

India, EU disagree over dispute settlement in investment pact

AT LOGGERHEADS. New Delhi insists on 'exhaustion of local remedies' clause but Brussels wants 'investor court system' model of dispute resolution

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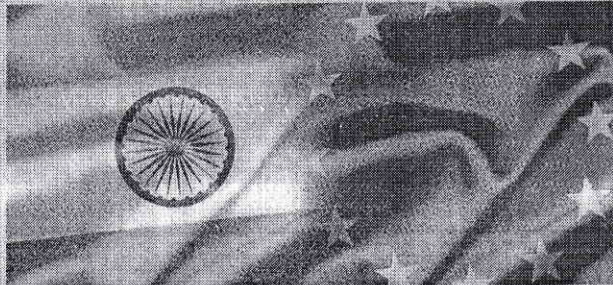
India and the EU are at loggerheads over dispute settlement under the bilateral investment protection agreement being negotiated parallelly with the free trade agreement.

New Delhi is opposed to the EU's proposal for an investor court model while Brussels is not comfortable with the exhaustion of local remedies clause in India's model BIT, sources tracking the matter have said.

"According to the EU's proposal, an independent and international panel or court should be permanently appointed to decide on an investment-related dispute for which both sides would need to pay. India is not prepared to give its consent to such a model," an official told *businessline*.

ARBITRATION MODEL

The EU, on the other hand, is opposed to the arbitration model under the model BIT drafted by the Finance Ministry to check the rising number of investment disputes filed by foreign companies against the Indian government. "The EU is especially opposed to the exhaustion of local remedies clause which requires an investor to first



KEY PARTNER. The EU is India's third largest trading partner, accounting for €88 billion worth of trade in goods in 2021 or 10.8 per cent of total Indian trade

submit its claim before the relevant domestic courts or administrative bodies and exhaust all judicial and administrative remedies for at least five years before initiating international arbitration proceedings," the official said.

It is important for the two sides to resolve their differences and arrive at a consensus on investment protection as the India-EU FTA has to be concluded together with the investment protection agreement.

India had discontinued almost all its Bilateral Investment Treaties (BIT), including those with EU countries, between 2016 and 2019, as the government faced several arbitration claims from investors due to the "excessively" investor-friendly dispensation under the Investor State Dispute Settlement (ISDS) treaties.

A big blow to India was losing a claim in 2011 brought by White Industries of Australia alleging excessive judicial delays in enforcing a commercial arbitration award through the Indian courts.

According to Investment Duty Settlement Navigator of UNCTAD, as many as 29 treaty-based ISDS cases have been filed against the Indian government by investors by 2022-end.

The new model BIT was hence framed by the Finance Ministry in 2016, to be more protectionist and check the growing number of cases against the government. However, it has had few takers so far. This is mostly due to the proposed arbitration mechanism, the exclusions and the exhaustion of local remedies clause.

"While New Delhi is prepared to do some tinkering

in the model BIT's arbitration structure to take care of EU's concerns related to effectiveness and speed of the judicial process in India, it cannot give up on the exhaustion of local remedies clause. India has an independent judiciary and that cannot be questioned," the source said.

DISPUTE RESOLUTION

The EU, on the other hand, is insistent on the 'Investor Court System' model of dispute resolution as it has already adopted this model in the four trade and investment agreement it has concluded in the recent years with Canada, Singapore, Vietnam and Mexico.

The EU is India's third largest trading partner, accounting for €88 billion worth of trade in goods in 2021 or 10.8 per cent of total Indian trade, after the US (11.6 per cent) and China (11.4 per cent), per EU figures. The EU is the second-largest destination for Indian exports (14.9 per cent of the total) after the US (18.1 per cent), while China only ranks fourth (5.8 per cent).

India is the EU's 10th largest trading partner, accounting for 2.1 per cent of EU total trade in goods in 2021, well behind China (16.2 per cent), the US (14.7 per cent) or the UK (10 per cent).