associates, Gurgaon.

### ***For further information contact:***

Prateek Bedi, Partner, Dua Associates, Gurgaon  
Email: [prateek@duaassociates.com](mailto:prateek@duaassociates.com)

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<sup>14</sup> <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1843902>

<sup>15</sup> <https://nccs.gov.in/public/itsar/ITSAR203082209.pdf>