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Negotiating with the EU and the UK Post Brexit: Opportunities and Challenges for India

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Brexit, termed as the prolonged and unhappy divorce of the United Kingdom from Europe, was a game changer for India/EU/UK relations. Brexit represents a classic case study of contemporary challenges that it poses to liberal democracies. Was it inevitable? How does it impact India?

The European dream, rising from the ashes of World War II, was intended to develop a liberal welfare state, where citizens would enjoy human rights and fundamental freedoms guaranteed by the all powerful European Court of Justice. UK was an important and valued partner of that alliance. As a Permanent Member of the Security Council, UK strengthened the EU with its presence. It was the Lisbon Treaty, in its Article 50, which gave for the first time to EU Member States the explicit legal right to leave the EU. The treaty is a unique international legal instrument because of the manner in which it has skilfully divided national sovereignty between Member States and the Commission. The different interpretation of these shared competencies by Member States also led to the forces propelling Brexit and the movement against globalisation within Europe.

Five centuries ago, King Henry VIII, impatient with the demands of the papacy and refusal to annul his first marriage, broke with Rome and established the Church of England. That step changed Rome forever and established today's roughly 85 million Anglicans. That was England's first divorce from Europe and the European empire. This divorce was more complicated. The origins of English euro-scepticism, it has often been stated, originated with the Protestant Reformation. Historical parallels can sometimes be misleading but the echoes from the past can resonate in the future. Analysts say that "it is caused by the most pernicious and debilitating Little English drug called nostalgia". Nostalgia for empire and the past remain the ideological heart of the passionate debate for separation from Europe. My perception, reflected in my book 'India and EU: An Insider View' is that this complex divorce of Britain from Europe is deeply rooted in conservative, middle class, English euro-scepticism. Brexit ultimately represents the rejection of globalisation and migration and the natural opposition of the English to a bigger outside power, in this instance the EU, the Commission and the Brussels 'bureaucracy'.

The result of Brexit was like a seismic upheaval. It split the United Kingdom between England and Wales on one hand and Scotland and Northern Ireland on the other. It brought to the forefront the possibility of another Scottish referendum, this time for separation from United Kingdom. It sharply demonstrated the divide between upwardly mobile, well educated, multicultural English youth who voted to remain, especially in the city of London and the conservative, white, often racist, older and aging sections of English society who equated all of UK's ills with EU membership.

In the context of domestic politics, Brexit effectively ended the careers of two Prime Ministers, Cameron and May. The extension agreed to by the EU was till 31st October '19, with the option of Britain leaving earlier if the deal was agreed to in Parliament. The onus was on Britain to find a solution which would not amend the fundamental principles of the original agreement negotiated over months with the EU, including the 'Backstop' and the EU's 4 principles. This deadline was repeatedly extended since the option of UK leaving without a deal would have had a devastating impact on world trade. Boris Johnson, May's successor, vowed to take UK out of the EU by 31st October 2019, with or without a deal. The rest is history.

The Deal and its Implications

Following the adoption of the 'Withdrawal Agreement Bill' (WAB) by the House of Commons on 9th January 2020, there was an impasse for several months, which was rendered more complicated by the Covid lockdown globally. The UK voted to leave the EU in 2016 and officially left the trading bloc – its closest and biggest trading partner - on 31st January 2020. Both sides agreed to maintain status quo on trade issues until 31st December 2020, to negotiate and finalize a new trade deal. The deal was agreed to on Christmas Eve, 24th December 2020. What changed on 1st January 2021? The deal contains new rules on how the UK and EU will live, work and trade together. Both sides had to agree to some shared rules and standards on workers' rights, as well as many social and environmental regulations.

There are key gaps in the 'Christmas Eve deal', not just in financial services and data sharing but other critical areas of cooperation, including foreign and defence policy. Financial services and energy await future regulatory decisions, adding to the uncertainty. The eagerly awaited agreement on fishing lasts only five years. Freedom to work and live between the UK and the EU is terminated. From 2021, UK nationals will need a visa if they want to stay in the EU more than 90 days in a 180-day period. Northern Ireland will continue to follow many of the EU's rules in order to avoid a hardening of its border with the Republic of Ireland. This will mean however that new checks will be introduced on goods entering Northern Ireland from the rest of the UK, in effect allowing a new border between Northern Ireland and the rest of the UK. This has angered the Unionist community, especially the Democratic Unionist Party (DUP).

UK is free to set its own trade policy and can negotiate deals with other countries. Talks are being held with the US, Australia and New Zealand - countries that currently do not have free trade deals with the EU. There are intense ongoing discussions with India. While the UK and EU have agreed to some identical rules for the present, they do not need to be identical in the future. If one side takes exception to the changes, they can trigger a dispute, which could ultimately lead to tariffs (charges on imports) being imposed on some goods in the future. Threats of disputes are expected to be a new constant and irritant in UK-EU relations.

The 'EU UK Cooperation Trade Agreement' was negotiated in nine months. UK was forced to concede on the core demands of the EU. The Agreement avoids a hard border with Republic of Ireland, which was at the heart of the dispute. It preserves the "Four Freedoms" of its single market on which no concession could be given to the UK: free movement of goods, services, capital, and people. On the other hand, UK achieved "zero tariff, zero quota" goods trade with its main trading partner and avoids any role for the European Court of Justice in settling trade disputes, a core

issue for the British negotiating team. On fisheries, another important potential sticking point, the EU agreed to give up 25 percent of its existing quotas in UK waters over a transition period of five and a half years, after which there will be annual renegotiations.

The main sticking point—how to guarantee a level playing field in future trade relations—was resolved by the principle of “managed divergence.” That implies that both sides reserve the right to retaliate, after a judicial review process, in case one party believes the other side has gained an unfair competitive advantage. As a result, from 1st January 2021, trade in goods should have become simpler, since the UK has left the EU customs union and single market. Although there will not be any tariffs levied or restrictive quotas imposed, there will be a whole series of new customs and regulatory checks, including rules of origin and stringent local content requirements. On the negative side, this will add to red tape, slowing down the overall process, and supply chains will time to adjust. Even more important, however, is the likely negative effect on trade in services, where the UK has a comparative advantage, since there will no longer be automatic recognition of professional qualifications and licenses. Services make up close to 80 percent of the UK economy.

As a result of Brexit, UK could become significantly more decentralised or even broken up, given the fissiparous forces it has unleashed. The Agreement has exacerbated tensions over UK’s territorial integrity, particularly Northern Ireland and Scotland. Customs checks will take place in the Irish Sea rather than on the land border between Northern Ireland and the Republic of Ireland. This means that Northern Ireland de facto remains within the EU regulatory orbit and will over time diverge from the rest of the UK. Nationalist Parties Sinn Fein and the Social Democratic and Labour Party won 9 seats in UK’s 2019 General Elections. This has given rise to speculation on how soon a referendum might be held on Ireland’s reunification.

It has also reinvigorated the dream of Scottish independence. With 62 per cent of Scots voting to remain within the EU in 2016, the hope of Nicola Sturgeon’s Scottish National Party (SNP) has been to regain its absolute majority in the Scottish Parliament during regional elections in May 2021 and then hold another independence referendum shortly thereafter. Opinion polls in Scotland have shown a solid majority in favour of independence, with large numbers of younger voters overwhelmingly in favour. PM Johnson has so far rejected the request for another referendum. This matter will become of pressing concern after the Scottish elections.

Impact of Brexit on India-UK Relations

Contrary to popular perception within the EU, encouraged by the UK, India never looked at its relations with the EU through the prism of its bilateral relationship with its former colonizer, the United Kingdom. Similarly, India always had a robust bilateral relationship with UK. There is no doubt that Brexit is a challenge. Whether it is an opportunity remains to be seen. What are the stakes for India? The EU is India’s largest trading partner, accounting for around 13% of India’s total trade in goods. India contributes around 2.3% of total EU trade and is the EU’s ninth biggest trade partner. With €91 billion worth of India EU trade and €19.4 billion of India UK trade at stake, all partners needed to think through this issue carefully in the business and commercial context.

Services are also an important component of EU-India trade. Eurostat data indicates that Indian services exports to the EU were €16.6 billion in 2018, while imports were €17.1 billion. The sector has also attracted foreign direct investment from the EU, including Germany, the Netherlands, France, Italy and Belgium, as well as the UK. India enjoys a positive trade surplus of around US \$ 3.64 billion in 2015 with the UK. Exports to UK increased by 13.6 per cent in FY 2017-18. Trade was impacted by COVID-19. Imports from UK have increased by 31.2%. Trade balance is in favour of India in tune of 4.83 billion USD. The UK is currently the sixth largest investor in India, with a cumulative inflow (2000–2020) estimated at USD 29.5 billion, which represents about 6% of the total FDI into India.

The UK pre-Brexit had been seen by Indian firms as a gateway to the European Union. A common market ensured these companies barrier-free access to the EU countries. Brexit has inevitable impact on more than 800 Indian companies in UK in crucial sectors of British economy reportedly generating more than 110,000 jobs as well as flows of tourism and business from India to UK. More than half of them work in just five companies from the Tata group, one of the largest foreign investors in Britain. There are high end companies such as Jaguar, under Indian ownership, which risk being adversely affected. A common market has so far ensured these companies barrier-free access to the EU countries. Some crucial sectors of the Indian economy likely to be affected are automobiles, auto-components, pharmaceuticals, gems and jewellery, education and IT enabled services. FICCI has noted that many of these sectors would be vulnerable to changes in demand and currency values. Some UK based Indian companies are have made back up plans to move operations to Amsterdam or Dublin, both English speaking hubs but with the risk of increased costs in infrastructure and manpower.

Future Trade Arrangements Post-Brexit

Indian economists are of the view that Brexit is an opportunity for India to reset the legal terms of its trade with the UK and the EU at the multilateral level as well as through free trade agreements. The bottom line is how should India respond to Brexit so as to maximize opportunities for its goods and services sectors post Brexit?

These economists are of the view that India should re-negotiate with the UK and with the EU. The World Trade Organisation (WTO) Schedules of Concessions, for both goods and services, should resume its BTIA discussions with the EU and should launch Free Trade Agreement (FTA) talks with the UK immediately. In any trade deal with UK, India would insist on inclusion of Mode 4 (Mode 4 covers temporary movement of natural persons). The UK would need to demonstrate flexibility on Mode 4. Indian trade policy remains anchored in demands for what General Agreement on Trade in Services (GATS) defines as 'Mode IV' delivery of services, or in common parlance, temporary migration of business professionals.

Instead, UK negotiators have thus far offered Modes I, II and III as more acceptable than Mode IV. Mode I (cross-border supply) relates to outsourcing such as Indian professionals delivering services from their offices in Mumbai to patients and clients in Manchester via the internet. Mode II (consumption abroad) relates to travel to India for top-quality medical treatment and first-class engineering consultancy advice. Mode III (foreign direct investment) is welcome since it involves Indian companies investing in the UK and employing British citizens. India however will continue to insist on Mode IV in any trade agreement with UK. UK economy,

without the rest of the EU, represents a middle level economy. For the deal to be attractive to India, with the EU now a much larger trading partner, UK would need to make some concessions. UK is overwhelmingly a service based economy. India, with about 60 per cent of its economic activity accounted for by services, is not far behind.

The UK is trying to argue that its 'Global Tariff', which replaced EU's common external tariffs as the Brexit transition process ended on December 31st 2020, could be twice as beneficial for Indian exports as the EU's existing rules. Elizabeth Truss, UK Secretary of State for International Trade while speaking at a virtual session on 'Post-Brexit UK and India' at a recent CII Summit to convince a sceptical audience argued that UK's improved immigration standards and new point based immigration system coming in place now will make it easier for skilled workers from India to migrate to the UK for work purposes.

India's Minister Goyal was non-committal, hoping that the early harvest proposition of India, within the framework of a larger FTA, would be accepted by the UK, which would help the countries grab the low hanging fruits. He said: "We are looking at possibilities of trade in goods and services and investments being apart of our enhanced trade partnership. We are looking at an option to see if it can be converted into an early harvest agreement". India's implicit message was clear. To conclude a forward looking FTA with UK at this juncture looks difficult. The 'low hanging fruits' scenario seems more realistic.

Impact of Brexit on India EU Relations

Brexit has not impacted these relations in any significant way. A Summit is due in Portugal in May 2021. The question is whether it has impacted the stalled negotiations on the BTIA. There is agreement that while the India UK trade relationship has dwindled over the past few years, the India EU trade has been booming. Earlier 75 per cent of Indian investments in the EU went to the UK. Presently, only half of Indian investments go to UK. During the Brexit process, Veronica Cody, Head of Regional Affairs including South Asia at the EEAS noted that even without UK: "The EU is committed to strike a trade deal with India."

Cody underlined that Brexit was unlikely to change anything in the India EU context, pointing out: "India remains a vital partner for us and the EU is also a vital market for India. The EU is the second largest economic single market and the largest export market for countries like India, even after Brexit." Some have argued that the EU might find it easier to negotiate the deal without the UK. Frederic Grare, former Director of the Centre for Analysis, Planning and Strategy at the Quai d'Orsay, Paris, was of the view that Brexit would make it easier for India to get a better deal from the EU as it would result in a consolidation of the French-German axis within the EU which would be to India's benefit.

Gareth Price from Chatham House pertinently noted: "One of the things blocking the negotiations is actually mobility of Indians and one of the countries opposed to it is the UK. Logic suggests that if the UK left, one of the impediments to the BTIA would be removed." Despite Brexit, trade arrangements with EU and the BTIA are problematic. India needs to overcome significant challenges in the area of trade policy before a BTIA with the EU can be concluded. Given the lack of competitiveness of India's manufacturing sector and the lack of innovation and investment in sectors such as textiles, garments, and pharmaceuticals, there is an absence of enthusiasm

for adopting a more activist trade policy posture within the Government, think tanks and the trade policy community. Doubts about the attractiveness of international trade agreements and FTAs grew stronger when global concerns over immigration caused the EU to reject India's demand for the free movement of professionals (Mode 4).

Another major handicap is the lack of understanding among Indian policymakers and its trade negotiators on the benefits of a dynamic trade policy and an absence of analysis of the obstacles to economic development resulting from an unevenly developed manufacturing sector as well as unsatisfactory results from regional trade agreements. These in turn results in constrained relationships with its main trading partners. The stakes are very high, with European investors eager to enter the Indian market and India's new global companies setting up shop across Europe. EU negotiators are now reluctantly coming around to the idea of a limited deal, based on the low hanging fruits concept. Perhaps it is time for India to re-evaluate its approach to Free Trade Agreements. Trade contributes to prosperity but challenges do need to be managed not avoided. Minister Hardeep Puri had written in February 2017: "It is axiomatic that if an FTA results in trade expansion but is in the interest of one partner, it is a badly negotiated agreement. A series of badly negotiated agreements should result in the sacking of trade negotiators, not a turn away from free trade".

Conclusion

The developments around Brexit demonstrate the fragility of the established democratic order when faced with challenges resulting from globalisation, new technology and social media. A new world order is emerging. It should remain anchored to the principles of liberalism, democracy, tolerance and multiculturalism. Brexit demonstrates the danger of populism and populist policies endangering the unity of a nation. Brexit threatens the fragile peace in Northern Ireland. The hard core of Brexiteers were willing to gamble with the unity of Britain and to risk losing Scotland and Northern Ireland in their quest to be rid of Europe once and for all.

Time would appear to be of the essence. The clock is ticking for UK whose policy makers remain blissfully unaware that Brexit has unleashed fissiparous forces which threaten its territorial integrity. Hegel had said: "We learn from history that we learn nothing from history." As separatist movements from Catalonia to Kosovo simmer across the continent, U.K. would be wise to take caution. Politically, Britain may no longer be part of Europe, but neither is it immune from the currents reshaping it.

Boris Johnson's visit to India when re-scheduled would be an important step in giving a new direction to this important relationship. Policy makers in UK who are so critical of India would do well to remember that a reinvigorated partnership with India, the former jewel in Victoria's crown, might yet and ironically keep those divisive forces in check. Then only would the wheel of 170 years of the colonial yoke be complete and history could write the final footnote. The journey to Brexit, the divorce, is now complete. The consequences are awaited with trepidation. This is a narrative still in the making. How will it translate for the India/UK/EU relationship? A game changer it is but the jury is still out on whether Brexit is a win-win for India or not.