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Research article

# Examining the Role of Trust and Ideological Disparities in India-EU Negotiations: The Case of the Bilateral Trade and Investment Agreement (BTIA)

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## Abstract

*Negotiations between India and the EU for a Broad-Based Bilateral Trade and Investment Agreement (BTIA) have proven to be a complex and protracted affair. Despite both parties realising the importance of a trade agreement, neither of them intend to provide any concessions to the other party. Moreover, both parties, even after adopting different bargaining techniques, have been unable to come to an agreement. It is for this reason that scholarly interest in the study of the BTIA negotiations has grown dramatically over the last decade. Despite the interest, extant reviews have focused predominantly on the ex post economic benefits of the agreement. Rarely has the role of trust between the EU and India been analysed by the scholars. The primary aim of this article is to conceptualise the role of trust between the EU and India and summarise the bargaining strategies used previously by the parties. On the point of trust, the authors would argue that the signals provided by the leaders of India and the EU have helped in creating trust, which would in turn assist in the negotiations*

of the BTIA. The authors demonstrate that the presence of mere calculus-based trust led to a breakdown of the BTIA negotiations. Thereafter, attempts have been made at elite, organisational and societal levels to move towards an identification-based trust. The authors conclude that although the process of transitioning from calculus-based trust to identification-based trust is slow and costly, the benefits of the latter would not only result in the possible culmination of the BTIA, but also result in the creation of a long-term strategic partnership.

**Keywords:** negotiations, trust, BTIA, EU, India, bargaining

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## **Introduction**

India and the EU have been keen on developing a trade partnership for years. The aim of the parties is to create a free-trade area between them allowing for liberalisation of goods and services.<sup>1</sup> To realise this, the parties aimed at having a comprehensive agreement covering aspects of trade and investment. For this reason, in 2005, the parties set up a High Level Trade Group (HLTG) to provide recommendations and analyse the viability of an agreement.<sup>2</sup> Pursuant to the recommendations of the HLTG, negotiations on the agreement commenced in the year 2006. Both India and the EU thought the parties could combine the negotiations pertaining to trade and investment by aiming for a Broad-Based Bilateral Trade and Investment Agreement (BTIA). They also recognised the importance of the early conclusion of the BTIA and expressed a commitment to achieving a balanced outcome. This did not happen; primarily, issues pertaining to liberalisation of goods and services, dispute resolution and investment clauses and the nature of the agreement affected the negotiations.<sup>3</sup> Additionally, changing domestic and international circumstances affected the BTIA negotiations.<sup>4</sup> Eventually, the negotiations came to a standstill during the *Enrica Lexie* case, where two Italian marines were alleged to have committed murder under the Indian Penal Code. This case resulted in the cancellation of the annual India-EU Summits, and subsequently impacted the BTIA negotiations.<sup>5</sup> After the brief hiatus, the summits resumed in 2016 but talks on the BTIA were slow.

In 2019, the Prime Minister of India, Narendra Modi (PM Modi) had a landslide second-term victory and, subsequently, the President of the European Commission (EC) Ursula Von der Leyen too recorded a historic win as the first female President of the EC. Prime Minister Modi was quick to congratulate the newly elected President of the EC, and the gesture was reciprocated when he was invited to Brussels for the India-EU Summit.<sup>6</sup> Initially, the summit was supposed to take place on 13 March 2020; however, owing to the COVID-19 pan-

demic, the meeting was mutually postponed to July 2020.<sup>7</sup> Eventually, the 15<sup>th</sup> India-EU Summit took place on 15 July 2020 through videoconferencing where India was represented by PM Modi and the EU was represented by Ursula Von der Leyen and Mr. Charles Michel, President of the European Council.<sup>8</sup> During the summit, the parties decided to reinforce foreign policy, increase partnership, promote multilateralism and enhance shared values. Since the COVID-19 pandemic was a major concern, the agenda during the summit concentrated on issues concerning the pandemic. Nonetheless, PM Modi was able to clarify his government's position on India's Citizenship Amendment Act, 2019 (CAA), which provided fast-track citizenship to immigrants of certain communities fleeing persecution to the exclusion of others.<sup>9</sup> The CAA had caught the ire of the European Parliamentarians as they made a motion for resolution against the Act.<sup>10</sup> After the brief discussions on the CAA during the summit, Mr. Charles Michel noted that India and the EU would continue to exchange best practices in their efforts towards safeguarding human rights.<sup>11</sup>

The 15<sup>th</sup> India-EU Summit helped in deepening the political and socio-economic dimension of the India-EU relationship. Importantly, the invitation by Ms. Ursula Von der Leyen for a summit signalled to Indian leaders that the EU realises the central role India plays in Asia's development. The said invitation can be interpreted as a signal by the EU that it is ready to partner with India. Additionally, several meetings before the summit show that the parties were keen on creating a bond between themselves.<sup>12</sup> These signals are important as they show an intent to build a strategic partnership and a deeper bond, eventually impacting the BTIA negotiations. The impact of these signals was evident after a year during the 16<sup>th</sup> India-EU Summit, which was held in a hybrid format on 8 May 2021.<sup>13</sup> Although issues concerning the pandemic held the highest priority, representatives from both parties agreed to resume talks on the BTIA. Significantly, the representatives agreed to set up an EU-India Senior Officials' Dialogue to strengthen cooperation on trade issues, specifically related to the WTO.

Signals from State leaders help in reaching a specific kind of trust, which assists the State leaders in the process of bonding.<sup>14</sup> As Friedman notes, trust plays an important role in any negotiation; however, different stages of trust are visible as the negotiation proceeds, or as the relationship develops.<sup>15</sup> The authors build upon the significant scholarly contributions on the role of trust in international negotiations in the context of the BTIA to not only identify the reason for the breakdown of negotiations in the past, but also analyse how the parties have recently attempted to nurture a strategic partnership, which may eventually facilitate the agreement.

Through this paper, it is argued that during the start of the BTIA negotiations, the parties had a specific type of trust, i.e., calculus-based trust (CBT) wherein

the parties evaluate the benefits and costs of trusting the other party.<sup>16</sup> However, this type of trust is based on specific reciprocity and therefore is quite fragile. Due to the volatile political situation between the parties, the CBT approach did not work, eventually resulting in the breakdown of the negotiations. The authors argue that the parties must, therefore, aim for identification-based trust (IBT) wherein one party comes to believe that the other's value and interests are aligned with their own. The authors use Lewicki and Bunker's stage models of trust to posit that trust changes as the relationship develops.<sup>17</sup>

The subsequent section provides an overview of the negotiations that have taken place between the parties. The authors then analyse the strategies of bargaining used by the parties during the BTIA negotiations. During the start of the negotiations, parties had common interests and were keen on producing mutual benefits for each other. However, divergence of views resulted in parties providing low concessions, hampering the negotiation process. The section discusses the issues involved in the negotiations and the stance of the parties on each of them. The authors argue that the parties must provide certain concessions and use integrative bargaining (value-creating) strategies for long-term partnership creation. For creating a durable relationship, trust is a prerequisite to negotiations.<sup>18</sup> The fourth section specifically deals with the role of trust in the BTIA negotiations. The section proceeds to analyse the three levels of trust, i.e., elite, organisational and societal, when conceptualising how trust and distrust impact negotiations. Further, the section also analyses whether there was any kind of trust between the parties at the start of the negotiations and whether lack of a specific kind of trust impacted the BTIA negotiations. The authors then argue that the parties in their recent meetings have signalled an intent to nurture the partnership by creating a bond. It is this bond that may eventually help the parties enter into an agreement. Further, PM Modi's clarifications on the CAA, and the EU representative's reciprocity, also create a bond that eventually may have an impact on the negotiation of the agreement. Lastly, the authors show that there is a causal link between economic transactions and social exchanges. In section five, the authors provide concluding remarks, and identify the limitations of this research.

### **EU- India trade relations and BTIA negotiations: A conspectus**

In 1991, India opened its markets with the ushering in of new economic policies, which relaxed import duties and allowed foreign investments in most sectors. Although largely obscure on the global front as a political power due to its non-alignment policy, India suddenly became a powerhouse in Asia.<sup>19</sup> This resulted in the EU and India signing the 1994 Cooperation Agreement on Partnership and Development, which largely outlined the area of future cooperation

between the parties. Furthermore, India has largely benefitted from the EU's Generalised Scheme of Preferences (GSP), which made it easier for India to export its products to the EU Member States. Over the years, there has been an increase in the GSP eligibility and subsequent usage by India, which has positively impacted the exports to the EU. Simultaneously, India's partnerships with the Member States, especially on trade, have also been quite positive. For instance, total trade between India and France increased from 6.23% in 2011 to 24.79% in 2017. Similarly, the Netherlands was the fifth largest investor for 2020-21 with estimated FDI inflows of USD 2.8 billion, with a total two-way trade standing at approx. USD 13 billion.

For both the EU and India increase in trade was important. This can be witnessed when trade and investment was given utmost priority in the early 2000s during the High Level technical summits. The political dialogue between India and the EU, during the first India-EU Summit in Lisbon, shows the importance of creating a strategic partnership with an emphasis on trade between the states. Consequently, these summits became a yearly affair with certain declarations being signed every year. In the year 2004, the EU established the Strategic Partnership with India, reflecting the commitments of sharing its goals and values with Asian countries. Pursuant to this, an HLTG was formed in 2005 to provide recommendations for trade and investment agreement between the parties. The recommendations of the HLTG were accepted, resulting in the launch of the BTIA negotiations. A few years later, the Lisbon Treaty came into force and placed trade policy under exclusive competence of the EU.<sup>20</sup> However, trade agreements negotiated by the EU that included provisions outside its exclusive competences were to be concluded as 'mixed'. Such 'mixed' agreements must be ratified by all EU Member States before the EP can give a formal consent.<sup>21</sup> The question arose whether a comprehensive trade and investment agreement would come under exclusive competence of the EU or have shared competences. The EU was unsure whether the BTIA would be accounted as a mixed agreement, implying that ratification of all Member States would have been required.<sup>22</sup> Although the issue regarding mixed agreement still looms large<sup>23</sup>, the parties continued negotiations on the BTIA. Apart from the procedural uncertainty, as mentioned earlier, the *Enrica Lexie* case caused uproar in both the EU and India, causing the parties to cut off the India-EU Summits until the foreseeable future.<sup>24</sup>

Thereafter, in 2014, the PM-Modi led BJP government, which secured a majority in the House, was keen on resuming the BTIA negotiations. Eventually, after a hiatus of three years, the parties began negotiating on the BTIA during the 13<sup>th</sup> India-EU Summit in 2016. The 14<sup>th</sup> India-EU Summit did help in rekindling initiatives such as 'Make in India', 'Digital India', etc.<sup>25</sup> With a resounding second

term win for PM Modi in 2019, the timing appeared ripe to aim for the elusive BTIA. This was witnessed through India and the EU's efforts before the 15<sup>th</sup> India-EU Summit, where the EU High representative for Foreign Affairs Josep Borell conducted a videoconference with the Indian Minister of External Affairs Subramanyam Jaishankar on developing the bilateral relationship, specifically trade, investment and security cooperation.<sup>26</sup> Whilst the 15<sup>th</sup> and 16<sup>th</sup> India-EU Summits mainly concentrated on the action plans and future strategies to combat COVID-19, both PM Modi and President Charles Michel reiterated the need to strengthen the economic ties.<sup>27</sup>

### **Dynamics of bargaining techniques: A reorientation of strategy**

Extant literature on the BTIA negotiations points towards the economic benefits parties might have through the BTIA.<sup>28</sup> The CUTS India study predicted that an EU-India FTA would increase FDI flows from the EU by 27% and the FDI stocks by 18%.<sup>29</sup> Meanwhile, the ECORYS study shows that there would be an estimated increase of real wages of workers by 1.7% in the short run, which would stand at 1.6% in the long run.<sup>30</sup> A recent study by the Confederation of Indian Industry shows that there would be a massive boost in employment if the agreement goes through.<sup>31</sup> They show that negotiations could be easier if the trade part of it is separated from the investment part of the agreement, a proposal that has been recently provided by the EU to India.<sup>32</sup> In this section, we primarily use the analysis of Khullar, a Former Indian Ambassador to the EU, who analyses the BTIA negotiations.<sup>33</sup> We also rely on Jain and Sachdeva's paper examining the strategic partnership that India and the EU aspire to create.<sup>34</sup>

### *Levels of negotiations*

The BTIA negotiations have always involved some combination of common interest and conflicting views. Negotiating on conflicting issues is the central subject of the analysis undertaken in this chapter. Negotiation is where explicit proposals are put forward, ostensibly, for the purpose of reaching an agreement on an exchange or on the realisation of a common interest where conflicting interests are present.<sup>35</sup> Normally, the parties have mixed motives, which would be a combination of different interests. Mixed motives would imply that, on certain issues, the parties can gain from cooperation, whereas on others it would be beneficial for a party to unilaterally defect as the gains to be earned are much higher.<sup>36</sup> This is where understanding the States' motives on issues helps in seeing whether there is any potential to reach an agreement. Of course, bargaining theory will not give a clear solution as to where an agreement can be reached. Considering that parties' preferences change over time depending on the circumstances, it becomes difficult to predict with certainty whether convergence

is always possible even when some concession is given. Therefore, treaty negotiations follow certain steps, beginning with negotiators of both sides identifying areas of converging interests.

A broad opening proposal, including the negotiators' recommendations, is then placed before the leaders. Once the leaders agree with the broad landscape, the negotiators proceed with formulating the issues and aim for convergence. The negotiators must also consider the preferences of different stakeholders domestically. This is where balancing interests becomes extremely crucial. Putnam says that the negotiators play a two-level game where, during the international negotiations of an agreement, parallel domestic negotiations take place.<sup>37</sup> It is a balancing act where the international agreements between States must, inevitably, consider the domestic agreement between the State and domestic stakeholders.

The BTIA's chief negotiators have faced this dilemma throughout this process. The whole process of finding mutual concessions with the aim of reaching a convergence somewhere within the bargaining space is called concession-convergence bargaining.<sup>38</sup> During this process, simultaneous negotiations are done at the international (level 1) and domestic (level 2) levels. To understand level 1 negotiations, it is important to see where the parties have reached at level 2.<sup>39</sup> Larsén states that a win-set is where all possible negotiating outcomes are acceptable to the domestic constituents (EU Member States) for them to eventually ratify the agreement.<sup>40</sup> Therefore, Larsén argues, 'In order to reach an international agreement, the EU and the Indian win-sets need to overlap, and the contours of the win-sets are affected by the preferences and positions of the domestic constituents.'

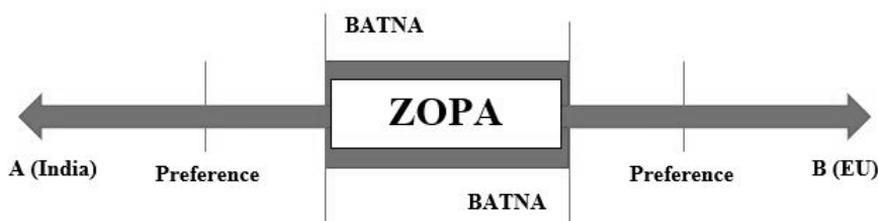
Meanwhile, Jain and Sachdeva have examined the issues of divergence between the parties and PM Modi's engagement with Europe since his 2014 victory.<sup>41</sup> Their analysis does not particularly deal with the BTIA; however, they claim that PM Modi's aim to prioritise a strategic partnership with the EU would have a significant impact on furthering economic ties with the EU.<sup>42</sup> Srivastava notes that the FTA negotiations seem to be in deadlock because of the EU's need for further liberalisation of legal and accountancy services in India, unwarranted changes in goods and services tax, insurance, land acquisition, civil society monitoring of FTA, environment and child labour concerns.<sup>43</sup> Meanwhile, India wants greater access to services like telecom and IT, free movement of skilled professions, data security, etc. There is a big gap between India and the EU's win-sets and, therefore, without making concessions, convergence is not possible.

### *Determining the strategy*

To determine whether convergence is possible, it is necessary to determine the impact of the negotiations. Looking at examples of certain divergent issues and

areas where win-sets have been identified, we could identify techniques that can be used by the parties. At the outset, we assume that there is a hypothetical bargaining line, as can be seen in Figure 1 below. On this bargaining line, Point A is the position of India, which is outside of the range of acceptable agreement (India's extreme stance on the BTIA), whereas Point B is the position of the EU, which is also outside of the range of acceptable agreement (EU's extreme stance on the BTIA). India (Point A) prefers agreements towards the left end of the horizontal line, where it has substantial positive value from the agreement. Likewise, the EU (Point B) prefers agreements towards the right end of the horizontal line. Considering that no convergence is possible, preferences must change. Therefore, India moves slightly towards the right (India's preference), correspondingly, the EU moves slightly towards the left (EU's preference). However, even after making such concessions, neither side concedes, which may result in a stalemate.

Figure 1: Bargaining Line (With BATNA)



In most negotiations, each party takes initial positions, termed as offers or counter-offers.<sup>44</sup> These are subject to change when concessions are made to reach a compromise. Considering there is no overlapping, the parties must come up with the 'Best Alternative to a Negotiated Agreement' (BATNA). BATNA is the 'no agreement alternative' where the parties assume that their individual gains are maximised if they reject the negotiated agreement.<sup>45</sup> Subramanian rightly asks, 'If your current negotiation reaches an impasse, what's your best outside option?'<sup>46</sup> Therefore, the presence of BATNA becomes essential in the negotiation process. Fisher and Ury note that there is always an alternative available, which will assist the parties to be flexible enough to permit exploration of an imaginative solution.<sup>47</sup> According to Odell and Tingley, parties that have already determined the scope of their BATNA will provide a 'Zone of Possible Agreement' (ZOPA), which will help the party with the BATNA to analyse the worst deal it will accept.<sup>48</sup>

As seen in Figure 1, ZOPA represents the overlap between the party's reservation prices. A reservation price is the party's breakeven point or the worst acceptable outcome for each issue.<sup>49</sup> India and the EU must identify the point beyond

which an agreement would no longer be beneficial for the parties. Hopmann states that, 'In order to determine this point, the party must first ask itself what is the value associated with a nonagreement, or in other words, what will happen if the negotiations break off and no agreement is reached.'<sup>50</sup> Therefore, parties may be able to reach a settlement anywhere between the parties' BATNAs, as seen in Figure 1.

In the context of the BTIA negotiations, the HLTG laid out a broad opening proposal which included recommendations for the leaders. This could be described as an agenda-setting phase. The agenda at this stage is generic, with the parties endeavouring to create a partnership at an international level. General discussions are conducted on specific focal issues including IP, FDI, tariff and non-tariff barrier. Thus, the agenda is set for future negotiations. Hampson and Hart described these general discussions as the pre-negotiation phase wherein the first step is the identification of the problem, the second is the search for options, the third is the commitment to negotiate and the last is the agreement to negotiate.<sup>51</sup> As exchange of information took place between the parties, the negotiations transitioned from the pre-negotiation phase to the negotiation phase. This is where substantial bargaining is done on focal issues.<sup>52</sup> The main issues in the BTIA were the discussions on regional integration, IP, trade and human rights.

During the early stages of negotiations, India and the EU could be seen to have applied an integrative strategy, which employs problem solving behaviours.<sup>53</sup> Therefore, the goal of this type of negotiations is to accomplish a mutually beneficial agreement maximising settlement efficiency. One example of this is the issue of generic drugs and IPR protection in India. The pharmaceutical industry in the EU was apprehensive about the lack of IPR protection granted in India and, therefore, lobbied extensively in the EU. Meanwhile, India refused to commit to any IPR laws affecting the production of generic medicines at affordable prices.<sup>54</sup> After several objections raised by the NGOs, the EP eventually caved and came to India's rescue on this issue.<sup>55</sup> Larsén while analysing this issue from Putnam's two-level game perspective states that, 'There was a gap between the India and the EU negotiators. However, the pressure from the EP led the EU negotiators to revise their position, thus expanding the EU win-set to the extent that it overlapped with that of India.'<sup>56</sup> Simultaneously, India was able to solve the sticky issue of wine exports by providing a strategy of minimum export price above which the EU could export wines.<sup>57</sup> If the parties attach different priorities to different issues, a joint gain is possible.

That said, integrative bargaining depends upon the behaviour of both parties and the factoring-in of trust.<sup>58</sup> If we factor in trust, the integrative bargaining stages would resemble this:



To facilitate integrative negotiations, State leaders must often make calculations about the future trustworthiness of others in relation to focal points. This helps the party provide more concessions during the negotiation process, primarily due to the expectation of that party that no harm may be done in contexts where betrayal is always a possibility.<sup>59</sup> However, as Luhmann rightly points out, the uncertainty attending all trusting behaviour means that our expectations of another person's (party's) trustworthiness, however confident, can end in disappointment.<sup>60</sup> Until there is no transformation of identities and interests between the two actors, the calculative element of trust remains. This is volatile as any adverse information gained by the other party may risk the process of trust building entirely.<sup>61</sup> This was indeed the case during the negotiations between 2010 and 2013. Unfortunately, during these years, the Government of India was riddled with corruption allegations, with several high-profile scams coming to the fore.<sup>62</sup> The-then Prime Minister of India Manmohan Singh was also alleged to have been a part of the corruption scandals, which hampered India's global image.<sup>63</sup> Inevitably, this indicated to the EU that India lacked the ability to create a safe space for EU companies. Simultaneously, the policy paralysis in India and the impact of the Euro crisis stagnated the negotiations.<sup>64</sup> Furthermore, the Italian Marines case also impacted the BTIA negotiations. In 2013, the EU Parliament's report mentioned that public discontent with India was a factor leading to the deadlock.<sup>65</sup>

#### *Eventual breakdown - issues relating to political clauses*

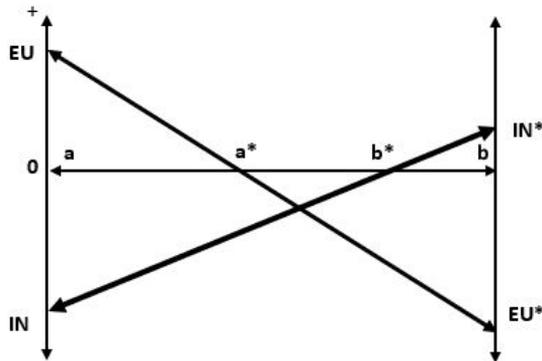
Apart from the situational factors, between 2009 and 2012, the stance taken by both the parties during the negotiations resulted in divergence rather than value creation. The extant literature provides some analysis of issues plaguing the negotiations. However, it does very little to provide solutions to resolve these issues. Khullar says that parties have had their disagreements on certain key areas since the start of the negotiations, viz. agriculture, automobiles, wines and spirits, drugs and pharmaceuticals, services, human rights and IPR.<sup>66</sup> His analysis shows that if concessions were provided on certain issues from both sides, the parties would have been able to enter an agreement or at least potentially arrive at one.

Unfortunately, on certain fundamental issues, parties used distributive bargaining, where they adopted a position (opening offer) and persuaded the other party to accept the same. In this case, the goal of one party is in basic conflict with the goal of the other and, therefore, the party would be interested in securing favourable terms without concern for the other party's outcome.<sup>67</sup> Considering this, the EU and India would behave rigidly and not provide any concessions whatsoever, resulting in no mutually acceptable agreement. Take, for instance, the issue of human rights and sustainable development clauses (political clauses)

in the BTIA. India has consistently opposed the inclusion of political clauses in trade and investment treaties on two grounds. First, that political clauses must not be within the purview of a trade agreement; instead, such issues should be discussed in other forums. Second, if the EU has legally binding political clauses in the BTIA, it reduces India's competitive advantage and would unnecessarily involve a foreign party in India's domestic affairs.<sup>68</sup> *Per contra*, the EP is of the opinion that inclusion of political clauses is a must in the BTIA.<sup>69</sup> To that end, in 2009 the EP passed a resolution stating that an ambitious and legally binding sustainable development clause must form part of the BTIA.<sup>70</sup> Not compromising on issues such as this resulted in no overlap of win-set and consequently affected the negotiations. Even after the EU negotiators understood the situation and were willing to accept the non-inclusion of political clauses in the agreement, the EP adopted a new resolution in 2011 mandating the inclusion of legally binding clauses on human rights, social and environmental standards in the BTIA.<sup>71</sup>

As can be seen from Figure 2, pursuing distributive bargaining may increase the likelihood of a stalemate.

Figure 2: Hopmann's Absence of Bargaining Space Model



- Horizontal Axis = Issue Dimension
- Vertical Axis = Gains (+) and Losses (-) Relative to Non-agreement (0)
- EU-EU\* = EU's Preference Curve, IN-IN\* = India's Preference Curve
- a = EU's preferred outcome, b = India's preferred outcome, a\* = EU's minimum acceptable outcome, b\* = India's minimum acceptable outcome

In Figure 2 above, we have a single issue such as the inclusion of political clauses in the BTIA. The horizontal axis represents the issue dimension where an agreement can be reached on any point along the horizontal line. The vertical axis represents the gains that can be achieved above the mid-point (+) and the loss

that can be incurred below the mid-point (-). At the mid-point (o), the parties are indifferent as the value of an agreement is zero for both. The preference curve of the EU is EU-EU\*, whereas the preference curve of India is IN-IN\*. In this case, if we assume that the EU's preferred outcome (a) is the inclusion of political clauses and India's preferred outcome (b) is non-inclusion of political clauses in the BTIA, we see that no convergence is possible. Now assuming that the minimum preferred outcome for the EU (a\*) is the compulsory inclusion of environment and labour standards in the BTIA, excluding human rights clauses whereas India's minimum acceptable outcome (b\*) is to merely include a democracy clause, by behaving rigidly, the parties fail to achieve an integrative solution.<sup>72</sup>

### *Techniques - integrative, distributive and alternative*

In almost all negotiations integrative and distributive bargaining techniques are used simultaneously.<sup>73</sup> In cases where distributive bargaining techniques are used, the party aiming to increase its payoff may run the risk of a stalemate that will prevent both the parties from realising a mutually beneficial agreement. Distributive bargaining techniques often involve using hardball, intimidation tactics and other aggressive behaviour.<sup>74</sup> This does not necessarily imply that distributive bargaining techniques cannot be utilised during negotiations. At times, these tactics may result in an agreement with smaller countries as there is an inevitable cost involved with prolonged stalemates. Therefore, these tactics work well when there is an asymmetry between the negotiating parties. Both India and the EU have been seen to use these tactics, often involving threat of walking away, in their negotiations with other countries.<sup>75</sup> That said, it would not be advisable for parties to employ distributive tactics when the parties are relatively symmetrical in economic ties. Sharland believes that the distributive approach will rarely lead to trust building and creation of a long-term strategic partnership.<sup>76</sup> If there are certain focal issues where the parties refuse to budge from their positions, in that case certain concessions could be provided on other issues, which would imply some sort of reciprocity from the other party. Prado and Martinelli argue that compromise can be an alternative to integrative negotiations.<sup>77</sup>

The BTIA negotiations have involved going back and forth between creating value and claiming it, depending on the situation. We use the terms 'integrative' and 'distributive' in the sense of value-creation and value-claiming actions by the parties.<sup>78</sup> Apart from the BTIA, if building a long-term strategic partnership is the goal, it is important for the parties to create some focus on interests rather than positions. As of now, there is extreme confidentiality in the negotiations of the BTIA. For this reason, it is difficult to analyse particularly which strategies were undertaken by the parties on certain issues. Pursuant to Khullar's paper, it could be seen that parties were able to formulate a broad outline agreement

and were able to find solutions on certain important issues by using integrative bargaining techniques.<sup>79</sup> Table 1 below shows the techniques used by the parties and the results of these techniques.

Table 1: Bargaining techniques used in the negotiations

Sr. No.	Issues	India	EU	Solutions/ Problems
1	Agriculture	Possible Compromise	Possible Compromise	Solutions- Adopting tariff quotas, Minimum price requirements
2	Automobiles	Divergent (Distributive bargaining)	Possible Compromise	Problems- Level 2 negotiations in India; Strong domestic lobby
3	Wines and Spirits	Compromise	Divergent (Distributive bargaining)	Problem- Setting on minimal export price above which EU could export
4	Drugs	Integrative	Integrative	Solution- Supplying bulk drugs rather than generics to EU
5	Services	Distributive (No compromise)	Distributive (No compromise)	Problems- Liberalisation of services; Movement of people
6	IPR	Integrative	Distributive	Problems- Generic Drugs; Geographical Indicators
7	Political Clauses	Distributive	Distributive	Problems- Human Rights clauses in FTA; Level 2 negotiations on the side of the EU

Source: Prepared by the authors based on Khullar<sup>80</sup>, Jain and Sachdeva<sup>81</sup>, Larsén<sup>82</sup> and Confederation of Indian Industry<sup>83</sup> research

Table 1 shows that through integrative bargaining parties were able to get solutions. However, work remains to be done on several issues. Some of these issues also have serious level 2 negotiations that must take place. Another issue for which the parties could use integrative bargaining techniques is the ISDS Clause in the BTIA. Investment has been a thorny issue since the start of the negotiations, particularly ISDS clauses in the agreement. Both the EU and India, in their recently concluded agreements with Vietnam and Brazil respectively, have preferred to adopt a similar ISDS mechanism creating a scheme of state-to-state arbitration and abandoning the investor-state arbitration mechanism.<sup>84</sup>

If the parties have divergent views on multiple issues, Osgood's idea of Graduated and Reciprocated Initiatives in Tension Reduction (GRIT) where negotiators make a series of small, unilateral concessions to their opponents to establish trust helps.<sup>85</sup> Essentially, GRIT allows for small concessions and hopes that the

other party reciprocates in a positive manner, leading to a 'spiral of trust'.<sup>86</sup> Komorita notes that GRIT strategy works best after a long period of firmness where both parties have reached a stalemate.<sup>87</sup>

It is also important that the parties identify the BATNA. The parties must know the reservation points, which is the breakeven point or the worst acceptable outcome for each issue. Knowing the reservation points helps in setting limits that preclude the parties from settling for less than what they could have achieved. Quantifying the BATNA helps in determining the resistance points for each issue. Fisher and Ury note, 'Generating a BATNA requires three distinct operations: (1) inventing a list of actions the party might conceivably take if no agreement is reached; (2) improving some of the more promising ideas and converting them into practical alternatives; and (3) selecting, tentatively, the one alternative that seems best.'<sup>88</sup>

The parties must understand that the major deliverable is the BTIA and collaborate on specific divergent issues therein, if they feel a strategic partnership must be really formulated. Prime Minister Modi must signal to the EU that the agreement is imperative. If there is no reciprocity from the EU, India must be willing to walk away from the negotiations, especially if it has a strong BATNA. Meanwhile, the EU must, in the words of Herman van Rompuy, acknowledge that, 'we [EU] have strategic partners, now we need a strategy'.<sup>89</sup>

In summary, India and the EU must face several hurdles before an agreement can be reached. The divergence on focal issues shows that the parties must provide some concessions. In order to rejuvenate the relationship, it is important that both parties approach this through a problem-solving perspective. Additionally, for a strategic partnership, it is imperative that the parties have a primary objective of increasing trade and investment. This must be coupled with parties understanding the mutuality of interests and benefits. This is possible only if there is a creation of trust between them. A specific type of trust would not only help in creating a bond but also assist parties in achieving integrative solutions.

### **Trust as a route to influence**

India and the EU have faced a dilemma throughout the negotiation process. Both have been rather wary of using integrative bargaining. Trust could potentially resolve this dilemma.<sup>90</sup> In this chapter, the authors analyse the role of trust in the negotiations of the BTIA.

#### *Trust in international relations: Levels of analysis*

Considering several agents are involved across different layers, it becomes difficult to identify the role trust plays, if any. Since States are not active agents hav-

ing the cognitive capability to trust, it is imperative to understand the behaviour of the actors in the State. In general, three levels can be identified for the study of trust in the EU-India BTIA negotiations. The impact the agents have differs considerably. This is the classic 'levels of analysis' problem in international politics as noted through seminal arguments of Singer and Spanier. Spanier mentions three levels of analysis to create a framework for international politics. First, a *systemic* level referring to the international system as a whole; the second being *nation-state* and its internal characteristics; lastly, the *decision-making* level which includes decisions by people who occupy official positions in the State.<sup>91</sup> Similarly, Singer notes the two causal levels of analysis, viz. the State and the global systemic.<sup>92</sup> The question in relation to trust is whether the trusting/mistrusting behaviour of individuals can be relevant for describing the behaviour of a State. Sinkkonen, using the case study of United States-Egypt relationship, argues that trust can be analysed through three levels - elite, organisational, societal.<sup>93</sup> The elite level comprises of interpersonal relations between leaders. These relations between leaders after continuous interactions increase interpersonal trust, which can bring forth predictability, credibility and good intentions, leading to reciprocity.<sup>94</sup> Wheeler describes this as a 'relationship between two individuals (leaders) through a process of interaction, have come positively to value the continuation of the relationship, and where each does not expect the other to act in ways that damage the relationship.'<sup>95</sup> Although the empirical analysis of this level becomes difficult, as noted by Weinhardt, due to the lack of quantifiable nature of trust, the proxies to identify, or at the very least estimate, trust/mistrust could be official statements given by the leaders during diplomatic meetings, summits, interviews.<sup>96</sup> As mentioned in the previous chapters, PM Modi's signalling and President Ursula Von der Leyen's reciprocity are examples of cooperation, which, according to Rathbun, indicates a creation of trust.<sup>97</sup> Meanwhile, mistrust could be identified through statements indicating malevolence, self-interest and noncooperative motives during negotiations. The second level that Sinkkonen notes is the *organizational level*, where trust is demonstrated in institutionalised relations between States.<sup>98</sup> Individuals and bureaucrats that represent an institution in the States assume roles of 'institutional agents', act as a collective, and, therefore, having an objective assessment of statements made by individual officials is necessary.<sup>99</sup> The inferences through these statements, understandably, must be examined and understood as a collective rather than a personal attribute. For instance, statements made by the Minister of External Affairs, S. Jaishankar could be used for a methodological study. Lastly, Sinkkonen points out that the societal level is where trust is manifested 'as discursively reproduced collective beliefs that individuals as members of the society hold . . . about another state, its leaders, its people, its culture and values, or

some combination thereof'.<sup>100</sup> Oftentimes, the creation of collective beliefs happens through 'trust entrepreneurs'; the ones that are responsible for disseminating information regarding the other State as well as its leaders and population.<sup>101</sup> There are several gatekeepers or entrepreneurs that forge collective beliefs. If we go via a top-down approach, the institutional agents in the organisational level become the trust entrepreneurs. However, occasionally NGOs, media channels or influential individuals could disseminate information which can impact the other levels.<sup>102</sup> Therefore, be it top-down/bottom-up processes, it is necessary to study trust and the impact trusting behaviour at different levels could have on the negotiation processes at the international level. For this reason, statements issued by PM Modi and President Ursula Von der Leyen would constitute indicators of elite-level trust. On the other hand, statements made by officials such as S. Jaishankar and Charles Michel would be indicative of organisational trust. Meanwhile, statements collated from civil society and the media would entail elements of societal trust.

#### *From calculation to bonding*

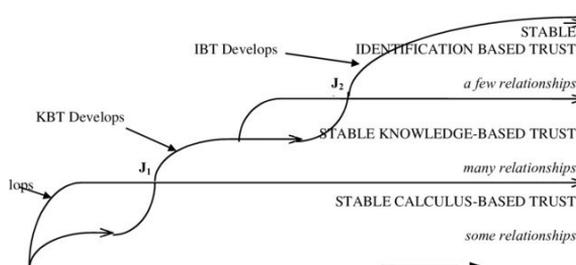
Trust is the intention to accept vulnerability based upon positive expectations of the intentions and behaviour of another.<sup>103</sup> Thus, two fundamentals are essential in the analysis of trust, namely interdependence and risk.<sup>104</sup> One party (trustor) develops an expectation that they will not be harmed based on the risk calculation they had undertaken of the other party (trustee). This approach, therefore, would be based on acquiring more information by the trustor of the trustworthiness of the trustee, to reduce the risk of losing. Lewicki and Bunker argue that since calculation lies at the heart of this idea, it can be termed as calculus-Based trust (CBT).<sup>105</sup> In the international arena, the CBT approach to trust would be undertaken by States when they update their information about the trustworthiness of other States through the behavioural signals sent to each other.<sup>106</sup>

Rathbun argues that if a trustor using the CBT approach is prepared to risk the costs of defection to secure the potential gains of cooperation, the other party would cooperate, resulting in building a 'reciprocity circle'.<sup>107</sup> This is how CBT would be built after the initial gamble pays off. However, the CBT approach cannot be used to create a long-term strategic partnership, primarily because it is based on specific, and not diffused, reciprocity. Specific reciprocity is a condition in which two parties give each other equivalent treatment in respect of one issue.<sup>108</sup> Rathbun believes that such a functional relationship can only be sustained when benefits of cooperation are seen regularly.<sup>109</sup> At the beginning of negotiations, parties must ensure that trust-building progresses. This is especially important if the parties aim to build a strategic partnership. Intuitively, a minimal level of trust would be essential for any negotiation.<sup>110</sup> This minimal

level of trust would be based on calculations and, therefore, would be a CBT approach. Eventually, however, CBT must transform into 'knowledge-based trust' (KBT), which is based on predictable behaviour of the other party. The trustor often assumes that the party would keep their promises. Therefore, even if the negotiations are highly competitive, since the other party is predictable, KBT will not be affected.<sup>111</sup> Osgood's GRIT system mentioned earlier is an example of KBT.<sup>112</sup> Even though GRIT does not establish trust, since giving concessions is a predictable behaviour, it helps in creation of trust.

Nonetheless, Lewicki and Bunker believe that transformation of identities and interests are essential, if parties are to value the same goals.<sup>113</sup> This would eventually create a 'we-feeling' that would come after positive identification of interests.<sup>114</sup> They term this type of trust as 'identification-based trust' (IBT) where there is full internalisation of the other party's interests and desires. They note that, 'The other party (trustor) can be fully confident that his interests would be fully defended and protected, without surveillance and monitoring by the actor'<sup>115</sup>

Figure 3: Stages of trust development



Source: The stages of Trust Development adopted from Lewicki and Bunker<sup>116</sup>

Figure 3 posits Lewicki and Bunker's stage model of trust which shows that the relationship develops across three stages. The first, CBT, is seen in early-stage relationships. As the relationship grows, KBT is reached where trust is based on accumulated knowledge over repeated interactions. Lastly, where the interests of both the parties are aligned, IBT is reached.<sup>117</sup> This progression takes time as the relationship between the parties matures. As Korsgaard and others mention, 'Stage models of trust imply dynamic relationships such that the impact of certain predictors and processes of trust change over time . . . as trust progresses through stages, it is more resilient to violations. That is, factors that might undermine trust are less impactful over time.'<sup>118</sup> Therefore, it is noticeable in the figure that only a few relationships reach the stage of IBT.

We argue that leaders of India and the EU must follow this process for successful creation of a partnership and, hopefully, negotiations of the BTIA.

### *CBT approach in the BTIA negotiations*

Creation of trust is extremely important for a mutually beneficial agreement. Given that parties normally do not have perfect information in negotiations, CBT becomes dependent on the actor's willingness to take risks. Therefore, if the parties have a CBT approach to trust, and the trustee had to reciprocate trust by neglecting the rational-utility maximising approach, the trustee would not do so. The aim of India and the EU before the start of the negotiations was to create a strategic partnership. Trade was thought to be the cornerstone of this strategic partnership. The European Council acknowledged this by categorically stating that, '[EU] take concrete steps to secure ambitious free trade agreements, secure greater market access for European businesses and deepen regulatory cooperation with major trade partners.'<sup>119</sup> To make sure that the partners pursue the European objectives and interests, it was imperative that trustworthiness was shown from both sides. To reach a stage where there is collective identity transformation, the parties must aim for IBT, where there would be a process of suspension, implying that even if parties behave opportunistically, the process of identity transformation would help in maintaining a relationship.<sup>120</sup>

India and the EU never reached the state of IBT and, therefore, no process of suspension occurred. The trust between the parties was merely CBT. Of course, the creation of any relationship, at the outset, would begin from rationalist foundations.<sup>121</sup> As Lewicki and Bunker note, there is an evolution from CBT to KBT to IBT.<sup>122</sup> The parties aimed towards creation of IBT; however, changes in circumstances, divergence of opinions and changes in leadership have all affected the process of evolution. To see why the parties were unable to transform their trusting relationships, it is necessary to analyse the trustworthiness of the parties, as a party would in the CBT approach.

The first step taken by a party in analysing the trustworthiness of the other party is looking at the past behaviour. Correspondingly, if the party has had positive experience in negotiating with the other party, there would be an increase in trustworthiness. However, this information can never provide certainty that the other party may behave in the same way in the future. India and the EU had never negotiated an agreement like the BTIA and, therefore, there was a lack of familiarity. The idea behind prior familiarity is that there is a reputation built between the parties that the transactions between them would be respected.<sup>123</sup> This does not necessarily mean that the parties move from CBT to IBT, but it does facilitate the process. Additionally, prior familiarity results in the reduction of alliance-specific investments, specifically search costs for analysing the *bona fides* and the monitoring cost that the parties would have to incur to curb opportunism.<sup>124</sup>

Kong, Dirks and Ferrin put forth three factors as being the bedrock on understanding the other party's trustworthiness: perceived integrity, ability and benevolence.<sup>125</sup> According to them, 'Integrity refers to the perception that the party will adhere to sound moral values, such as being honest and fair, and can be depended upon to act consistently with those values. Ability refers to the perception that the party is trustworthy in terms of having a certain skill set or ability relevant to the performance. Benevolence refers to the perception that the target cares about the well-being of the trustor.'<sup>126</sup> Considering that the leaders speak and act in the name of the States they represent, the signals that they send are on behalf of a collective. Wheeler terms this as 'the collective dimension of state behaviour'.<sup>127</sup> Following suit, the negotiating teams of the parties also carry out the analysis of trustworthiness of the parties.

For instance, initially both parties were keen on completing the BTIA negotiations by mid-2011. Through the HLTG, the chief negotiators had provided their final recommendations on certain issues that were to be discussed. Unfortunately, there was a divergence of perceptions of what the process of negotiation was, what the parties were going to achieve and what the ambitions were.<sup>128</sup> For this reason, it was imperative that strategic dialogue resulted in some significant policy measure before the negotiations. However, that did not come about, with both parties having strategic dialogues without having any type of ground level policy measures showing normative convergence.<sup>129</sup>

Following unnecessary delays, the Indian media were quick to prompt that India should not go along with the agreement if the EU had reservations.<sup>130</sup> This shows that the perception of the civil society in India changed during the negotiations. In turn, this goes to the root of the aspect of benevolence where the parties feel that trusting the opposite party would harm them in the future. For the creation of trust, it is also important that the parties respect each other during the negotiation process.<sup>131</sup> Lack of respect and goodwill for the party may not only impede the trust building process but could rupture it entirely. For instance, after the Italian Marines issue, PM Modi's visit to Brussels did not fructify due to the-then High Representative of the EU Fredrica Mogherini's reluctance to confirm dates of visit.<sup>132</sup>

### *The way forward - relationship restoration*

According to Lewicki and Bunker, in CBT, progress occurs akin to slowly climbing a ladder and even a single inconsistent event may 'chute' the individual back several steps, or even to square one.<sup>133</sup> Therefore, negative events may lead to trust dissolution where there is a relationship recalibration, whereunder parties interact in a less trusting manner, or it may lead to relationship rupture, where the relationship ends. However, even if events reduce trust, relationship resto-

ration is always possible, where trust is re-established and continues as before. This may happen through positive events helping in revising the trustworthiness of the other party in a way that stops the waning of trust.<sup>134</sup>

### *Signalling by PM Modi*

Since the 15<sup>th</sup> India-EU Summit, the parties have shown keen interest in continuing the BTIA negotiations. This could be taken as a possibility of relationship restoration. Certain positive events have led the parties to reach this stage after the deadlock. The creation of jobs and opportunities was extremely important to PM Modi's political agenda.<sup>135</sup> For this reason, a change in foreign policy was witnessed once he was elected. He realised that job creation was possible if there was an investment from the West, and, therefore, mutually beneficial cooperation between people and businesses on both sides was important. Prime Minister Modi signalled to the EU that projects like 'Make in India' and 'Digital India' required the assistance of the EU to be successful.<sup>136</sup> At the 14<sup>th</sup> India-EU Summit, PM Modi opined that India and the EU were indispensable partners for the future.<sup>137</sup> In the same year, the-then EC President noted that it was 'high time' that an FTA between India and the EU was made.

Trust restoration takes time and effort from both parties, especially their leaders. Until that time, leaders can give specific signals of their intent to enter strategic partnership. When these signals are interpreted unambiguously by the other party, the process of creation of trust is facilitated.<sup>138</sup> Through continued signalling from the EU and Indian leaders, the parties' intentions are clearly visible. Wheeler notes that for those parties who hold a 'friendly image' of the other party, the sender's signal may be interpreted as confirming a belief that the sender can be trusted.<sup>139</sup> For instance, Germany's Minister of Foreign Affairs, Hieko Maas's call for countries to join the Alliance for Multilateralism was taken up by India to safeguard multilateralism.<sup>140</sup>

### *The relevance of Kashmir and CAA*

In 2019, PM Modi's government abrogated Article 370 of the Constitution of India and passed the Jammu and Kashmir Reorganisation Act, 2019, which stripped the special status of the state of Jammu and Kashmir and bifurcated the state in two union territories.<sup>141</sup> It was alleged that the state of Jammu and Kashmir was under a complete communications lockdown, including internet shutdown.<sup>142</sup> The EP was keen on debating the Kashmir issue with the-then EU High Representative for Foreign Affairs and Security Policy, stating that it was of utmost importance to 'restore the rights and freedoms of the population of Kashmir'<sup>143</sup> It was imperative that PM Modi signal to the world leaders that no human rights violations were occurring in Kashmir. Although the Ministry of External Affairs

did not take any active steps in this regard, the Women's Economic and Social Think Tank, funded by the International Institute for Non-Aligned Studies, invited certain members of the EP to India. The members were then taken to the newly formed union territories of Jammu and Kashmir in their personal capacity and not as representatives of the EP. These members then provided a positive response about the state of the people of Kashmir.<sup>144</sup>

Interestingly, a few months later, PM Modi's government was again in the line of fire when it passed the CAA (Citizenship (Amendment) Act 2019), which intended to provide fast-track citizenship for persecuted minority groups who had entered India on or before 31 January 2014 from Pakistan, Bangladesh and Afghanistan. The government identified six minority groups for this purpose but did not include Muslim minorities, which were persecuted in the aforesaid states.<sup>145</sup> The EP decided, out of its own volition, to put forward a resolution for voting on 28 January 2020. According to the EP, the CAA is discriminatory in nature as it specifically excludes Muslims and thereby violates the ethos of the Constitution of India, which mentions India as a secular state. The EP went further to state that the CAA undermines India's commitments to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>146</sup> The vote was delayed until PM Modi's visit to Brussels, where he was planning on addressing the EP regarding the CAA.<sup>147</sup> On this resolution, Helena Dalli, the Vice-President of the EC, mentioned that the EU shares a 'rich, frank and open' relationship with India. She went further by stating that the CAA was India's internal matter and would be decided by the Supreme Court of India.<sup>148</sup> Unfortunately, due to the COVID-19 pandemic, PM Modi's visit to Brussels was cancelled. However, during the 15<sup>th</sup> India-EU Summit, PM Modi was able to clarify his position on the CAA. This clarification was enough to convince the EP representatives. As Mr. Charles Michel noted, 'Regarding the citizenship law (discussions), you know that in the European Parliament this was an important topic. And we raised this issue in our talks. I would like to say that we trust Indian institutions. We understand the supreme court will have a role to play to assess this legislation. We took a decision with India to continue a dialogue on human rights in order to exchange best practices and have the best understanding on how to tackle this issue for India and the EU'<sup>149</sup>

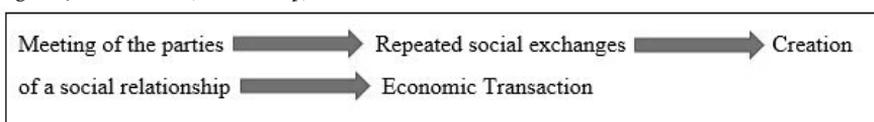
In our opinion, PM Modi's clarification on the CAA and members of the EP vouching on the Kashmir issue were both important for the future partnership of India and the EU mainly for the reason of exchange, which requires interdependence of parties. Thus, this kind of reciprocity can be either positive or negative in nature; depending on the orientation (positive/ negative), there will be return (positive/ negative).<sup>150</sup> From the point of view of signalling, PM Modi's move of clarifying his CAA position and Kashmir showed the EU representatives

that he was keen to institute transparency. The information provided by PM Modi helps the EP clarify its stance on India's domestic issues. This, in turn, benefits PM Modi as he would receive a form of trust from the EP, which would eventually result in further matching of goodwill and helpfulness towards the EU.<sup>151</sup> The concept would come under the bracket of creating a social exchange relationship that comprises actions contingent on the rewarding reactions of others, which over time provide for mutually rewarding transactions and relationships.

Although the BTIA between the EU and India should be considered as a reciprocal exchange, if we assume that the *ex post* violation of the negotiated agreement results in a legal or contractual sanction, then the subtle difference between reciprocal exchange and negotiated rules would be the 'explicitness' of the *quid pro quo* propensities. For instance, a negotiated agreement, such as the BTIA, may involve sanctions for violation of the clauses of the agreement, necessarily implying that the violation might induce legal penalties. However, in a reciprocal exchange, even though there is a *quid pro quo* propensity, a negative treatment would break the other party's trust but would not incur a legal penalty. Thus, a negotiated rule, as several trust scholars have pointed, would be part of an economic transaction.<sup>152</sup> Pursuant to this, Organ and Konovsky distinguished between 'social exchange and economic exchange relationships'. For them, 'social exchange' is more than simply a set of rules for transacting benefits. A social exchange relationship, therefore, would create a series of interdependent exchanges or can be viewed as an interpersonal attachment that results from a series of independent transactions.<sup>153</sup> Thus, there are two situations: one whereby the exchange causes the relationship and one whereby the relationship causes the exchange. The former would imply a causal link where repeated social exchanges result in formation of economic exchanges; the latter would imply the reverse link.<sup>154</sup> Several trust scholars have tried to solve this ambiguous situation by providing guidelines.<sup>155</sup> However, the authors will not delve into the resolution as that lies beyond the scope of this paper.

In view of the aforesaid analysis, a causal link appears between growth of social relationships between the parties and the economic transaction. Therefore, assuming that PM Modi's clarification would maintain, if not grow, the social relationship between the parties as a collective, the same might have a beneficial effect on the BTIA negotiations.

Figure 4: Causal link (relationship)



Therefore, the social exchange relationship, as can be seen in figure 4, shows a building of economic transaction. However, if PM Modi's clarification had been unable to convince the EP representatives, resulting in the EP passing a resolution, the consequences, though not penal in nature, would have inevitably affected the trust of the parties. Consequently, this distrust would trickle down to the economic transaction, i.e., the negotiation of the BTIA. Therefore, the authors believe that creating a social relationship has both risks and rewards. For one thing, a positive social relationship has a possibility of culminating into an economic transaction, thereby facilitating an economic relationship, which is based on the strong psychological foundation of greater trust and the consequent ability to take risks. However, a negative relationship due to a series of negative social exchanges has the possibility of creating distrust and perhaps a permanent damage to the relationship in general.

To summarise, creation of trust takes time and effort from both the parties. Though Lewicki and Bunker argue about the progression of trust from one stage to the other<sup>156</sup>, there is no method provided as to when the parties move from one stage to the next. The evidence of growth can be seen from the correlation between trust and the length of the relationship. That said, formulating a strategy at the beginning is important. Even if the BTIA is negotiated, trust is important for its successful implementation. Therefore, the parties must move beyond CBT and aim to have IBT. Prime Minister Modi's signalling has evidently worked in transforming EU's opinion about India. In the 15<sup>th</sup> India-EU Summit, Mr. Charles Michel noted, 'Today's meeting clearly showed that both the EU and India want a stronger strategic relationship for the future. India can count on the European Union. And we count on India to be a key partner.'

## **Conclusion**

The purpose of this paper was to identify the issues involved in the negotiations of the BTIA. It sought to provide a different dimension to the understanding of the EU-India BTIA negotiations. The authors attempted to argue that parties must use integrative bargaining techniques to resolve certain underlying issues. A way forward would be to have a concession-convergence bargaining. For making concessions, the parties must have a BATNA, and understand the need for entering into an agreement.<sup>157</sup> It is true that on certain issues both the parties have used integrative strategies. However, a lack of trust has impacted the negotiations drastically. Given that the parties have had divergent views on several issues, techniques such as GRIT could be used, at the very least, to establish some amount of trust. Providing minimum concessions might be beneficial, especially when the negotiators feel stagnated. Essentially, the parties must understand that if a long-term partnership is to be created, trust will play an important role

in the BTIA. The analysis shows that there was a specific type of trust (CBT) that the parties had during the start of the negotiations. Unfortunately, events such as, *inter alia*, the Italian Marines case resulted in the parties viewing each other with suspicion, eventually resulting in a deadlock on the BTIA. The paper shows that since parties had only CBT, it was fragile and prone to a breakdown. Nevertheless, restoration is always a possibility with trust. Keeping this in mind, the signals that a leader sends across are extremely important. At the elite level, PM Modi and President Ursula Von der Leyen have signalled and reciprocated, resulting in the hopes of creating a stronger bond. Agents representing different State departments in the EU and India have also been on the same page as their leaders, bolstering at the organisational level and thereby assisting in the creation a partnership. At the societal level, creation of trust becomes difficult. However, as noted in Babalova and Goddeeris, perception of the EU has shifted in the media and the civil society after the 14<sup>th</sup> India-EU Summit.<sup>158</sup> This change is drastic, especially when the study of Ling and Goddeeris, before PM Modi's election, showed that the 'EU had a massive image problem in India'.<sup>159</sup> Whether the agents, NGOs, and media act as 'trust entrepreneurs' or not, it is necessary to maintain dissemination of information. Considering that the link between the elite, organisational and societal levels is not unidirectional, it is always possible that the relationship of trust between two States can be built 'bottom-up'.<sup>160</sup>

Through the elite level interactions, the States must strive to create an IBT. Both parties should move from having economic transactions at the core towards striving for repeated social exchanges. This, in turn, would create an environment for the BTIA negotiations to be completed swiftly. In some ways, the COVID-19 pandemic has allowed the EU and India, both major producers of vaccines, to become closer partners.<sup>161</sup> It is true that progression from the level of CBT to IBT is time consuming and costly; however, the benefits of creating this relationship, especially if both parties intend to become long term partners, are manifold.

Finally, it is also necessary to mention that this analysis has certain limitations. At the outset, it is worth noting that it is difficult to identify the win-sets of each party, especially when domestic constituents play a huge role. Thus, creation of trust at Level 1 may not be enough to solve Level 2 issues. Additionally, quantifying trust in international politics is a daunting task and, therefore, overreliance on statements of leaders is always a risk. However, indirect indicators such as statements by the leaders and their corresponding behaviour do, at times, show intention to cooperate. For future research, authors can carry out congruence analysis to show contextualisation of the BTIA negotiation process against the actors' divergent levels of trust. This would help in understanding the negotiation behaviour of the parties and whether the parties have reached

a specific trust stage.<sup>162</sup> Certainly, this requires analysis of all the official statements coupled with qualitative interviews. Unfortunately, the lack of available data makes it difficult to show when the levels of trust have been crossed. Since most negotiations take place behind a veil, with little information disclosure, the best indicators are either positive or negative statements of the other party. Another issue which future researchers could delve into is the complexity of relationship in different issue areas. For instance, as noted by Ruzicka and Keating, two states may have a higher level of trust in their strategic partnership, but far less in their economic relations.<sup>163</sup> Although social interactions showcasing development of partnership can impact economic transactions, the extent to which the same changes the level of trust is difficult to map out. Finally, the level of analysis problem represents the greatest methodological challenge; perhaps trust accentuates this problem, especially in light of trust scholars' difficulty in defining general markers of trust coupled with the lack of available data.

The discussion of the concept of trust through its application in the case of BTIA negotiations between the EU and India provide interesting insights into the nature of trust. Broader questions regarding analysing trust empirically do arise; however, a combination of verbal and behavioural evidence does show how parties function. In the end, trust research is a leap in the dark, as Forsberg rightly notes, "Trust researchers often study texts and statement, but the language itself is fallible. Paradoxically, the language of trust is perhaps most needed in situations where there might be an intention to build trust but where there is also simultaneously, plenty of uncertainty concerning whether trust actually exists."<sup>164</sup>



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