



1. [India-EU free trade pact talk remains inconclusive but both remain committed](#)
2. [Preparation for EICC Trade & Investment Partnership Summit gathers pace](#)
3. [Foreign Trade Policy: Indian government announces host of incentives to boost exports](#)
4. [India, Germany agree to broaden bilateral cooperation](#)
5. [India accedes to international trademark system](#)
6. [India's Competition Commission eases M&A norms](#)
7. [India sitting on over \\$4 bn unused Universal Services fund, says GSMA](#)
8. [India tops global inward remittances list at \\$69 bn in in 2012: World Bank](#)
9. [Brazilian government launches stimulus package for domestic pharma production](#)
10. [US report blames India for trade barriers](#)
11. [EU, Australia, Canada may follow India's Patent Law](#)
12. [Commission proposes to modernise the EU's trade defence instruments](#)
13. [Commission proposes to improve application of workers' rights to free movement](#)

India-EU free trade pact talk remains inconclusive but both remain committed

The free trade negotiation talks at the highest ministerial level in Brussels remained inconclusive but both India and EU have India stated their commitment to ink the deal by the end of the year. A meeting between Commerce & Industry and Textiles Minister Anand Sharma and European Union (EU) trade commissioner Karel de Gucht in Brussels on April 15 remained inconclusive, with both sides sticking to their respective positions.

India clearly told the EU it would "not accept" any further concession, as far as the automobile sector was concerned. The EU, especially Germany, had demanded an indefinite tariff rate quota on the import of cars from Europe, as well as zero duty on all cars, eventually. At the meeting, both ministers reviewed the progress in talks for an ambitious free trade agreement (FTA). The meeting came within days of Prime Minister Manmohan Singh and German Chancellor Angela Merkel agreeing to a "successful outcome".

The official said India had already offered "much more" to EU compared to what it had offered to Japan and Korea, with whom it had similar agreements. "Now, EU has to narrow its ambitions if it truly wants the deal with India. We have given the best we can, much better than what we have offered to anybody so far, in the automobile sector and in other areas, too. But they seem to be asking for more and more concessions," the official said.

India once again asked EU to remove the 20 per cent threshold relating to the safeguard clause introduced under the Mode-4 quota of services trade. This relates to free movement of Indian professionals under a relaxed visa regime. However, it seemed EU didn't agree to India's demand.

"This provision will significantly reduce the benefits India can enjoy. With such a provision, it becomes meaningless for India to negotiate on services," the official said. Under services trade, India also expressed "severe concern" on EU's denial to recognise it as a 'data-secure' nation, without which it wouldn't be able to gain substantial market access for its information technology industry. According to EU law, European countries engaged in outsourcing business with countries not certified as 'data-secure' have to follow stringent contractual obligations that raise operating costs and affect competitiveness.

So far, 16 rounds of negotiations on the FTA have been held. The last round was held in Brussels on March 18-22. However, India and the European Union have decided to chalk out a roadmap to complete

their Free Trade Agreement (FTA) negotiations by October-November this year. The FTA – officially known as Broad-based Trade and Investment Agreement (BTIA) – is likely to be signed during the next India-EU Summit, expected to be held in November. The next ministerial meeting on the ongoing India-EU Broad-based Trade and Investment Agreement (BTIA) is scheduled for June as experts and chief negotiators will remain engaged.

An official statement issued in New Delhi said after the meeting of Prime Minister Manmohan Singh and German Chancellor Angela Merkel and the recent high level dialogue with the French President and British Prime Minister, the need for demonstrating pragmatism was underscored to conclude an ambitious and balanced agreement.

“The candid discussions between the leaders covered all the elements of the package. A clear understanding was reached that a balance needs to be arrived at for meaningful expectations of market access on both the sides,” it said.

While India wants easy access to European markets for its IT professionals and data secure status, EU is demanding heavy duty cuts to ensure sale of its automobiles, wines and spirits in India. However, the auto industry in India is strongly opposed to duty cut in the sector.

In his talks with Mr Gucht, Mr Sharma underscored the importance of getting a good package on services including declared interest in IT sector and movement of Indian professionals. He also emphasised the need to declare India a data-secure country. Both the sides sought a complete understanding on a balanced package in the services sector. Other issues of market access for agricultural products, pharmaceuticals and textiles were highlighted by Mr Sharma.

While the EU has conveyed its strong interest in financial services, automobile sector, wines and spirits and cheese, Mr Sharma reaffirmed the stated position that India cannot go beyond the parameters of the TRIPS Agreement and Indian laws for Intellectual Property Regime in the ongoing negotiations for a trade and investment agreement. The EU also wants hike in the FDI limit in the insurance sector to 49 per cent from the current 26 per cent, a Bill which is pending with the Parliament.

The Commerce, Industry and Textiles Minister said, “After a number of rounds of negotiations, issues of concern to both sides have been identified. We must devote our energies to addressing these issues as expeditiously as possible.” “India is keen on a successful and balanced outcome of the negotiations at an early date,” he added.

According to official sources, talks on the services sector dominated this round. On cross-border supply of services (outsourcing), the EU raised doubts on whether India is data-secure. Pointing to the presence of several Fortune 500 companies in India, including their research and development centers, Mr Sharma insisted that India is data secure and sought greater market access for Indian companies providing cross-border supply of services to the EU. India also demanded that EU ensure freer movement of Indian service professionals, including from the IT sector, through the FTA. New Delhi also asked the EU to do away with certain “restrictive” safeguard clauses, saying they may come in the way of India availing itself of the concessions offered by the EU in the FTA. Besides, India has sought more market access in agricultural products.

Meanwhile, the EU has sought clarity on greater market access in wines and spirits and the automobile sectors. The EU also raised protection of Intellectual Property Rights, including Geographical Indications and patents. Despite the Euro Zone crisis and the slowdown in the Indian economy, trade between India and EU in 2011 increased to \$108.8 billion from \$83.46 billion in 2010.

The much-hyped bilateral trade and investment agreement (BTIA) between India and the European Union (EU) would not impact the Indian generic drugs industry or lead to a change in the country's patent law, João Cravinho, EU ambassador to India, recently said in New Delhi. "Our position is very clear. We do not want any change to any Indian legislation," Cravinho told Business Standard on the sidelines of a meeting

here. He was referring to speculation that the EU had demanded an amendment to the Indian patent law, in the wake of a patent being rejected to Swiss pharmaceutical major Novartis, for its cancer drug, Glivec.

Cravinho said under the India-EU trade deal negotiations, EU hadn't demanded "anything more than what is there in TRIPS (trade-related intellectual property rights), neither have we asked for data exclusivity or patent linkages". "Because the issue (of pharmaceuticals) is somewhat political, it can reach a high level of mobilisation and there are people who are anti-free trade anyway. So, it can be a vehicle for mobilising their views. Pharmaceuticals are not a significant area of difficulty in the negotiations. Seriously, the generics industry in India is not worried," Cravinho said.

He added the EU "does not stand by" the documents reportedly leaked by civil society groups in that region. According to these documents, India had buckled under pressure from EU to change its intellectual property right (IPR) laws, and this would affect accessibility and affordability of medicines.

Apparently, EU has demanded an exclusive chapter on data exclusivity. By gaining exclusive rights over data, innovator companies can prevent their competitors from securing marketing licences for low-cost versions during the tenure of this exclusivity. In the case of pharmaceuticals, data exclusivity refers to the data generated by drug companies through expensive global clinical trials to prove the efficacy and safety of new medicines.

EU commissioner for health and consumer policy Tonio Borg, currently in India, said under the negotiations, EU hadn't demanded anything, as far as issuing injunctions for patent infringement was concerned. He was referring to the fact that a few Indian drug makers were facing lawsuits by global pharmaceutical companies for breach of patents. According to norms, Indian courts abstain from issuing injunctions during hearings for cases concerning patents, in case it results in stopping the supply of generic drugs to the market.

Since the alleged text on negotiations between India and EU was leaked, Indian civil society groups and health activists have been up in arms against India-EU trade pacts. They believe EU's demand for stronger implementation of IPR norms might affect the country's generic drugs industry, which exports 67 per cent of its produce to poor and developing countries.

Currently, India supplies low-cost versions of expensive medicines manufactured by major pharmaceutical companies, a practice that has earned it the reputation of 'pharmacy to the developing world'. Any change in IPR laws would prove to be a death knell for Indian generics manufacturers.

The European Union has clarified that it is not seeking inclusion of data exclusivity provisions in the proposed free trade agreement with India and added there is a political will from both the sides to move on with the pact. In pharmaceutical sector, drug companies generate such data through expensive global clinical trials to prove the efficacy and safety of their new medicine.

By gaining exclusive rights over this data, innovator companies can prevent their competitors from obtaining marketing licence for low-cost versions during the tenure of this exclusivity. It is felt that inclusion of data exclusivity provisions would delay, and could even prevent the registration of generic versions of medicines - even when there is no patent on a medicine. It would also hurt the interests of the domestic generic drugs industry.

"No we are not asking for anything whether it concerns data exclusivity or patent extension," Head of EU Delegation to India João Cravinho said. He was addressing reporters along with the visiting European Union Commissioner for Health and Consumer Policy Tonio. There were strong apprehensions from Indian side that EU is pressing for inclusion of this provision in the FTA. He said that the 27-nation bloc is not asking for anything which will impact Indian generic medicine industry.

India is a major player in this sector. India's generic drug industry is estimated at over \$20 billion and the country exports 50 per cent of its produce.

On the issue of leakage of certain portions of the FTA text, Cravinho said that they do not stand by the veracity of those documents. On the ongoing negotiations for the much-delayed free trade agreement between India and EU, Borg said there are stumbling blocks on the way of the pact "but lets move on because we are so near to the agreement". He asked both the sides to grab the window of opportunity through conclusion of talks. "...Certainly there is a political will to move forward now..." he added.

India-EU free-trade pact may undermine WTO's patent agreement: A European Union proposal that the 20-year exclusivity for drug patents be extended by a further 5 years under a free-trade agreement (FTA) with India would undermine the WTO agreement on TRIPs, analysts point out.

An India-European Union free-trade agreement (FTA) would call for changes in India's patent laws, if it accepts European Union's (EU) proposal for an extended patent term for pharmaceutical products.

EU, which is dead against India's pharmaceutical industry, which churns out the generic equivalents of some of the highly priced branded medicines of Western MNCs, has demanded that patent term for medicines be extended from the current 20 years to accommodate the time taken in regulatory procedures, approvals and delays.

Alternatively, the EU would like the Indian authorities to do away with time consuming procedures for drug permits, so as to facilitate greater market penetration by pharma MNCs.

EU is now demanding a 5-year extension of patent protection to pharma MNCs to keep generic threat at bay for a further 5 years. Currently, article 33 of World Trade Organisation's (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) provides for 20 years of patent protection from the date of filing of patent application. The 20-year exclusivity was agreed upon under TRIPs, after taking into consideration the time required for regulatory compliances and the proposed extension of patent period under an FTA would undermine the WTO agreement, say analysts. Under the proposed FTA, the EU is trying to skirt the provisions of TRIPs outside the WTO agreement.

If EU's demands are accepted, India may have to revise its patent law to accommodate such provisions. Interestingly, India's patent law was recently lauded internationally because of its provisions to safeguard medicines against ever greening of patents etc. Various patient groups and health activists have staged protests on the streets in New Delhi today calling on the government to reject EU's demands in the FTA with India.

This protests come in the wake of Prime Minister Manmohan Singh's visit to Germany, with FTA topping the agenda. Commerce minister Anand Sharma is also scheduled to be in Brussels for ministerial level negotiations on 14-15 April to finalise the FTA. India has already acceded to the global trademarks rules of the West and an FTA with the EU would further imperil its pharmaceuticals industry and harm interests of its citizens.

The civil society is opposing the intellectual property related issues in the proposed FTA that would impact access to affordable medicines across the developing world. The agreement would involve slashing of duties on over 90 per cent of the trade and opening up of mutual markets for services and investment.

In a statement EU's chief negotiator of the EU-India FTA Mr. Ignacio Garcia Bercero has said that EU is ready to make 'ambitious' work visa offer for free trade pact with India. The European Union is ready to make an "ambitious" offer on temporary work visas for Indian professionals to help finalise a delayed free trade agreement, the EU's chief negotiator said on 23 April, and called on India to reciprocate. The EU has been asking for greater market access in auto, wines and spirits while India wants liberalised visa norms for its professionals.

Negotiators had originally hoped to seal the deal in 2012, but talks stalled over issues including access for Indian workers to Europe's labour market.

At stake is an agreement that would create one of the world's largest free-trade zones by population - covering 1.8 billion, or more than a quarter, of the world's people.

"I can tell you that we are very conscious that for India it will not be possible to conclude an agreement unless there are improved conditions for Indian highly qualified professionals to provide temporary basis service in Europe. And we are ready to make quite an ambitious offer," negotiator Ignacio Garcia Bercero said.

The EU has been asking for greater market access in auto, wines and spirits while India wants liberalised visa norms for its professionals. "In the same way we are expecting India to take some politically difficult decisions which are important for Europe. We are also ready to take politically important decisions which are important for India," Bercero said.

"It is very clear that for us issues like cars or wines and spirits are extremely important in terms of our export interest to India. Besides, we believe that there is certainly enough room in India to allow cheaper European imports of those products in the Indian market.", he added.

Preparation for EICC Trade & Investment Partnership Summit gathers pace

Chamber's Trade and Investment Partnership Summit (TIPS) on 16 October in Brussels is receiving wide interest in India and in Europe. The European Business Technology Centre, a programme funded by the European Commission and managed by the EUROCHAMBRES, as main collaborator, will be the main collaborator and both are working closely to see that the Summit meets its objectives. Titled as "***Dynamics of EU-India Relations in a Changing Europe: Challenges and Opportunities for Accelerating Trade and Investment***" the theme of the Summit will also mark the 50 years of India's engagement with the EU. TIPS will be the largest business event in the context of India and European business relations of 2013 in Europe and will provide the highest level platform for a concrete and constructive dialogue in the context of improving trade and investment between EU and India and will offer Indian and European companies to build their collaboration. The EU Trade Commissioner Karel De Gucht has been invited to address the summit.

Over the past two months, the Chamber has been hard at work committed to building a sustainable relation, building a strong participatory framework and foundation for closer cooperation between European and Indian business and how together they can enhance EU-India trade. In the quest for meeting its mission objectives with larger participation of business, Chamber's efforts has been very successful. Business houses, companies, organisations and agencies who have confirmed their participation include Dalmia Group of Companies (India), Foresight Limited (UK), The FifthVeda Entrepreneurs (India), KHS Machinery (India), Binani Group of Industries (India), Bajoria Group (India), Avantha Group (India), Tata Consultancy Services (India), Poddar Group (India), CMI Group (Belgium), Commonwealth Business Council (UK), FIT (Belgium), Deloitte, PwC, Andras House (N. Ireland), AWEX (Belgium), Captiveway (France), LOYENS & LOEFF (The Nederland), GIANNI, ORIGONI, GRIPPO, CAPPELLI & PARTNERS (Italy), DLA Piper, Uflex Limited (India), Ernst & Young, Indian Chamber of Commerce (India), Alliance for Natural Health International (UK), BNP Paribas, Ransat Group (UK), Chatham House (UK), APCO Worldwide and JBF-RAK (UAE).

The Summit will bring together leaders from various fields to discuss challenges, opportunities and commitment required by companies to enhance business collaboration. TIPS will seek to bridge trade and economic divide between the two countries will bring policy makers, industrialists, business leaders, and high representatives of the European Commission and heads of trade bodies. The summit will attempt to build better and innovative relationship by exploring the dynamics of changing Europe through discussion and exchange of ideas among high profile business leaders, experts from wide range of discipline from Europe and India. The sessions will focus on some of the leading innovative companies sharing their experience, expertise and concerns on the issue of trade and investment between EU and India. The event will also discuss the broader side of the trade related issues such as regulatory and legal framework, taxation policies and other incentives in India and Europe. The TIPS will make comprehensive overview of India-EU relations in content and context and will suggests ways to give it a strategic dimension. The summit will serve as a key platform offering an unparalleled access to a full spectrum of

more than 150 industry leaders, business executives, policy makers, representatives of the European Commission to share their views on issues related to trade and investment. The summit will provide an opportunity for the delegates to access important presentations to engage in discussions and network with specialists across a range of topical issues and suggests ways to give it a strategic dimension. Industrial sectors that will be discussed in depth for bilateral cooperation include Pharmaceuticals, Renewable Energy, Infrastructure and Retail.

Foreign Trade Policy: Indian government announces host of incentives to boost exports

Faced with declining exports, the government today announced a slew of measures including extension of the popular EPCG scheme to all sectors and sops for Special Economic Zones (SEZs) to boost shipments.

The initiatives announced by Commerce and Industry Minister Anand Sharma as part of the annual supplement to the Foreign Trade Policy (FTP) are aimed at pushing exports which declined by 1.76 per cent to USD 300.6 billion during 2012-13 and pushed up the trade deficit to USD 190.91 billion.

The Export Promotion Capital Goods (EPCG) scheme, which allows exporters to import capital goods at zero duty, would be extended beyond March 2013 and would be applicable to all sectors, Sharma said.

"We have decided not only to extend the zero duty EPCG scheme beyond March 2013, but also merge it with 3 per cent EPCG scheme. Now, the zero duty EPCG benefit will be available to all sectors," the Minister said.

As regards the SEZ scheme, Sharma said, the minimum land area requirement for setting up such zones has been reduced to

Half and there would be no ceiling for IT and ITeS SEZs. "We have taken note of the fact that there are acute difficulties in aggregating large tracks of uncultivable land which is vacant and contiguous and we have decided to reduce the minimum land area requirement by half for different categories of SEZs.

"...there would be no minimum land requirement for setting up IT/ITeS SEZs and only minimum built up area criteria would be needed to be met by SEZ developer," the Minister said.

On demands of an exit policy for the SEZs, Sharma said it has been decided to allow transfer of ownership and sale of SEZs units. "I hope that the measures which we have announced today will go a long way in providing much needed support for exports," the Minister added.

India, Germany agree to broaden bilateral cooperation

India and Germany on Friday agreed to broaden their cooperation and "shape the future" with focus on trade, bilateral investment, energy, hi-tech and defence even as both sides committed themselves to EU-India negotiations for a "broad based, ambitious and balanced" FTA.

Besides agreeing to greater cooperation at all international bodies, both sides agreed to continue working together to prepare the ground for India to accede to the export control regimes as a full member and thereby strengthen the international non-proliferation regime.

"The Indo-German cooperation opens up excellent prospects for developing both countries to the benefit of their peoples.

"Germany and India share the view that new initiatives in the area of trade, bilateral investment, energy, energy security, the environment, culture, education, training, research, technology and defence can catalyse and activate the great potential of their bilateral ties," said a joint statement released at the end of the Indo-German intergovernmental consultations held in Berlin.

The meeting was co-chaired by Prime Minister Manmohan Singh and German Chancellor Angela Merkel.

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Germany and India are determined to further expand their cooperation in higher education, research and technology -- dynamic core areas of the Indo-German Partnership -- and to open up new and innovative areas of cooperation, the statement said.

The statement titled 'Shaping the future together' noted that close trade and investment relations are a core dimension of bilateral partnership and of great importance for the development of both the Indian and the German economy.

"Both Governments will strongly back a further intensification of Indo-German business cooperation. Both sides would encourage cooperation in the field of rare earths on mutually beneficial terms. Both Governments recognize that expanding high technology trade and cooperation is key to deepening the strategic content of their relations.

"Both sides agree to consult regularly on advancing this objective and to this end form a High Technology Partnership Group including both government and business," it said.

Both sides emphasised that freedom of movement for business visitors and professionals is important for the sustained growth of trade and investment flows. Both sides agreed to work together to facilitate such movement between the two countries.

Germany and India reaffirmed that they will continue their successful development cooperation in a spirit of partnership.

Assisting projects with innovative approaches in the mutually identified priority areas of energy, environment and sustainable economic development support India's inclusive development and poverty reduction programmes, the statement said.

Germany and India expressed satisfaction at the deepening comprehensive bilateral relations between India and EU and "recognise that both India and EU, as long-standing strategic partners, are committed to working together to reinforce the relationship in all areas".

"The leaders underline their strong commitment to a successful outcome to the EU India negotiations for a broad based, ambitious and balanced Free Trade Agreement that will generate jobs and growth in both countries and their hope for final agreement in 2013," the statement said.

It added that Germany and India will seek to intensify consultations within the G20 and strengthen the G20's role as the premier forum for international economic and financial cooperation.

"Both sides will therefore make strenuous efforts to achieve a consensus on trade facilitation by a balanced package of issues this year at the 9th WTO Ministerial Conference so as to ensure there is still a prospect of bringing the Doha Round to a conclusion," it said.

On the security front, both sides agreed to intensify further their exchange of views and experience on combating terrorism as well as their practical cooperation in this connection, also in the Indo-German Working Group on Counter-Terrorism as well as multilateral forums.

"In the light of new security challenges both sides are keen to intensify their security policy dialogue and exchange of views.

"Both sides expressed their keenness to enhance cooperation in the defence sector through dialogue and exchanges on matters of mutual interest, including in the area of defence technology collaboration," the joint statement said.

Germany and India reaffirmed that they will work together for a world without nuclear weapons, for universal and non-discriminatory global nuclear disarmament and a reduced salience of nuclear weapons in international affairs and security doctrines.

India accedes to international trademark system

India has joined the International Registration of Marks at the World Intellectual Property Organisation (WIPO) by depositing the instrument of accession to the Madrid Protocol.

India is the 90th member to join the international trademark system and the treaty will enter into force with respect to India on 8 July 2013, according to a press release by the WIPO.

India's minister for commerce, industry and textiles Anand Sharma deposited the instrument of accession to the Madrid Protocol.

Earlier, addressing a high-level policy dialogue at the WIPO headquarters in Geneva today, Sharma defended flexibilities for developing nations in honouring their international Intellectual Property (IP) commitment to meet their social challenges.

Sharma reminded the WIPO that while countries of the South have a responsibility to honour their international commitments, they should have also have the flexibility to provide affordable healthcare solutions for their citizens.

"It is my belief that while all countries are obligated to honour their international commitments, inherent flexibilities must be provided to developing countries to address these pressing social challenges," said Sharma.

Sharma also raised the issue of the intellectual property associated with genetic resources, traditional knowledge and folklore such as curative aspects of neem and haldi etc, which are being plundered.

India has created a unique digital library of traditional knowledge which has over 250,000 entries highlighting the source and the efficacy of each product, Sharma expressed concern about the fact that at times there is extensive bio-piracy through patents being awarded for traditional knowledge.

"India has been at the forefront for bringing this agenda on the negotiating table and for the last one decade, we have been trying to build a consensus for a binding treaty on traditional knowledge. I hope that WIPO shall be able to bring these negotiations to culmination," he said.

The Madrid Protocol on the International Registration of Marks aims at offering a safe and effective means of protecting and managing their trademark portfolio internationally.

"We recognise that this instrument will provide an opportunity for Indian companies, which are increasing their global footprint, to register trademarks in member countries of the protocol through a single application, while also allowing foreign companies a similar dispensation."

WIPO director general Francis Gurry welcomed India's accession, noting, "India's accession to the Madrid system is a major milestone in bringing us closer to transforming the Madrid System into a system with truly global reach." He added: "India's participation in the Madrid system gives brand owners around the world the ability to extend their protection to the important Indian market, through a single, simplified and cost-effective procedure."

India is the 14th of the G-20 economies to accede to the Madrid Protocol.

"India's accession to the international trademark system, as with the recent accessions by Colombia, Mexico, New Zealand and Philippines, signals an era of significant geographical expansion of the Madrid system, which offers greater benefit to right holders worldwide," Gurry said.

The Madrid system is especially attractive to large businesses amidst the current global economic conditions, by protecting markets internationally.

The year 2012, meanwhile, saw the highest number of international trademark applications being filed under the Madrid system, with 44,018 applications - a 4.1 per cent increase from the previous year.

India's Competition Commission eases M&A norms

In an important move aimed at reducing regulatory hurdles in corporate mergers and acquisitions, fast tracking clearances for mergers and acquisitions, the government has announced an easing of Competition Commission of India rules for M&As.

Besides relaxing compliance requirements, the amendments to competition rules exempt corporates from seeking the CCI's permission for certain M&A deals, like transactions between two entities where one of the enterprises holds more than a 50-per cent stake in the other.

All M&A transactions involving Indian companies have to get approval from the fair competition watchdog CCI.

The CCI has moved amendments to the combination regulations contained in the CCI Transaction of Business Relating to Combinations Regulations, 2011. It will come into effect as soon as the new rules appear in the official gazette the CCI said in a release recently.

Under a notification issued on 4 April, companies now do not have to file a notice with the CCI for purchasing shares or voting rights in another entity if the acquisition "is less than five per cent of the shares or voting rights of the company in a financial year", CCI said.

It added that the rules have been amended "with a view to further simplify filing requirements and bring about greater certainty in the application of the Act and the Regulations".

The relaxations are with regard to certain filing requirements for corporate entities planning combinations that are unlikely to raise competition concerns.

The exemption is subject to the condition that the acquirer already holds more than 25 per cent but less than 50 per cent of the shares or voting rights of the target company.

"In a step which would significantly reduce compliance requirements, the provision for giving notice is now dispensed for mergers/amalgamations involving two enterprises where one of the enterprises has more than fifty per cent (50 per cent) shares or voting rights of the other enterprise.

"Similarly, the requirement of giving notice is also dispensed for merger or amalgamation of enterprises in which more than fifty per cent (50 per cent) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group," the notification said.

Clarifying rules on intra-group acquisitions, CCI said that relaxation of norms would not be applicable in cases where the "acquired enterprise is jointly controlled".

The provisions of Competition Act related to regulation of combinations have been in force from June 1, 2011.

India sitting on over \$4 bn unused Universal Services fund, says GSMA

Global mobile industry body GSMA has said that India is sitting on unutilised fund of over USD 4 billion collected from telecom operators and the system needs to be re-valuated as it has been ineffective.

"In India, the Universal Service Obligation Fund (USOF) continues to impose approximately a five per cent levy on operator revenues, despite the fact that it contains over USD 4 billion of accumulated funds.

"India is not alone as regards the collection of substantial amounts of money from the mobile industry, for example in Cote D'Ivoire and Paraguay, the USF represents in excess of 0.6 per cent of the countries' GDP," a report prepared by Ladcomm for GSM Association said.

Globally, there are USD 11 billion universal services funds lying unused with authorities in various countries, it said.

"Our research shows that, despite the fact that there is an ever-increasing amount of money sitting unused in these funds, governments continue to collect still more from the mobile operators, India levies 5 per cent tax on mobile operators for collecting USF perhaps which is highest in the world," GSMA Head of Public Policy Gabriel Solomon said here.

"At the moment that's not evident. One of the key reason is 5 per cent of each rupee earned is going to USOF and its not going to be returned back to the industry. This is a missed opportunity. It is something that is taken from the industry that could otherwise be used to make an investment case," Solomon said.

As per the Indian Telegraph Act 1885 (as amended in 2003 and 2006), Universal Service Obligation is defined as access to telegraph service to people in rural and remote areas at affordable and reasonable prices.

The report, however, appreciates India's USOF for having high level of transparency from a financial reporting perspective along with Colombia.

India tops global inward remittances list at \$69 bn in 2012: World Bank

India has emerged the largest recipient of overseas remittances in the world, with inward remittances of \$69 billion in 2012, even as global remittances reached \$514 billion during the year, the World Bank said in a report.

China is second in the list of countries receiving remittances, with \$60 billion inflows in 2012, followed by the Philippines (\$24 billion), Mexico (\$23 billion) and Nigeria and Egypt (\$21 billion each), the report said.

Pakistan, Bangladesh, Vietnam, and Lebanon also were large recipients of overseas remittances during the year.

Remittance flows to developing countries have more than quadrupled since 2000, while global remittances, including those to high-income countries, are estimated to have reached \$514 billion in 2012, compared to \$132 billion in 2000, World Bank said in a report released today.

Officially recorded remittance to developing countries grew 5.3 per cent to an estimated \$401 billion in 2012, according to the latest edition of the World Bank's 'Migration and Development Brief'.

The report also projected an 8.8 per cent annual average increase in remittances to developing countries over the next three years, to reach \$515 billion in 2015.

The World Bank also announced the establishment of the Global Knowledge Partnership on Migration and Development (KNOMAD), which would be a global hub of knowledge and policy expertise on migration issues.

"Migration and remittances offer a vital lifeline for millions of people and can play a major role in an economy's take-off. They enable people to partake in the global labour market and create resources that can be leveraged for development and growth.

"But they are also a source of political contention, and for that very reason deserving of dispassionate analysis," said Kaushik Basu, the World Bank's chief economist and senior vice president for development economics.

Remittances to South Asia as a whole increased by 12.8 per cent in 2012 against annual average increases of 13.8 per cent in the previous two years, the World Bank report said.

Since many migrants send money and goods through people or informal channels, the true size of remittances could be much larger than the official figures, the report noted.

In 2011, Tajikistan reported remittance inflows equal to 47 per cent of its gross domestic product (GDP), followed by Liberia (31 per cent), Kyrgyz Republic (29 per cent), Lesotho (27 per cent), Moldova (23 per cent), Nepal (22 per cent), and Samoa (21 per cent), the report added.

Brazilian government launches stimulus package for domestic pharma production

The Health Minister of Brazil, Mr. Alexandre Padilha, announced a package of initiatives to boost Brazilian pharmaceutical sector during an executive meeting of the Brazilian Inter-Ministerial Group (GECIS) in Sao Paulo on April 11, 2013.

Eight partnerships for national production of pharmaceutical products and equipment between public and private laboratories were signed during this meeting – these are expected to generate savings of US\$ 354 million over a period of 5 years. Through these partnerships for productive development (PDP) between public and private laboratories, the private foreign laboratories undertake to transfer to the Brazilian public laboratories, technology for domestic production of the pharmaceutical product or vaccine within a 5-year period. In return, the government ensures exclusivity in the purchase of these products at the lowest values quoted in the world market during the same period. In this manner, the Ministry of Health of Brazil ensures access to high-cost treatments and expands patient care of the Unified Health System (SUS).

NTPPharm, the Brazilian partner of **Belgium-based VAYA Pharmaceuticals** was awarded one of the eight signed PDPs, for an anti-retroviral (Anti-AIDS) product Darunavir. According to Ashish Sehgal, Managing Director of VAYA Pharmaceuticals, the Brazilian government is actively pursuing an agenda for locally manufactured products and a strategy designed to bring new technologies in-house. This evolving market scenario has the potential to bring in numerous business opportunities for generic players. Brazil is currently the 6th largest pharmaceutical market in the world, growing at an annual rate of 23%.

VAYA Pharmaceuticals offers professional business development consulting and implementation services for the markets of Europe and Brazil - it complements the activities of its manufacturing partners, meets business development challenges with practical solutions and accelerates the success of its business partners.

US report blames India for trade barriers

Although US-India bilateral trade has grown exponentially in recent years, the US government has raised anew a wide range of grievances against New Delhi's tariff and non-tariff barriers, claiming these impede imports of American products. While acknowledging the economic reforms undertaken by India, the annual report from the Office of the US Trade Representative questions the Indian trade regime over a broad front. It says the US goods trade deficit with India was \$18.2 billion in 2012, up \$3.5 billion from 2011. US goods exports in 2012 were \$22.3 billion, up 3.9 percent from the previous year. Corresponding US imports from India were \$40.5 billion, up 12.1 percent. India is currently the 18th largest export market for US goods.

"While the United States has actively sought bilateral and multilateral opportunities to open India's market, US exporters continue to encounter tariff and nontariff barriers that impede imports of US products, despite the government of India's ongoing economic reform efforts," says the report which deals with foreign trade barriers of over 60 countries.

It complains that the structure of India's customs tariff and fees system is "complex and characterized by a lack of transparency in determining net effective rates of customs tariffs, excise duties, and other duties and charges". The tariff structure of general application is composed of a basic customs duty, an additional duty, a special additional duty and an education cess.

"India's tariff regime is also characterized by pronounced disparities between bound rates (i.e., the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the WTO, India's average bound tariff rate was 46.4 percent, while its

simple MFN average applied tariff for 2010 was 12 per cent," the report says, adding that US exporters were facing tremendous uncertainty because of this large disparity between bound and applied rates.

"Rather than liberalizing its import tariffs, India instead operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. Eligibility to participate in these schemes is usually subject to a number of conditions, including an export obligation," it says. The report also criticizes India for maintaining a "negative list" of imported products subject to various forms of nontariff regulation and divided into categories of banned or prohibited items, restricted items and canalized items. It goes on to complain that India "often fails to observe customary transparency requirements, such as publication of this information in the Official Gazette or notification to WTO committees, which can, in practice, act as a barrier to trade".

The USTR report also prominently raises objections about India's government procurement policies, export subsidies, intellectual property protection, service barriers and investment barriers. India, it says, remained on the US's "Priority Watch List in the 2012 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights", adding: "Recent patent-related actions have only heightened these concerns."

EU, Australia, Canada may follow India's Patent Law

India's strong stance on minor drug innovations could reverberate in national parliaments and courthouses of the developed world as Australia, the EU and Canada get ready to discuss and ban patent protection for frivolous improvements. A top Australian government body recently asked for changes in its patent laws relating to drugs saying that the indiscriminate grant of patents to incremental innovations should be checked and that an independent review should be set up to vet these proposals.

A draft report on the possible changes was released by IP Australia, the government body. Canadian lawyers and health industry officials are discussing tighter standards and taking comfort from the Indian law and the Supreme Court ruling on Monday denying patent protection to Glivec of Novartis. India was one of the first few countries to introduce a specific clause such as Section 3(d) way back in 1995 when it passed the product patent legislation. This section forces the patent applicant to prove the medical or therapeutic efficacy of any incremental innovation for which it is seeking a patent. The law came into effect from 2005 and NovartisBSE filed the case against the Indian government in 2006.

Though the final decision on Novartis came only on Monday, the provisions of the Indian law was well known in international IP and pharma circles and countries and courts have been modifying their stance since then.

Last year, the Canadian Supreme Court refused to grant patent to Pfizer's Viagra saying that the company has not proved the efficacy of the compound that it was seeking to patent. Last month, the European Union sounded an alarm last month over loose patent standards saying that there is widespread concern that patent quality is deteriorating and that the low patent quality threatens the functioning of the entire system.

"The Indian ruling is not an isolated one; we are seeing in Canada, courts are under pressure to strengthen their patent standards. What we are seeing is that the developed world is taking a cue from developing countries in drafting patent norms" said Ikechi Mgbeoji, lawyer, and associate professor with Osgoode Hall Law School based out of Toronto, Canada.

Last year, Argentina amended its patent act to incorporate a law that said "the discovery of a different or improved characteristic or property for a particular element or a group of elements already known in the prior art does not mean that the product or process is novel". Other countries like Indonesia are also following suit taking a cue from Indian law. "What the Novartis decision does is give other countries an imprimatur from a highly respected court that restricting ever greening is an important public policy," says Brooke Baker, professor of Law, Northeastern School of Law, who advised the Uganda government in drafting its patent law.

"I think that the decision could well embolden other countries to adopt India-style protections against ever greening," he added. India's Supreme Court on Monday declined to grant patent protection to Novartis' blood-cancer busting drug Glivec. The denial created a world-wide stir and was widely welcomed by pharma NGOs, activists and aid organisations and by Indian government and domestic pharma companies. Novartis and other multinationals criticised the ruling saying that it is a setback to innovation and research. But the release of the Australian government report shows that Australia and health experts are also concerned about what they see as a widespread misuse of "ever greening" or trivial innovations in an effort to get patent protection.

"The decision by India's SC is an important addition in our case as an example to the fact, that national courts and national laws can have more control over patents and limit patents," said Dr Patricia Ranald, convenor of Australian Fair Trade and Investment Network, a lobby group that advises government on trade and investment decisions. The organisation was one of the many which submitted recommendations to the report. She added that IP Australia's draft report is recommending that Australia not extend patents any further and that existing patent law be reviewed to make it more difficult to obtain patents on drugs that really do not add to the medical efficiency or effectiveness of the medicines.

Commission proposes to modernise the EU's trade defence instruments

The European Commission on 10 April made a proposal that aims at adapting the EU's rulebook to tackle unfair competition from dumped and subsidised imports to the contemporary challenges facing the EU's economy.

The proposed changes would make the EU trade defence work better for all stakeholders, including both EU producers and importers. Anti-dumping and anti-subsidy instruments will be more efficient and better enforced to shield EU producers from unfair practices of foreign firms and from any risk of retaliation. At the same time, importers will enjoy greater predictability in terms of changing duty rates, which will make their business planning easier. The entire system will become more transparent and user-friendly. " This is a balanced package with real improvements for all stakeholders affected by trade defence duties – producers, importers and users," said EU Trade Commissioner Karel De Gucht. "We want to equip EU businesses better to tackle unfair trade practices abroad, while not negatively affecting EU consumers or companies that rely on imports."

According to the legislative proposal, the Commission will: Improve the predictability for businesses by informing them about any provisional anti-dumping or anti-subsidy measures two weeks before the duties are imposed; Offer importers reimbursement of duties collected during an expiry review in case it concludes that there is no need to maintain the trade defence measures in place after five years; Protect the EU industry by initiating investigations on its own ("ex officio"), without an official request from industry, when a threat of retaliation exists; Discourage other trading partners from engaging in certain unfair trading practices by imposing higher duties on imports from countries which use unfair subsidies and create structural distortions in their raw material markets. In such cases, the EU would deviate from its general 'lesser duty' rule that keeps the additional tariff within the limit of what is strictly necessary to prevent an injury for an EU industry.

The legislative proposal must be approved by the Council and the European Parliament and will probably not become law before 2014. Additional non-legislative proposals will facilitate cooperation with firms and trade associations involved in investigations by extending certain deadlines during the investigations; improve monitoring of trade flows; allow ex-officio anti-circumvention investigations to ensure faster action against illegal evasion of measures.

In parallel, a DG Trade working paper sets out 'draft guidelines' in four particularly complex areas: The expiry review of a trade defence measure, which is an investigation at the end of the usual five-year application of duties to determine if dumping and injury are likely to continue or recur if measures expire; 'The Union interest test', i.e. the way the Commission determines whether a trade defence measure would serve the overall economic interests in the EU – including interests of the domestic industry concerned, importers, industries that use the imported product and, where relevant, consumers.

Calculation of 'injury margin', which requires an examination of the volume and prices of dumped imports and their consequent impact on the EU industry; Choice of an 'analogue country', which is used to determine existence of dumping for products coming from a country without "market economy status". These draft procedural guidelines will now be subject to a three-month public consultation. Afterwards, the Commission will analyse received comments and adopt the final version in order to make it easier for EU companies and the general public to understand EU trade defence procedures.

Anti-dumping and anti-subsidy duties are often the only way in which the EU can shield its producing industries from the damage caused by foreign companies' unfair trade practices. It is necessary to ensure that the EU's trade defence system – largely unchanged since 1995 - remains relevant to new challenges across the changing economic landscape.

The Commission's proposal comes after an eighteen-month reflection including a public consultation on the issues EU companies have to deal with when faced with unfair practices. The proposal also takes into account the conclusions of an independent study evaluating the current trade defence system and the Commission's experience of anti-dumping and anti-subsidy investigations. At the end of 2012, the EU had 102 anti-dumping and 10 anti-subsidy measures in force. The European Union is a moderate user of the trade defence instruments compared to other WTO members. Anti-dumping and anti-subsidy measures impact around 0.25% of EU imports.

Commission proposes to improve application of workers' rights to free movement

The European Commission on 26 April proposed measures to ensure the better application of EU law on people's right to work in another Member State and so make it easier for people to exercise their rights in practice. Currently there is a persistent problem with public and private employers' lack of awareness of EU rules, regardless of whether the national legislation is compliant or not. This lack of awareness or understanding of the rules is a major source of discrimination based on nationality. People also consider that they do not know where to turn to in the host Member State when faced with problems concerning their rights to free movement. The proposal aims to overcome these obstacles and to help to prevent discrimination against workers on the basis of nationality by proposing practical solutions.

László Andor, Commissioner for Employment, Social Affairs and Inclusion, said: "The free movement of workers is a key principle of the EU's Single Market. With much higher levels of unemployment in some Member States than others at the moment, it is all the more important to make it easier for those that want to work in another EU country to be able to do so. Labour mobility is a win—win – it benefits both Member States' economies and the individual workers concerned. This proposal will help workers to overcome obstacles to working in another EU country."

The proposal, if approved by the European Parliament and Council, would help to ensure real and effective application of existing legislation. Member States would be required to: create national contact points providing information, assistance and advice so that EU migrant workers, and employers, are better informed about their rights; provide appropriate means of redress at national level; allow labour unions, NGOs and other organisations to launch administrative or judicial procedures on behalf of individual workers in cases of discrimination, and give better information for EU migrant workers and employers in general.

Currently 3% of the EU labour force, or 9.5 million people, live and work in another Member State. An additional 1.2 million people live in one EU country but work in another. But people wanting to work in another country often lack protection and information in the host Member State and can have difficulties accessing a job or social advantages or with their working conditions. A September 2011 Eurobarometer poll indicated that 15% of EU citizens would not consider working in another Member State because they feel there are too many obstacles. Obstacles include: different recruitment conditions, nationality conditions to access certain posts, different working conditions in practice (such as pay, career prospects and grade), problems with access to social benefits which are subject to conditions are more easily met by nationals than by EU citizens (e.g. a residence condition), professional qualifications and experience acquired in other Member States not taken into account or taken into account in a different way.

As well as having professional and personal consequences for the individuals concerned, these obstacles also adversely affect their integration into the labour market and society of the host country.

The right of EU citizens to work in another Member State, laid down in Article 45 of the Treaty on the Functioning of the European Union (TFEU), includes the right not to be discriminated against on grounds of nationality as regards access to employment, pay and other working conditions. Regulation (EU) details the rights derived from free movement of workers and defines specific areas where discrimination on grounds of nationality is prohibited, in particular as regards: access to employment, working conditions, social and tax advantages, access to training, membership of trade unions, housing, and access to education for children.

Both Article 45 TFEU and Regulation (EU) are directly applicable in the Member States but the new proposal aims to improve and reinforce the way in which they are applied in practice. The proposal would do this by establishing a general common framework of appropriate provisions and measures for facilitating better and more uniform application of rights conferred by EU law on workers and members of their families exercising their right to free movement. Independently of this proposal, the Commission, as guardian of the Treaty, will also continue to pursue infringement procedures where necessary against Member States in cases where national law is not in line with the Treaty and the Regulation.

Labour mobility in the EU benefits not only the workers involved but also the Member States' economies. It benefits host countries because it allows companies to fill vacancies that would otherwise not be filled - there is no evidence that migrant workers take jobs away from host country workers - and so produce goods and provide services that they would otherwise be unable to do. And it benefits migrants' countries of origin because it allows workers that would otherwise be less able to work to find jobs and so ensure financial support to their family back home and acquire skills and experience they would otherwise lack. When migrant workers subsequently return to their country of origin they then benefit from that experience.

For example, a 2011 study on migration from eight new Member States (Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovenia and Slovakia) indicated that Ireland's GDP was boosted by 3%, and the UK's GDP by 1.2%, in the period 2004-09 as a result of migrant workers from these eight Member States.
