

FSE 10.11

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Mr. [Signature]
Faham
11

From: [Redacted]
JEPD
KH/907 - 215 4375
Date: 6 December 1994

cc: [Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]

RATIFICATION OF THE UK/INDIA INVESTMENT PROMOTION AND PROTECTION AGREEMENT (IPPA)

Problem

1. India and the United Kingdom have completed formalities to ratify the UK/India IPPA. Should the Secretary of State sign the UK Instrument of Ratification and agree to the Exchange of Instruments necessary to bring the IPPA into force?

Recommendation

A

2. I recommend that the Secretary of State should sign the attached Instrument of Ratification and agree to the Exchange of Instruments. SAD, NTCDC and our departmental Legal Adviser concur.

LAST PAPER

Background

3. The Secretary of State signed the IPPA at 10 Downing Street on 14 March during the visit to Britain of Prime Minister Rao of India. The IPPA was subject to ratification before its entry into force. Both sides have completed their domestic ratification formalities and the way is now clear to exchange Instruments of Ratification on the date of which the IPPA would enter into force. Since the IPPA was signed in London, it would be normal practice to exchange Instruments in New Delhi. The Indian Government agree to this approach.

[Redacted]

[Handwritten signature]



Foreign &
Commonwealth
Office

dti

the department for Enterprise

11

Overseas Trade Services

Joint Export Promotion Director

Kingsgate House
66-74 Victoria Street
London SW1E 6SW

[Redacted]
[Redacted]
British High Commission
NEW DELHI

Enquiries

Fax

Direct line
Our ref
Your ref
Date

[Redacted]
JDP 128/1

16 March 1994

FSE 10/11
RECEIVED
OFFICE
16/3/94
[Handwritten initials]

[Handwritten signatures and dates: 16/3/94]

Dear [Redacted]

UK/INDIA IPPA

1. My fax of 15 March and our telephone conversation today refer.
2. I attach a copy of the final English text as signed. The Hindi text will need to be adjusted to incorporate the new Article 16 and the shortened tailpiece. I am seeking Treaty Section's advice on how we formally incorporate the Hindi text: these are exceptional circumstances!
3. I also attach the FCO translator's comments on the Hindi text and should be grateful if these could be passed on. We hope the comments are helpful and that we can be given a revised Hindi text (including new Article 16 and the shortened tailpiece) for final clearance. (As I mentioned on the telephone, the Indian insistence on signature means the UK side has lost flexibility to resolve purely linguistic points by adjusting the English text whilst it was still in draft.)
4. As regards ratification, our procedures are fairly straightforward. The text will be published, usually within about 3 months, and laid before Parliament for 21 working days (the "Ponsonby rule"). Thereafter we could move quickly to exchange Instruments of Ratification thereby bringing the IPPA into force in accordance with Article 14. Since the IPPA was signed in London, it would be customary to exchange Instruments of Ratification in New Delhi. It would be helpful to know of Indian procedures and timescale towards ratification.
5. Doubtless there may be requests for copies of the text. The standard advice is that it will be published by HMSO in the Country Series of Command Papers, and, after ratification, will be republished in the Treaty Series.



Overseas Trade Services

Copies may be purchased from HMSO in due course. You will be automatically included in our initial distribution of copies for the official record and will receive an extra copy to pass to the Indian Government.

Turn over

[REDACTED]

[REDACTED]

Joint Export Promotion Directorate

cc (without enclosure): [REDACTED] Treaty Section, NTCD
[REDACTED] SAD
[REDACTED] XAAA3ci, DTI

From: [REDACTED]
Joint Export Promotion Directorate
Date: 9 March 1994

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INDEX	PA	ACTION TOGAS

Handwritten: 9/13/3

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Treaty Section
NTCD
[REDACTED] (XAAA3/DTI)

[REDACTED]
Private Secretary

UK/INDIA INVESTMENT PROMOTION AND PROTECTION AGREEMENT (IPPA)

Problem

1. We have negotiated the text of an IPPA with India. The Indians have agreed it at official level and are seeking urgent Cabinet approval in advance of Prime Minister Narasimha Rao's visit to London next week. On the assumption that we receive final Indian agreement in time, should the Secretary of State approve the text and agree that the IPPA be signed?

Recommendation

2. I recommend that the Secretary of state should approve the text and agree that the IPPA may be signed during Prime Minister Rao's visit. SAD, our departmental Legal Adviser, NTCD and Whitehall departments concerned concur.

Background

3. [REDACTED] With mounting enthusiasm throughout 1993 in the context of their economic liberalisation programme, the Indians prepared their own text which they tabled with us in January this year. We accorded them top priority in our negotiating programme, and talks were held in London in January, followed by a second round in Delhi in late February which resolved all but three issues.

4. In an attempt to secure agreement in time for Prime Minister Rao's visit to London on 14-16 March, we proposed a compromise package to resolve the outstanding issues. Indian

negotiators have agreed our proposals which are being submitted urgently to the Indian Cabinet for final approval.

5. Subject to final Indian approval, the resultant text preserves all the key standards of investor protection we seek and is a satisfactory outcome for the United Kingdom. It should provide a valuable contribution to the Indo-British Partnership Initiative.

6. The Indians have told our High Commission that they may be willing to sign an English text only. This is subject to confirmation. If however they require to sign an authoritative Hindi text also, signature would have to be delayed pending clearance of a Hindi text by FCO translators. We have not yet received a Hindi translation from the Indians.

[REDACTED]

[REDACTED]

THE JOINT EXPORT PROMOTION DIRECTORATE
OVERSEAS TRADE SERVICES
ROOM 907
KINGSGATE HOUSE
66-74 VICTORIA STREET
LONDON SW1E 6SW

9/3 (9)



For info.

FAX NUMBER: [REDACTED]

P.A. 9/3

FACSIMILE MESSAGE CONSISTING OF ..0. PAGES PLUS
THIS LEADER SHEET

FROM [REDACTED]

DATE 7 MARCH 1994

TEL [REDACTED]

TO [REDACTED], BHC NEW DELHI

FSE 101/1		
RECEIVED IN REGISTRY		
15 MAR 1994		
DESK OFFICER		REGISTRY
INDIA	PA	INDIC. TARIFF

Dear [REDACTED],
UK/INDIA IPPA

1. Many thanks for your telno. 191. This sounds very encouraging. We can certainly put our own clearance procedures in motion: although the timing is tight, there is an outside chance of clearing the draft this week and we would pull out all stops to do so.

2. There is however a serious practical difficulty! I understand from FCO Translation Branch that a Hindi text could not normally be processed in under a week: this timescale would necessarily be extended if amendments are proposed and rechecking is required. We have less than a week available! Provided we can clear the English text in time, it would be possible to sign the IPPA with the authoritative text in English only. We would be pleased to produce both the UK and Indian copies of the Agreement on UK treaty paper and in UK binders unless the Indians have an overriding requirement to use their own stationery: we would propose to collaborate fully with the Indian High Commission over proof reading, binding and sealing. In these circumstances are the Indians content to sign the IPPA in English only? Obviously we would be glad to agree the accuracy of a Hindi text subsequently though it would not then be formally part of the Agreement and would not be "authoritative". I should be grateful to know whether the Indians would be content to proceed in this way.

[REDACTED]
cc. [REDACTED] SAD

By Fax

Agreed Minutes of the Meeting held between the Indian and the U.K. delegations on the proposed Agreement on Bilateral Promotion and Protection of Investments, in New Delhi, on February 24th and 25th, 1994.

In pursuance of the first round of negotiations between the Indian and the UK delegations held in London from 26th to 31st January, 1994, the two delegations conducted further negotiations in New Delhi from 24th to 25th February, 1994, on a Draft Agreement for the Promotion and Protection of Investments. The composition of the respective delegations is annexed.

The delegations held discussions in New Delhi on the basis of the common text arrived at during the first round negotiations in London. The delegations made considerable progress in arriving at mutually acceptable arrangements. At the conclusion of a wrap up meeting convened by [REDACTED] and in subsequent negotiations, three areas of divergence remained between the two delegations: (i) The reference to Intellectual Property Rights in the definitions (Article 1(a)(iv)); (ii) the observance of ^{obligations} stipulations entered into by the Contracting Parties (Article 3(2), final sentence); and (iii) a

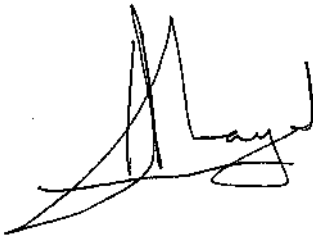
AJY

AJY

mutually acceptable way of preserving the availability of certain exceptional measures to each Contracting Party (Articles 11 and 12). The two delegations resolved to use every endeavour to conclude successfully efforts to settle the areas of difference between them as soon as possible.

The outcome of the negotiations in New Delhi is reflected in the Text which is appended to the Agreed Minutes. Underlined sentences refer to issues where a consensus could not be reached.

The discussions were held in a friendly and cordial manner characteristic of the traditional friendship and cooperation between the two countries.



For the Indian
Delegation



For the U.K.
Delegation

5

To [redacted]
ITP/2B
2156110

cc. [redacted], FCO
[redacted] SAD/FCO
(with enclosures)

From [redacted]
Joint Directorate
907 Kingsgate House
[redacted]

Date 28 February 1994

p.a. - 9/2/3

UK/INDIA IPPA

1. Following last week's talks in New Delhi, I am updating our word-processor version of the draft text in advance of the meeting we have agreed to hold on 2 March in ITP at, I suggest, 10 A.M.. Meanwhile, I attach the agreed minute and the Indian version of the text which emerged from last week's round. You will see that the outstanding issues have been reduced to three:

Now agreed for 11 A.M. 28/2

a) Article 1 (a)(iv) - the reference to intellectual property rights in the definition of "investment";

b) Article 3(2) - observation of obligations; and

c) Articles 11 and 12 - the Indian proposals to include a reference to "Applicable Laws" and a force majeure clause. You will notice some overlap between the texts of these two Articles: this results from our suggestion to soften the proposed force majeure clause by linking it in to "Applicable Laws".

2. [redacted] is preparing a note on last week's discussions. I think our objective now is to formulate our position on the outstanding issues and to send appropriate instructions to BHC New Delhi in order to press the Indians to bridge the gap in advance of Prime Minister Rao's visit to London in mid-March: I would propose to do this by telegram in the light of our discussions on Wednesday. If we could resolve the three outstanding issues within the next week there would remain a faint chance, albeit a very remote one, of having the IPPA ready for signature one week later. But even if signature is not possible I think we should keep up the momentum between now and the Rao visit to press the Indians hard to agree a mutually acceptable text on the three issues so that at least it could be announced that a draft IPPA text had been agreed and would be signed at an early date.

[redacted]

FSE 101/1	
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THE JOINT EXPORT PROMOTION DIRECTORATE
OVERSEAS TRADE SERVICES
ROOM 907
KINGSGATE HOUSE
66-74 VICTORIA STREET
LONDON SW1E 6SW

6
to see
Another round
before Rao's
visit, but
no chance
of a final agreement
by that time.

FAX NUMBER: [REDACTED]

FACSIMILE MESSAGE CONSISTING OF ..0. PAGES PLUS
THIS LEADER SHEET

FROM [REDACTED]

DATE 7 FEBRUARY 1994

TEL [REDACTED]

TO [REDACTED] BRITISH HIGH COMMISSION, NEW DELHI

p.a. 9/12

UK/INDIA IPPA

1. Because the lines were unavailable I was unable to get through to return your telephone call this morning. I have since received your telno 116 which doubtless concerns the point you wished to discuss.
2. We are grateful for [REDACTED] suggested dates for a further round of IPPA talks. We too are keen to make further progress and agree that a UK team should visit Delhi for a second round. An unfortunate consequence of the change of dates for Prime Minister Rao's visit is that less time is available to make progress before the visit. I regret to have to say that the dates suggested by [REDACTED] present us with serious difficulties because we are committed to a major IPPA signing ceremony in London in the week beginning 21 February. The commitment, made at Ministerial level, is likely to involve an FCO Minister, possibly the Secretary of State. An added complication for us is that [REDACTED] our departmental Legal Adviser who was a key member of our team at the recent London talks, would not be available that week.
3. This is all rather disappointing but given [REDACTED] other commitments up to 4 March, it seems that we cannot realistically aim for another round of talks until after that date.

[REDACTED]

[REDACTED]

FSE 101/1		
RECEIVED IN [REDACTED]		
16 MAR 1994		
DESK OFFICER		SECRETARY
INDEX	PA	ADMIN. STAFF

FAX MESSAGE

O.B. copy
BN copy
2/11/93
16/11



24

British
High Commission
New Delhi

To: [REDACTED]
Joint Directorate

Our FAX No. [REDACTED]

From: [REDACTED]

Dept: Commercial

Date: 9 November 1993

Fax No. (UK) [REDACTED]

Total Pages: 10
687261

If the message is incomplete or illegible please call : 91 11 801371 Ext 318

UK/INDIA IPPA : INDIAN MODEL TEXT

Attached, at long last is the Indian draft text which has been passed to us as a non-paper by the Finance Ministry today. The Indian's still have one more hoop to go through; before the text becomes official; the Finance Secretary Ahluwalia has decided to refer it to an interministerial steering committee of Secretaries sometimes in the next week.

We have not yet looked at the agreement in any detail but have been assured by the Indians that there are few differences from our model text.

We would be grateful if you could have a look at the text with a view to briefing the Secretary of State to offer the Indians some comments on the text when he visits next week. Perhaps he could also make some proposals for taking things forward, ideally by suggesting some tentative dates for negotiations to the Indians.

FSE 102/1		
RECEIVED IN REGISTRY		
2. NOV 1993		
DEPT OFFICER		
INDEX	FILE	SEARCHED

[REDACTED]

CC: [REDACTED]
SAD FCO
by fax
[REDACTED]



BRITISH HIGH COMMISSION
NEW DELHI, INDIA

4 June 1993

[Redacted]
[Redacted]
Ministry of Finance
North Block
NEW DELHI 110011

[Redacted] 5/6
[Redacted] = 12/6.
[Signature]

Dear Mr [Redacted],

**INDO-BRITISH INVESTMENT PROMOTION AND PROTECTION AGREEMENT
(IPPA)**

You will recall discussions during Mr Major's visit in January about the possibility of a bilateral Investment Protection and Promotion Agreement. It was agreed that we should start negotiations on this and we were encouraged by the Finance Minister's remarks in his Budget Speech. We have also had a number of constructive exchanges with your officials.

[Redacted]

Such comments would help confirm that a basis for negotiation exists (we are confident that it does, on the basis of our informal exchanges), and open the way for early substantive negotiations. As far as we are concerned, the faster we can conclude a bilateral treaty, the better. I hope this will not need to await changes in your own legislation, which might take some time.

I know you have received similar requests from other countries, but I hope that you will be able to accord a high priority to the negotiation of a treaty with the UK, particularly as the indications are that it should not face too many substantive problems. The Indo-British Partnership Initiative, launched in January with the full support of both our Prime Ministers to improve the flow of trade and investment between the UK and India, is now in full swing. Conclusion of an early bilateral IPPA would send a strong and positive signal to British investors. Conversely, I fear that further delay might raise questions and doubts which could imperil this momentum.



I should be grateful if you could give the process a push.

Yours sincerely,

[Redacted signature]

CC: [Redacted]

MEA

[Redacted]

(Economic Affairs)

MEA