

India-ASEAN FTA in Services and Investments: Countdown to Implementation



After a lengthy five-year negotiation period, the India-ASEAN Free Trade Agreement in Services ('Services FTA') was signed at the end of 2014. If successfully implemented, the new Services FTA would work hand-in-hand with the existing India-ASEAN Free Trade Agreement in Goods ('Goods FTA') to reach the bi-lateral trade target of US\$100 billion by the end of 2015. Despite being signed, the agreement is expected to come into force on 15 July 2015 after having gone through ratification by each ASEAN member country. Whilst it may seem that as the agreement stands there would be no need for any further action from the Indian camp, there exist looming hurdles for India to get over in order for the Services FTA to reach its full potential. This article¹ looks to analyse the plausible effects the Services FTA would have on the Southeast Asian region by determining who the intended beneficiaries are and the steps India and ASEAN must take to reach the ambitious trade target.

In 2009, India and the Association of Southeast Asian Nations ('ASEAN') signed and later ratified a free trade agreement relating to goods. On 1 July 2015, it appears that the long-awaited India-ASEAN FTA covering services and investments will similarly come into effect following the necessary ratification by the bloc members. Though the formal conclusion to negotiations regarding this agreement came on 20 December 2012, the signing process was one marred with deferment.² Despite being negotiated over the past five years and signed at the end of last year, the content of the ASEAN-India Trade Agreement in Goods (the 'Services FTA') and parallel ASEAN-India Investment Agreement³ package is not yet in the public domain. The Services FTA with ASEAN represents the first trade pact inked by the National Democratic Alliance government despite being negotiated and readied under the previous administration.⁴ Ever since entry into office, Prime Minister Narendra Modi has ordered a comprehensive review of all bilateral and multilateral trade pacts in order to develop a comprehensive model for negotiating such agreements in the future.

From the general information available thus far, the Services FTA extends to telecommunications, information technology, transportation and logistics, financial services, education, real estate, business services, health and community/social services and the 'Mode IV' free movement of natural persons and professionals. Such an agreement shows great promise in the long run, allowing for the generally accepted advantages that come with deeper integration and the harnessing of new markets, greater competition and specialisation, efficiency and freedom of movement and growth as a whole. While the deal has been completed, significant challenges still exist in getting over the line in terms of ratification by each individual member country and further negotiations into the mutual recognition agreements. Such issues are the essence of trade negotiation, with a multitude of stakeholders and domestic pressures adding uncertainty to the success or otherwise of final implementation. However, if successfully implemented within the time limit, the breadth of a new Services FTA will have far-reaching effects.

The Past

The original structure of the ASEAN-India Free Trade Agreement was contemplated to be an agreement on both goods and services, and began as the Framework Agreement on Comprehensive Economic Partnership ('FACEP') in 2003. Negotiation of the goods element of the FTA (the ASEAN-India Trade Agreement in Goods ('Goods

FTA')) commenced in 2004 and was subsequently signed in 2009, coming into effect in 2010. The categories of tariff reductions per sector totalling over 4,000 product lines are to be gradually reduced between 2016 and 2019.

The negotiations of the parallel Services FTA concluded in Delhi on 20 December 2012, and is structured following an '8+1+1' model, that is, one agreement between India and Myanmar, the Lao PDR, Cambodia, Vietnam, Brunei, Singapore, Malaysia and Thailand, and two separate agreements between India and Indonesia and India and the Philippines. This model provides a deviation from positions of Free Trade Agreements ('FTA') between ASEAN and China and ASEAN and Japan, where the agreements relating to goods, services and investments with China and the comprehensive agreement with Japan were negotiated with ASEAN as a whole. Critics have often stated that by not negotiating the India-ASEAN FTA as a whole package, which encompasses trade in goods, services and investments, left India in a weaker position during the negotiations of the Services FTA.

Trade in goods and services between India and ASEAN stood at US\$76 billion in 2012-13, with the aim to increase to US\$100 billion by 2015⁵ and then to US\$220 billion by 2022.⁶ In addition to the overwhelming value of the Goods FTA, this ambitious target for both goods and services together is very much contingent upon the success of the Services FTA. During the recent ASEAN-India Summit held on 12 November 2014 in Myanmar, the leaders called for the early implementation of the Services FTA in order to fully utilise the Services FTA to its full potential and reach the bilateral target of US\$100 billion by the end of 2015. On another note, during the same summit, the possibility of the early completion of the Thailand-Myanmar-India Trilateral Highway was called for; this would allow for greater connectivity of the two regions on all dimensions including physical, institutional and people-to-people linkages.⁷

The position of India's and ASEAN's service exports are already established in global terms, for 2011, totalling US\$137 billion⁸ and US\$260 billion⁹ respectively. According to recent statistics, nearly 58 percent of India's GDP comes from the service sector. If integration is to occur, it is clear that the service arm needs to be a comprehensive and effective instrument in order to reinvigorate the hopes of the economy to witness a service driven period of growth after the GDP growth slump observed from 2010 onwards.

The Framework

The FACEP¹⁰ in its present form sets out a loose structure for the terms of negotiation of the Services element of the FTA. This general scope extends to the following:

- To 'progressively liberalise trade in services on a preferential basis with substantial sectorial coverage';
- Elimination of 'substantially all discrimination' between the parties, and/or the 'prohibition of new or more discriminatory measures with respect to trade in services';
- Expansion in the 'depth and scope of liberalisation' beyond those undertaken by India and ASEAN under the GATS (General Agreement on Trade in Services, a WTO instrument); and
- 'Enhanced cooperation in services...in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the parties'.

The Intended Beneficiaries Under the Services FTA

As noted earlier, the content of the Services FTA is not yet in the public domain and as such the exact scope of merits is difficult to determine; however, particular issues of note extend to the following:

(a) Multi-Brand Retail – India's guarded retail sector has long been coveted by foreign investors. Indonesia and Thailand in particular have, in recent times, developed a significant presence in their own respective markets, and are both looking to expand.

(b) Business Process Outsourcing (BPO), Software and IT Enabled Services (ITeS) – India's dominance in Software and ITeS has continued to expand in recent times, while Business Process Outsourcing (BPO) in general and Call-Centre Services in particular have seen overwhelming success in the Philippines whereby following its ambition to become the 'Call-Centre hub of Asia' and a major provider of IT services. India's Information and Communication Technology (ICT) Services account for 65.9 percent of its total services exports, with the Philippines at 67.3 percent.¹¹ ICT and BPO promises to be a central and contentious point in the impending Services FTA.

(c) Restriction on Work Permits and Uniform Qualification Recognition – Enabling the ease of

movement for professionals, referred to as 'Mode IV' access, would provide greater flexibility in obtaining certain visas for a longer duration and for obtaining work permits. An additional feature complementing Mode IV access may be the implementation of 'Mutual Recognition Agreements' (MRAs), whereby certain professional qualifications obtained in India or in an ASEAN nation may be recognised uniformly across the region. Giving the different economic scenarios in each of the ASEAN countries and the opposition to the idea of free movement of professionals in certain ASEAN member nations, India will now be required to negotiate MRAs with each ASEAN member country individually. At present, Indian and ASEAN states require certain professional qualifications to be obtained locally for foreigners, or for certain domestically obtained licenses to be held, for example an Indian doctor wanting to practice in Thailand is required to obtain a license from the Medical Council of Thailand. There exist a number of foreseeable issues on this point which also exist in the realisation of the ASEAN Economic Community; mainly that the licensing examinations in countries like Vietnam and Thailand are all conducted in the native languages. Thus, a qualified and licensed doctor in India wanting to work in Thailand will be required to pass the licensing examinations in the Thai language. A harmonisation of qualifications and mutual recognition is desirable for free integration of professionals. Should such a harmonisation take place, India may be able to make significant inroads in health care and financial services. However, India has to act fast, especially in view of the fact that its competitors, China and Japan, are already in advance stages of their relationship with ASEAN.

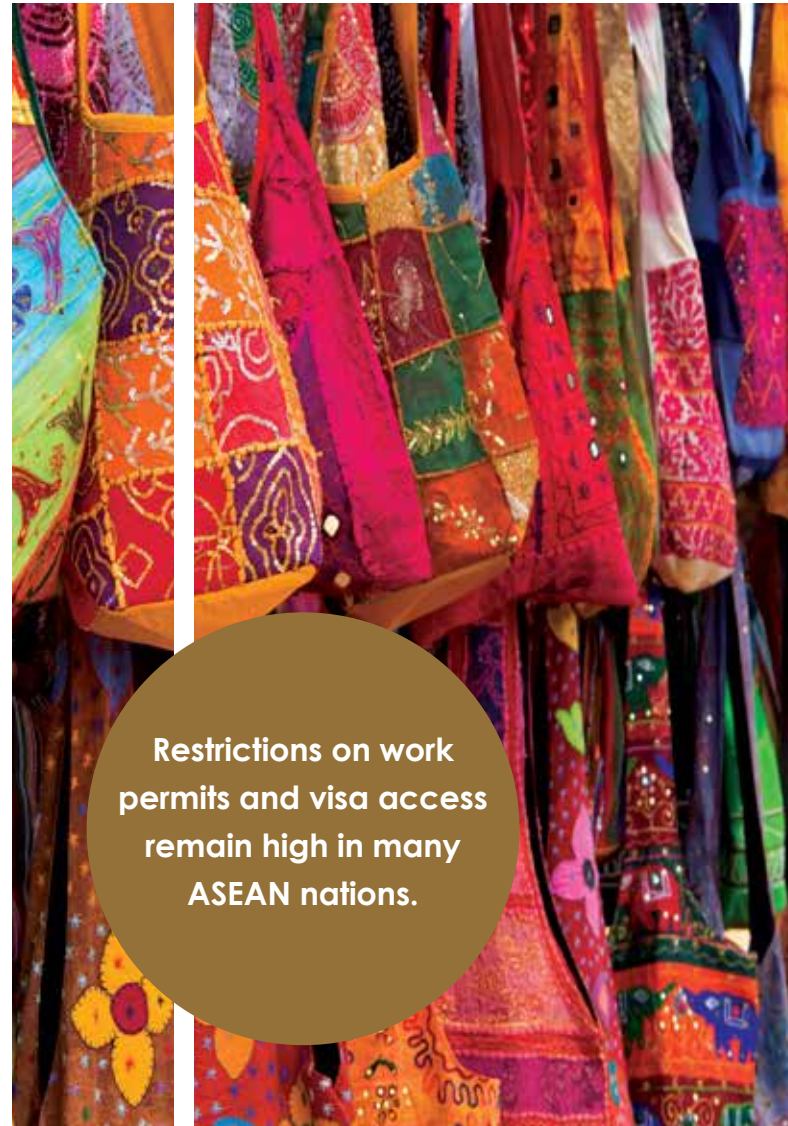
Deloitte and the Federation of Indian Chambers of Commerce and Industry ('FICCI') report¹² that sectors of comparative advantage for India lie in ICT services, e-commerce, telecommunications and engineering, where the largest beneficiaries in ASEAN appear to be in construction services, shipping and transportation and logistics services. Integration of the Financial Services and Insurance Services sectors appear to provide a 'middle ground' on near equal stance. In the interim, it is projected that the growth of the ASEAN states (like the Lao PDR, Cambodia and Myanmar) is to require a greater degree of skilled labour and professionals in general terms, and that India may fill that gap, providing

the means to grow the region by generating greater demand for Indian imported goods. These aside, the broader general benefits of a comparative advantage shift, unrestrained flows of capital and labour, the reduction of transaction costs, increase in competition and market efficiency all provide for the conventional notion of mutual benefit across the Southeast Asian corridor.

The Roadblocks

The Multi-Brand Retail sector in India is a long-standing and vexing issue. FDI relaxation came through in 2012, allowing for foreign holdings of up to 51 percent stake in an entity, which may be allowed or disallowed by the relevant Indian State government, rather than the Government of India (the Central Government).¹³ Based on the news reports, this policy has been marred by controversy, giving rise to mass strikes which have resulted in only around half of Indian states accepting the position.¹⁴ This lack of unity within India places limitations on the benefits that the Thai and Indonesian retailers expect to enjoy from a Services FTA via leveraging their comparative strengths in the retail industry. To compound the problem, the Indian position has the potential to regress further, as negotiations on the agreement were concluded before the election of the National Democratic Alliance led by new Prime Minister Narendra Modi (who had stated in its election manifesto prior to the election that FDI in Multi-Brand Retail would be repealed altogether); however, as of the end of 2014 speculation is mounting that the FDI policy will remain the same as under the previous United Progressive Alliance government. At the same time, Thailand and Indonesia have stated categorically that they require the unlimited ability to set up shop in India before ratification can occur. The implementation of the Services FTA may thus be a long way off.¹⁵

The Mode IV free movement of professionals was met with resistance from ASEAN states. The concern is that in opening the door to foreign professionals by allowing such movement in terms of visas could affect the employment of domestically trained professionals. Further concern exists over the potential for an influx of unskilled labour more generally which could lead to a raise unemployment rate in their respective countries. Restrictions on work permits and visa access remain high in many ASEAN nations, providing higher barriers in hiring foreign workers, particularly in certain sectors in Singapore.



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Once the Services FTA is in effect, its success would be contingent on how long it would take to establish mutual recognition agreements with each member country. Until such time, the benefits offered to India under the Services FTA may be meagre and the five year negotiations would have been in vain.

National treatment goals in relation to hiring practices remain central to the success of the agreement. In addition to these issues, it appears that the uniform qualification recognition has been left out of the agreement, leaving individual Mutual Recognition Arrangements to be conducted on a bilateral basis between India and each ASEAN nation. It is unclear at this point what effect, if any, the Mode IV and professional recognition may have had on negotiations.

Regional Implications

The Goods FTA and the Services FTA are intended to give rise to the long awaited FACEP, with a view to create a much integrated regional market giving effect to India's 'Look East' policy, and ASEAN's ambition for expansion. India's current trade with ASEAN member countries seem to be import heavy under the Goods FTA. With the introduction of the Services FTA, it is expected that more balanced trade relations between the two regions will spawn.

Integration of Financial Services, IT services, Transport and Logistics, Education, BPO Services, Health Services, the recognition of professional qualifications and free movement of persons may provide for sweeping change. If successful, the region appears in a sense to be doing away with the dividing titles of 'South Asia' and 'Southeast Asia', but rather towards a unified region. Comparative advantages will make themselves felt as deeper integration continues, and for the present, the best case scenario for potential mutual benefit looks promising.

As part of broader initiatives for further integration such as the ongoing India-Mekong Corridor infrastructure developments, and the integration of the Regional Comprehensive Economic Partnership ('RCEP') within ASEAN's existing FTA partners of China, Japan, South Korea, Australia and New Zealand, the India-ASEAN region is poised to become a significant engine of growth in the coming decades. It is worth mentioning that many of the RCEP members are also part of the US-led Transpacific Partnership Agreement to which India is not a member; thus effective implementation of the Services FTA is necessary to mitigate any potential negative impacts caused by the RCEP.

Additionally, the Services FTA is intended to give rise to greater business opportunities for Indian investors in places where Indian FDI has been historically low. India is often criticised for its dismal investment levels in its neighbouring countries. Large Indian investors have generally stayed away from many such countries despite other powerhouses such as America, Japan and China aggressively establishing their presence.

The question now appears to be one of determining how fast the mutual recognition agreements will be negotiated with each individual member country once the Services FTA is in effect.

Notes:

- 1 Author was assisted by Kunal Bir Singh Sachdev, Associate, DFDL India Desk.
- 2 Following negotiations, it was expected that the Services FTA would be signed in August 2013 this deadline was further delayed to December 2013. The revised tentative signing date was then set to be between the 24-26 August 2014 during the ASEAN Economic Ministers meeting in Naypyidaw, Myanmar. Unfortunately India's representative, Ms. Nirmala Sitharaman, was unable to attend the meeting which has caused further delays. The deal was instead signed by circulating the text around the Member Countries and would subsequently be ratified individually.
- 3 This article has been more focused on the Services part of the proposed FTA.
- 4 <http://www.rediff.com/money/report/has-asean-opened-the-floodgates-to-indians/20141010.htm> (Last Accessed: 11/2/2015).
- 5 <http://www.thehindu.com/business/Economy/india-asean-target-100-bn-bilateral-trade-by-2015/article5045229.ece> (Last Accessed: 11/2/2015).
- 6 <http://www.mea.gov.in/in-focus-article.htm?23855/Indias+Enhanced+Look+East+policy+takes+wing> (Last Accessed: 11/2/2015).
- 7 <http://www.mfa.go.th/main/en/media-center/14/51281-The-12th-ASEAN---India-Summit.html> (Last Accessed: 11/2/2015).
- 8 WTO International Trade Statistics 2012 (summary of India's performance available at: http://www.iitrade.ac.in/kmarticle.php?topic=WTO_-_International_Trade_Statistics_for_Commercial_Services_2012_-_India_ranks_Seventh (Last Accessed: 11/2/2015).
- 9 <http://www.asean.org/communities/asean-economic-community/category/services> (Last Accessed: 11/2/2015).
- 10 <http://www.asean.org/communities/asean-economic-community/item/framework-agreement-on-comprehensive-economic-cooperation-between-the-republic-of-india-and-the-association-of-southeast-asian-nations> (Last Accessed: 11/2/2015).
- 11 2012 statistics, World Bank.
- 12 http://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/India_ASEAN_FTA.pdf (Last Accessed: 11/2/2015).
- 13 http://articles.economicstimes.indiatimes.com/2013-05-30/news/39629171_1_multi-brand-retail-51-cap-foreign-retailers (Last Accessed: 11/2/2015).
- 14 <http://www.bbc.com/news/world-asia-india-15979163> (Last Accessed: 11/2/2015).
- 15 http://www.business-standard.com/article/economy-policy/india-asean-services-fta-in-limbo-over-retail-fdi-114041400972_1.html (Last Accessed: 8/8/2014).



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