Services in Regioanl Trade Agreements: Implications for India

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Services in Regional Trade Agreements: Implications for India[♣]

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Extended Abstract

Service sector has emerged as the largest and fastest-growing sector in the global economy in the last two decades, providing more than 60 per cent of global output and, in many countries, an even larger share of employment. The growth in services has also been accompanied by the rising share of services in world transactions. In fact trade in services has grown as fast as trade in goods in the period 1990- 2003 (6% per annum). In recent years the number of international agreements aiming to liberalize and promote trade in services has increased dramatically. The General Agreement on Trade in Services (GATS), negotiated as part of the Uruguay Round and followed up in Doha round has propelled the process of services negotiation but till date has limited success. In contrast to this, much of the recent and current international treaty addressing trade in services has occurred at the regional and bilateral levels. Traditionally, Regional Trade Agreements (RTAs) have focused on the liberalization of merchandise trade among members but new trends show inclusion of services. Examples include the Chile, Singapore Free Trade Agreements (FTAs) with the US, and the North America Free Trade Agreement (NAFTA), which have provisions allowing temporary entry of business professionals into member countries to facilitate trade in services. Among the roughly 153 RTAs operational in the world today, 43 are economic integration agreements notified under the GATS Article V.2

Between 2001 and 2006, 35 RTAs with services, constituting approximately 20% of all notifications, were notified to the WTO. Some of the important agreements in Asia Pacific region which included services are Australia and New Zealand Closer Economic Relations Trade Agreements (ANCERTA), ASEAN Framework Agreement on Services (AFAS), etc. These efforts were followed by a proliferation of similar agreements such as that between Singapore and Australia in 2001, and Singapore and the US in 2002. As of 2006, the US has concluded more than 10 RTAs with strong services chapters. The EU has also entered into RTAs with services chapters with countries such as South Africa, Mexico and Chile. While the preceding examples are drawn from North-South RTAs, even the South-South RTAs are seen to be conforming to the trend.

The growth of output in the service sector in India has been spectacular in recent times which got reflected in a higher contribution in the GDP. As a consequence of this, along with its move in the GATS negotiation, India has also plunged into Comprehensive Economic Cooperation Agreement (CECA) through signing the India-Singapore CECA. Of late, its attempt to convert India-Sri Lanka FTA into another CECA and negotiation attempts with partners like EU, Malaysia, etc. clearly shows its inclination to include services in the new agreements.

Services are intangible, mostly indivisible and can't be stored. Its developmental impact though quite overwhelming is difficult to measure. The data on service sector is also difficult to capture. Due to all these, it is problematic for a developing country to develop its offers and commitments in a structured fashion in case of trade negotiation for

services sector. At the same time, many service sectors are under tight control even in developed countries. Licensing, quota, regulatory structure, citizenship criteria, local content, subsidies etc are quite common in service sectors. Since services trade often requires (temporary) movement of provider or consumer, restrictions on services mostly arises from regulations and discriminating requirements regarding this movement. Therefore barriers to trade in services are particularly difficult to identify. Also, most of these barriers do not occur at the border. Developing countries are apprehensive in case of north-south services negotiation due to lack of transparency and information about the developed country service sector. Service sector commitments are riddled with lots of market access limitations and MFN exemptions which is common even in case of regional negotiation. Depending upon the sensitivity as well as technological levels, several components of different services are generally kept unbound. Sometimes, some modes of services (such as mode 4) have been kept unbound even for sub-component of a sector. Developmental impact of any services agreement needs to be judged from the commitment as well as negotiation strategy. This is important as several countries are pursuing GATS Plus commitments.

The CECA has progressed beyond GATS understanding the current business environment. Negotiations on domestic regulation in GATS have progressed to the level of framing a text for adoption while in case of regional agreements more ambitious approaches are observed. The present paper focuses on India's attempt to integrate with the world economy with service sector liberalistaion and understanding its strategy in services negotiation.

The structure of the paper is as follows. Initial section will focus on introduction and an overview of some select RTAs having special attention towards service sectors. Section 2 provides a brief overview of India's performance in the services sector, followed by a more detailed examination of the contribution of the service sector to growth, and the composition of services trade in Section 3. In particular, we'll discuss the change in pattern of trade from the traditional goods sector to services. Section 4 examines India's involvement in regional trade blocs keeping an eye on services sector. Several potential RTAs with services focus will also be discussed. The paper will make an attempt to develop a negotiating format for some of the important services understanding the current status of services in the partner countries as well as in India. While doing so, it will make an attempt to identify major barriers faced by India in some of the exportable services. These issues will be discussed in section 5. Section 6 will provide conclusion and induction from the major findings.

1. Introduction

In a world where competitiveness is driving economic development, services play a vital role in ensuring a competitive economy. Service industries provide the infrastructure allowing modern economies to function by linking geographically dispersed economic activities or supplying crucial inputs into products competing in the domestic and global markets. The contribution of services in income generation, employment creation and foreign exchange earnings has significantly increased over the last two decades across countries. Since 1990, the share of services in GDP has grown from 65 to 72 per cent in developed countries and from 45 to 52 per cent in Developing Countries. Services now account for over 70 per cent of employment in developed countries and about 35 per cent in Developing Countries (DCs) (Eschenbach and Bernard, 2006). Since 1990, world services trade has nearly tripled to reach \$2.4 trillion. Service exports from developing countries have grown at an average annual rate of 8 per cent compared with 6 per cent for developed countries. Annual growth in world services exports has further accelerated over the past five years, with an annual average growth rate of 12 per cent and 13 per cent for developed and DCs respectively (World Bank, 2006).

Services exports are concentrated in a small number of developing countries. DCs in Asia account for 75 per cent of all DCs' services trade, while 10 per cent and 15 per cent are attributable to Africa and to Latin America and the Caribbean respectively. Over half of developing country services exports originate in only six countries, and the top 15 developing country services exporters account for 80 per cent of all DC services exports. LDCs continue to be marginalized from international flows of services, with their share in world service exports being about 0.8 per cent. However, in recent times many DCs are taking steps to increase their service exports unilaterally or through regional agreement on services. Travel and transport continue to represent the major proportion of developing country services exports, while business services, including ICT, financial and insurance services, now account for one third.FDI inflows into DCs increasingly target the services sector. The share of FDI inflows into the services sector in DCs rose from 35 per cent in 1990 to nearly 50 per cent in 2004. Currently, at about \$1.2 trillion, FDI inward stock in DCs' services sector is now twice the value of FDI inward stock in their manufacturing sector, and represents 20 per cent of total world FDI inward stock in the services sector. DCs themselves have become a major source of those investments. Total FDI outflows to DC's services sectors rose from only $2 billion in 1990 to nearly $30 billion in 2004. A major share of those outflows is at the regional level, through mergers and acquisitions (Kulkarni,2006).

Regional Trade Agreements (RTAs) are an important instrument in international trade. RTAs create bigger markets through reduction or elimination of tariff and non-tariff barriers to trade between members. Traditionally, these Agreements have focused on the liberalization of merchandise trade among members. However, new trends show inclusion of services in RTAs. While motivations for engagement in services RTAs vary across countries, several factors may be identified which act as drivers for this endeavor. Services liberalization may be more easily negotiated between a limited set of participants, particularly with economies at similar levels of development with geographical proximity and cultural ties, as they enable a greater degree of reciprocity between regional partners, thus reducing the free-rider problem. Moreover, most of the cases, services negotiations are based on positive list and through request and offer approach (though negative list approach is not uncommon). Developing countries find the approach more comfortable as harsh side of negotiations is generally out of bound in case of services negotiation. Further recognizing the critical importance of services trade for growth and development, many countries accelerated regional initiatives in the search for services export opportunities and greater investment attraction. Services liberalization would be progressive, in principle based on the positive list approach, adapted to the level of development of the countries and regions concerned in overall terms and in terms of their services sectors and subsectors, and to their specific constraints, and underpinned by the principles, asymmetry and positive regional discrimination. A sound regulatory framework is considered important. Parties would retain the right to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives. The potential of RTAs in promoting liberalization of the temporary movement of services suppliers is particularly significant and hence thereby increases the scope of employment. Regulatory cooperation on mutual recognition or harmonization of professional qualifications, licensing certification, technical standards, competition, and provisions for labour mobility, are viewed to bring transparency in the regional market for services. Furthermore, regional services trade offers a supportive environment for national firms by accelerating learning curves, building supply capacities and enhancing international competitiveness. Regional services trade also plays a catalytic role in generating employment and furthering the development of growing regional services industries and firms. By allowing for economies of scale in the production of services, RTAs may support the development of regional infrastructure in key sectors such as transportation, communications and energy, environment protection, etc. However, the biggest challenge in services negotiation is the lack of knowledge about the real market structure of services. In developing countries, there exist lack of information about the markets and that creates uncertainty about taking up any commitments and offering market access.

2. Regional Trends

Different RTAs have adopted different approaches to services liberalization. RTAs have adopted distinct approaches in respect of (i) scope; (ii) modalities for liberalization; (iii) depth of commitments; (iv) regulatory cooperation; and (v) other areas of cooperation. Regarding the scope of the agreements, sectoral and modal coverage, existing RTAs mostly provide universal sectoral coverage, with the exclusion of sensitive sectors such as air and maritime transport, audiovisual services etc. Liberalization may be based on a progressive approach with an implementation period, especially for DCs. In some sectors, liberalistaion are offered in some segments and that may be through only some modes. For example, in maritime services cargo handling may be liberalized and that may be through only FDI (Mode 3). With regard to liberalization modalities, RTAs generally follow either a negative or a positive list approach. The negative list approach was adopted in NAFTA-type RTAs (CARICOM), Europe Agreements and EU–Mexico, while the positive list approach was adopted in EU–Chile, ASEAN, MERCOSUR, Japan–Singapore and United States– Jordan. The definition of rules of origin for services providers is important in determining the level and depth of regional services liberalization. As regards to the depth of commitments, countries' regional commitment as well as general and sectoral disciplines provided under an RTA would affect the extent to which RTAs can generate effective services liberalization. Liberalization commitment may result either in standstill or rollback of restrictive measures. This is important, since RTAs can go beyond GATS commitment to provide preferential market access conditions for regional partners. Regarding the regulatory cooperation, measures on domestic regulation such as qualification requirements also determine the level of liberalization as it is deemed to be entry barriers in some cases, for example trade in professional services. Harmonization and mutual recognition are pursued under some RTAs (MERCOSUR, NAFTA (accountancy, architecture, engineering), CARICOM), but often on a best-endeavor basis. RTAs can contain market access commitments in government procurement in services, monopoly and competition policy.

Through the extension of the coverage, RTAs generate increased intraregional services trade. A recent study by the OECD[1] indicates that intraregional services trade accounts for most of DCs' South–South services trade, and intraregional services trade accounts for 57 per cent, 71 per cent and 94 per cent of South–South services trade for Africa, Latin America and the Caribbean, and Asia and Oceania respectively. Intraregional services trade is particularly significant in Asia and Oceania, since as much as half of its total services trade is directed to the region. For DCs, much of regional trade reflects trade in commercial services such as freight transportation, tourism, construction and business services. However, the scope of traded services, and correspondingly the magnitude of services trade flows, is expanding rapidly as countries progressively privatize and liberalize those services traditionally performed as a government function.

2.1 North–North RTAs

Liberalization of services has been pursued progressively through specific sectoral directives (e.g. financial services, telecommunications, transport services, postal services, port and dock services, and energy), but numerous barriers remained in some sectors. The EU is the example of deep and far-reaching economic integration. Implementation has

[1] 'South-South Trade: Vital for Development', OECD Policy Brief (2006)

encountered difficulties, for instance in energy and financial services. In 2000, the EU Lisbon Summit called for a removal of cross-border barriers to services trade to achieve a single market in services. The EC treaty does not distinguish between market access and national treatment, which are in the GATS legal architecture. All restrictions, regardless of whether they are discriminatory (such as additional costs or delays), are prohibited. In autumn 2006, the European Commission presented a draft Services Directive aimed at creating an internal market for services which is supposed to enter into force in 2010. Moreover, liberalization would not affect national labour law, criminal law or social services; and member States would be free to maintain restrictions on public policy grounds (e.g. public security, social policy, consumer protection, environmental protection and public health), provided that these were "non-discriminatory, necessary and proportional". Within EU the progress towards single market directive is varying. National laws in EU member countries are different despite they are governed by single market Directives which provide a general set of rules only.

2.2 South–South RTAs

South–South RTAs are an important element in DC’s development strategy regarding their gradual and strategic integration into the world economy. The impetus to include services in South–South RTAs has been growing. In Asia, the growth of services are also driven by regional forces (though EU and USA being the major market for Asian services). The significant development of regional services capacities to support manufacturing has led to an increase in exports of services. ASEAN was among the first to embark on services liberalization in Asia, with the signing of the ASEAN Framework Agreement on Services (AFAS) in 1995. The South Asia Free Trade Agreement (SAFTA) integrated services liberalization in 2006. Asian countries have become active recently in concluding bilateral RTAs with partners within and outside the region.

The AFAS is modeled on a positive list approach, and commitments have focused on the air and maritime transport, business services, construction, financial services, telecommunications and tourism sectors. The long-term objective of the AFAS is the elimination of restrictions on trade in services among members in all the four modes of service supply. Liberalization commitments are complemented by mutual recognition agreements (MRAs) (for professional services, including engineering, accountancy, architecture, surveying and nursing) and cooperative mechanisms, such as for infrastructure development. Among the priority sectors for advanced liberalization are "e-ASEAN" and health-care services; both envisage facilitation of professional mobility in those sectors. Achievements in the liberalization of Mode 4 remain rather limited. Commitments are mostly at the level of GATS. The next step in AFAS liberalization is the establishment of the ASEAN Economic Community (AEC) by 2020 — that is, the free flow of goods and services as provided for in the 2003 Bali Concord II. Most Asian RTAs adopt a GATS approach, which contains provisions on national treatment, market access, modes of delivery and domestic regulation. However, there are notable differences from a GATS approach. For instance, while the schedules of country specific commitments in most Asian RTAs, such as ASEAN, follow a positive list approach, some Asian FTAs follow a negative list approach (FTAs between the Republic of Korea and Singapore, and the Republic of Korea and Chile). Most bilateral agreements contain well defined services provisions, including separate chapters for key services sectors. The India–Singapore agreement has separate investment and services chapters (an annexure on financial and telecommunication) with extensive coverage of the movement of professionals, air services and e-commerce. In view of the Philippines' and India's skilled English-speaking workforces, both the India–Singapore FTA and the Japan–Philippines EPA have extensive provisions for the movement of natural persons.

RTAs in Latin America and the Caribbean — CARICOM, the Andean Community and MERCOSUR adopted disciplines for services trade liberalization. In 2006, full liberalization of services was adopted. The Andean countries have lifted all measures registered in the inventory except national content in audiovisual services, and the requirement for incorporation under type of company for public services. The Andean experience reveals a process of integration at the sub regional level that is deeper than the one so far achieved at the bilateral and multilateral levels. The initial commitments at the sub regional level are deeper than the GATS commitments and the offers in the GATS negotiations; and in the case of national treatment they exceed the commitments of Colombia and Peru in the bilateral FTAs with the United States.

MERCOSUR adopted a staged positive list approach. A framework agreement on trade in services, the Protocol of Montevideo, entered into force on 7 December 2005. MERCOSUR has made progress both in terms of the increased number of commitments and in providing enhanced transparency, as commitments now specify with more precision the restrictive measures in market access and national treatment. Commitments adopted under the Montevideo Protocol have gone beyond MERCOSUR members' commitments under the GATS. The MERCOSUR government procurement regime covers both goods and services, using a positive list approach.

CARICOM has made considerable progress in creating a single market for services, in liberalizing capital movements and in ensuring the right of establishment of business within the region. Members are in the process of removing existing restrictions that impede the rights of CARICOM nationals to establish business enterprises, move capital and provide services. All services sectors without restrictions in national schedules were completely liberalized in 2002. The number of restrictions has been reduced significantly, and this has resulted in significant liberalization in services and capital movements, and in advancing the right of establishment. Intraregional liberalization of services trade has thus advanced beyond the level of GATS commitments adopted by CARICOM members.

African countries have embarked on a strategy of regional integration to overcome difficulty in integrating into the global economy. Major agreements include SACU, COMESA and SADC. These regional economic communities (RECs) are expected to serve as building blocks for the formation by 2025 of a continental African Economic Community. Sub regional RTAs are proliferating, and the consolidation and rationalization of these initiatives are an important challenge for the continent. Six of the 53 African countries are members of one REC, 26 are members of two RECs and 20 are members of three RECs, while one country belongs to four RECs. Most African RTAs aim at strong economic integration to stimulate economic growth by enlarging regional markets, generating economies of scale and facilitating trade and investment through regional cooperation. Despite the stated objective of the removal of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment, African RTAs are yet to embark on a services liberalization agenda. COMESA has established a Working Group to spearhead the development of this framework for trade in services (WTO, 2007). The mandate for services liberalization in SADC refers to the importance of trade in services for the development of the economies of SADC countries and adopting policies and implementing measures with a view to liberalizing their services sector within the Community. The target for SADC is to achieve substantial liberalization of trade in services no later than 2015.

2.3 North–South RTAs

North–South RTAs increasingly integrate services. Some bilateral agreements involving the United States and the EU have an important services component. Their accelerated proliferation has led to widespread use of deeper liberalization approaches to services under bilateral RTAs. Broader economic partnership agreements can potentially help DCs develop regional supply capacities building and investment promotion in infrastructure and modern technologies in the services sectors. North–South RTAs need to be designed in such a way that they serve as real instruments for development and for poverty eradication in the South. NAFTA has become a model for services trade liberalization that has been replicated elsewhere, including through US bilateral RTAs. The NAFTA model incorporates comprehensive provisions dealing with cross-border trade in services, and a separate chapter on investment covering goods and services, government procurement and the mobility of business persons. Most NAFTA-type agreements contain specific chapters on financial services, telecommunications and electronic commerce, incorporating various obligations both in goods and in services. A number of bilateral RTAs exist or are being negotiated between the EU and DCs, for example Euro-Mediterranean Agreements. These are modeled on the GATS, and include positive list approach without a separate investment chapter. The Trade, Development and Cooperation Agreement between South Africa and the EU provides for the fostering of cooperation in the services sector in general and in the area of banking, insurance and other financial services in particular.

Singapore accords substantial market access across its entire services regime, subject to very few exceptions. U.S. services firms enjoy fair and non-discriminatory treatment through strong disciplines on both cross-border supply of services (such as those delivered electronically, or through the travel of services professionals across borders) and the right to invest and establish a local services presence. Traditional market access to services is supplemented by strong and detailed disciplines on regulatory transparency. Regulatory authorities are authorized to use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations. Market access commitments apply across a range of sectors, including but not limited to:

- Financial services including banking, insurance, securities and related services
- Computer and related services
- Direct selling
- Telecommunications services
- Audiovisual services
- Construction and Engineering
- Tourism
- Advertising
- Express Delivery
- Professional services (architects, engineers, accountants, etc.)
- Distribution services, such as wholesaling, retailing and franchising
- Adult education & training services
- Environmental services
- Energy services

Thus North-North trade in services mainly focuses on the high-end services and the flow will be both way of same services, North-South is mainly investment seeking (mode 3) from developed country's point of view which provides technology to DCs. From DCs point of view, it provides opportunity in Mode 1 on labour intensive services (such as BPOs) and scope of capacity development in the south. Mode 4 is also important from DCs point of view to seek market access. South-South cooperation in trade in services perhaps is development oriented and bit soul searching as both the partners have similar kind of constraints and mode 4 in most of the cases a big no-no unless there is shortage of skilled workforce. Harnessing the potential of RTAs, particularly South-South RTAs, is of interest to DCs as a means to increase national services exports, and to support the broader objectives of stimulating regional growth dynamics and the development of regional supply capacities and infrastructure development, skill-sharing and capacity-building. There is a need to ensure that supportive mechanisms are made effective, particularly in respect of building supply capacities.

3. Importance of Services Sector in Indian Economy

Like many other developing countries service sector has undoubtedly become the most important sector in the Indian economy. This can be attributed to the contribution of different sub-sectors of services to the nation's GDP growth, employment creation and generating export revenues, thereby contributing to the overall development of the economy. India now ranks among ten fastest growing economies in the world, with average economic growth at over 7 per cent a year during the past decade (and over 8.5 per cent in the last four years), and the services sector has been the key driver of this growth for over a decade.

During the 1990s, India's service sector grew at an average annual rate of 9 per cent, ahead of the growth rate of industry at 5.8 per cent per annum and that of agriculture at 3.1 per cent per annum. In India, the service sector contributed approximately 68.6 per cent of the overall average real GDP growth (Service Value Added) in the past five years between 2002-03 and 2006-07. In 2006-07, it was growing at 11.2 per cent year on year, services (including construction) constituted 61.5 per cent of Indian GDP. Also significant is the fact that service sector growth in India is broad-based and cross-sectoral given that some of these services constitute important inputs for both manufacturing and services growth and productivity.

Table 1: Growth Rates within the Services Sector

	Sixth Plan	Seventh Plan	Eighth Plan	Ninth Plan	Tenth Plan
Trade	5.3	6.5	9.1	7.3	9.3
Hotels & Restaurant	5.4	6.9	11.2	9.3	9.0
Railways	2.8	5.7	1.9	4.7	7.7
Other Transport	6.9	7.0	8.4	6.0	11.4
Storage	3.5	1.8	2.4	2.2	5.6
Communications	6.7	5.3	14.1	21.8	22.1
Banking & Insurance	7.5	13.4	8.2	9.0	9.3
Real Estate & Business Services	7.3	8.1	6.1	7.2	8.3
Public Administration	6.1	7.9	3.9	8.5	5.2
Other Services	3.9	6.0	7.0	7.0	7.6

Source: National Accounts Statistics, Government of India; several years

For example, the communications sub-sector has grown at over 15 per cent since 1980s. Consequently, shares of services sub-sectors dependent on advanced IT and telecom technology also increased. Data from India's National Accounts Statistics indicate that the share of communications sub-sector increased from 1.7 per cent to 7.5 per cent, while banking and insurance sub-sectors increased their share from 9.2 to 11.3 per cent; this contrast starkly with the fact that shares of all other traditional services either declined or at best remained same.

In recent years, India's merchandise exports to the rest of the world crossed the 1 per cent mark (global ranking 28th as exporter), growing at an average 25 per cent over the last 3 years, although the net merchandise trade balance is negative. But India's invisible (net) inflows continue to offset the growing trade deficit to a large extent; in 2005-06, India's commercial service exports constituted around 37 per cent of the country's global exports (goods and services). Indian export of commercial services has been among the fastest growing globally in the past 15 years, and grew at over 17 per cent per annum in the 1990s as compared to the world average of 5.6 per cent.

Table2: Share of different Sub-sectors within Services (%)

(at 1999-2000 prices)

	1981-82	**1986-87**	**1991-92**	**1996-97**	**2001-02**	**2006-07**
Trade	28.3	27.0	25.1	27.3	26.6	26.7
Hotels & Restaurant	2.0	2.0	2.0	2.4	2.6	2.5
Railways	4.4	4.0	3.5	2.7	2.3	2.2
Other Transport	9.5	9.4	9.5	10.0	9.2	10.1
Storage	0.4	0.3	0.3	0.2	0.2	0.1
Communications	1.8	1.7	1.7	2.3	4.3	7.5
Banking & Insurance	6.5	8.1	10.2	10.7	11.2	11.3
Real Estate & Business Services	13.8	14.8	16.0	15.1	14.7	14.1
Public Administration	14.7	15.3	14.5	12.4	12.8	10.6
Other Services	18.8	17.5	17.1	16.8	16.2	14.9
Total	100	100	100	100	100	100

Source: National Accounts Statistics, Government of India, several years

Table 3: Exports of Commercial Services

	2000	2001	2002	2003	2004	2005	2006
Global Exports (US$ billion)	1,493.8	1,498.0	1,607.8	1,842.2	2,210.9	2,451.9	2,710.8
India's Exports (US$ billion)	16.0	16.8	19.1	23.1	37.2	54.4	72.8
RoG (y-o-y) of India's exports (%)		4.8	13.8	20.7	61.0	46.4	33.8
India's Share in World Exports (%)	1.1	1.1	1.2	1.3	1.7	2.2	2.7

Source: International Trade Statistics, WTO, several issues.

Between 2001 and 2006, on average, India's exports of commercial services grew at over 30 per cent as opposed to the world average of 10 per cent. In 2006, India exported US$73.8 billion of commercial services, equivalent of 2.7 per cent of global service trade (estimated at around US$ 4 trillion), and was ranked 10th in the global commercial service exporters list in 1997, the share in global trade was only 18 per cent. Though developed countries are major export destinations of India's services exports, India is now inclined to explore the possibilities of exporting the variety of services to developing countries. Its interest towards developing Comprehensive Economic Cooperation Agreement (CECA) and Economic Partnership Agreement (EPAs) are result of this. Also important to note, the growth of services exports primarily came from IT sector. However, growth performance of several other services sector such as banking, communication, transportation etc are also noteworthy but India is yet to draw benefit from the export potentiality it has in these sectors. RTAs in services provide an opportunity to explore this possibility.

4. India-Singapore CECA: Searching for an Alternative to GATS

During the GATS negotiations in the Uruguay Round, India and most other developing country members listed minimal commitments in their services schedules. As the GATS negotiations progressed in subsequent rounds, India came forth as a demander in services negotiations, largely led by its consistent and improving performance in global services trade. Consequently, the revised GATS offer in August 2005 attempted to narrow the gap between the 1994 GATS schedule and the autonomous level of liberalization.

For countries like India, which intend to further their market access in select services, exploring alternative opportunities, such as the CECA, appears to be the second best strategy. The CECA has followed the GATS-type positive list approach wherein each country schedules the sectors it wishes to liberalize. The architecture of the CECA services agreement is similar to that of GATS. It comprises the definitions and scope, specific commitments and general obligations, and finally the denial of benefits clause. All the four key objectives of GATS – namely, market access, national treatment, disciplining domestic regulation and transparency – are as detailed in the CECA as they are in GATS. Further, the CECA also adopts almost all the general obligations of GATS, namely, disciplines on domestic regulation, recognition and transparency among others. Market access and national treatment continue to be specific commitments in the CECA, which are liberalized on a sector-by-sector basis, similar to GATS. The market access objective aims to reduce limitations on the number of service suppliers, value of service transactions, quantity of services output, number of persons that may be employed in a particular service sector and establishment of commercial presence. The national treatment objective aims to provide equal treatment to local service suppliers and suppliers from the other contracting party. The domestic regulation objective attempts to ensure that measures or policies affecting services trade will be applied in a fair and objective manner. The transparency objective requires that all relevant measures affecting the services trade must be made known to the RTA partner within a reasonable period of time, including through prompt publication, maintenance of enquiry points, and fair judicial review. The extent of liberalization in the CECA also bears some relation to the degree of competitiveness. For instance, India has completely liberalized computer related services in GATS as well as within the CECA in Modes 1, 2 and 3. On the other hand, legal services are neither liberalized in GATS and the CECA nor autonomously. The first case reflects the confidence of domestic stakeholders and policy makers, given India's competence in information technology services. On the other hand, protectionist tendencies are evident amongst domestic constituencies in the legal services sector, and hence it is not liberalized in the CECA. Select niche service sectors – namely, library services, archive services, technical testing services, biotechnology research services and advertising services – are not listed in the GATS schedule but are liberalized in the CECA. From the Indian perspective, with its membership of ASEAN and APEC, Singapore is seen as an important bridge in the expansion of economic relationships with the ASEAN countries, including China. Several other features of the Singapore economy too have played a role. Singapore has the attributes of excellent education and infrastructure, intellectual property protection and aggressive government promotion of the IT and services sector. All these serve to reinforce the choice of Singapore as a regional hub for high-end services activities for MNCs with Asia-Pacific operations. Indian service sector companies, in order to sustain their high rates of growth, are expected to use the Singapore route to enter the ASEAN market. Bilateral trade flows also attest to the growing economic links between the two countries with Singapore emerging as India's largest trade and investment partner in the ASEAN.

The trend of increasing outward investment from India has fetched the relevance of Mode 3 particularly in services, makes it incumbent on policy makers to explore avenues for providing secure investment routes. This issue is addressed in the CECA by incorporating an advanced degree of protection for investors of both countries. The CECA includes three separate instruments which contain comprehensive investment provisions. Since Singapore is the first country with which this agreement has been signed, such a comprehensive level of protection is not available with any other country. Also, while India has a positive list schedule in investment, Singapore has a negative list schedule wherein it has listed horizontal and sectoral reservations. Thus Singapore has bound its current level of substantially liberalized FDI regime with few reservations. India has included infrastructure, housing and construction in its investment schedule. In addition, most of the clauses of the Investment Chapter are applicable for scheduled services sectors for Mode 3.

India has opened mode 3 for services like accounting, architectural, engineering, medical, planning, R&D, consulting, etc with some conditions. For banking services, Singapore banks have limited access in mode 3. In case of maritime cargo handling, India has put restriction even in mode1. On the other hand, Singapore has opened most of the services under first 3 modes but mode 4 has been kept unbound. Some services like urban planning, medical services, other business services, geological services, mode1 has been kept unbound. National Treatment has also limitation for surveying activities. In transport and retails mode 3 is unbound. Courier services are highly protected in Singapore as both mode 1 and 3 are unbound. Telecommunication services are subject to equity restrictions in Mode 3. Financial service in Singapore is also subject to protections under mode 1 and 3. Hospital services are also protected under mode, 1, 3 and 4. It is clear that some labour intensive services (both skilled and unskilled) India could not get much market access such as courier sector. In sectors like urban planning, geological services, skilled Indian professionals and firms can not access Singapore Market even through Mode1. However, gain is substantial in tourism, audiovisual services etc. The agreement has been made on the basis of reciprocity in the same sector. Sectors like financial services, legal services etc are protected from both side.

5. India's Inclination towards bringing services sectors in FTA negotiation

India in its current attempt has shown its inclination towards bringing services sectors for FTA negotiation. In several cases, India is willing to develop directly CECA and in some cases would like to convert an FTA into CECA. For example, both India and Sri Lanka is now engaged in converting existing FTA into an economic partnership agreement. Several services sectors are already being liberalized bilaterally as a predecessor to comprehensive agreement. For other countries, such as with EU, Israel, GCC, Malaysia, Mexico, etc, India has varying degree of interest in services sectors.

Studies have clearly mentioned that in which sectors India has strong comparative advantage and must seek for market access (such as IT and ITES, Health services, etc.). However, the market access limitation in the destination countries requires in-depth study. There may be scope of negotiation in some other sectors in which India may not have strong advantage in the short run but in the medium run it may derive some gains. Technological cooperation and related services, tourism services, financial, architectural, construction and education services are few of them to mention. Investment in services (Mode 3) and movement of natural persons (Mode 4) are the key issues in all those sectors.

Indian investment in Sri Lanka is increasing significantly which has paved the way for services cooperation. TATA (Taj Hotels), VSNL, Jet Airways, ICFAI, ICICI have already entered Sri Lankan market with large investment[2]. Sri Lanka concentrated mainly in the export of transshipment services as port of Colombo is a major hub port for India and tourism. India however focused in the export of both traditional services (construction, engineering, tourism) and knowledge based services (software, education, health)[3]. In case of maritime services, the negotiation has been on the basis of request and offer approach on the four modes. Following Sri Lanka's request, India has made commitments but some limitations are there. In case of maintenance and repair services

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[2] Taneja,N.; Mukherjee,A. ;Jayanett, S.; Jayawardane,T. / Indian Council for Research on International Economic Relations (ICRIER) ,2004.

[3] Nag (2006): A Review of India-Sri Lanka Trade Cooperation; Occasional paper 24; Indian Institute of Foreign Trade

India made full commitment in mode 1, 2 and 4. In case of civil aviation, Sri Lankan airlines can now travel to many places in India but high fuel charges in India is a matter of concern. In case of tourism investment is invited in hotels/motels in India from Sri Lanka and hence mode 3 route is being utilized. In case of health services, India is keen in negotiating the movement of health professionals and hence brought the issues like residency permits of doctors and application of long term registration of medical professional. Cooperation is also sought in case of alternative medicines as both the countries are quite strong in these areas. In case of technical cooperation also, mutual recognition of various degree has been found to be the key issues. In audio-visual services, Indian companies are seeking market access for developing joint TV programmes, animation films, etc. Sri Lanka wants to look into mode 3 and mode 4 holistically as Indian investment will be associated with Indian Professional but India is inclined to de-link commercial presence from movement of natural persons[4].

India and China have moved forward with possible agreement both in goods and services. However, the progress has remained uneven so far. In a study[5], it has been mentioned that there are several province wise barriers in services sector of China. Hence, in-depth study is required to understand the nuances of MFN exemptions. Regulatory structures are also sometimes have positive discretion towards state owned firms (such as in telecom). Some of the sectors where Indian investment may of profitable in future are entertainment industry including TV programmes, cinemas and media where India has a distinct comparative advantage. Apart from this, sectors like construction, retail, freight forwarding etc provide lot of opportunities to Indian players. Currently, China is engaged in English training drive. Indian skills may be optimally utilized for this purpose. Also many Chinese companies willing to take advise for IPR related issues where Indian legal expertise can export their services. As a result, there is a need to make visa rules and policies more user friendly. Exploration (such as petroleum) sector has also opportunity

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[4] Nag (2006)

[5] Harnessing India's Economic Potential in China: Strategies for Cooperation and Synergy; IIFT Research report 2007

for cooperation. India-China cooperation should focus towards medium and long term benefit rather than short run adjustments. From this context, the possible areas of cooperation including R&D and collaborative researches among universities may be encouraged.

India has now shown its interest in other countries for developing CECA or agreement involving trade in services. Israel is a lucrative market for India to negotiate an agreement of trade in services. India can import lots of sophisticated services such as high-end technology for medical services, security services, irrigation services etc. In return, India can negotiate for IT and ITes, consultancy, engineering, and architectural services. Education and Construction services are also important from India's point of view. Israel does not have much barrier in mode 1 and 2. In case of mode 3 especially IT and other growing sectors hindrances are very limited. However, in Mode 4 restrictions are relatively high. Mutual Recognition Agreement is an important issue which India must seek from Israel as this allows flow of Indian human capital smooth in Israel. Various economic need tests criteria are there for presence of natural persons. Emerging areas in the services sector for India also includes audio-visual services. Indian movies and TV programmes are quite popular in Israel. Demand is high for producing, creating animations and post-production activities. Israel can outsource many of these services to India instead of USA. Collaboration may be encouraged in pharmaceuticals especially bio-technology, agro-technology, environment services and chemicals apart from high-tech sectors such as IT, medical devices and security instruments. India's negotiating stance in case of Israel must be in importing best quality technology and technological cooperation rather than bargaining hard for market access. As the Israeli market is small India's gain will be small in most of the services. However, in some niche areas our gain may be substantial. In case of Gulf cooperation Council (GCC) and other Middle East countries India's main interest in Mode 4 as most of the services is protected by various economic need tests. Apart from this there are restrictions in mode 3 also which are protected by various ownership criteria, citizenship criteria etc. India's interest lies in construction, engineering, education, health and tourism sector apart from IT/ITes. Though India has interest in financial services but the sector is protected in case of restrictions in commercial presence. India requires aggressive negotiation strategy while negotiating with GCC. India is also contemplating developing agreements with Malaysia, Thailand etc. In these cases, Mode 3 and 4 are again are the most important negotiating issues. Two ways investment in several services sectors will be the negotiating objective for developing trade agreements with South East Asian countries. Tourism, IT, transport are the main services for negotiation. As India is looking east for increasing its trade in goods, to facilitate this service sector should be equally equipped and negotiation should be seen from this angle. Learning from India-Singapore CECA in this context is important while preparing the negotiation strategy with other South East Asian countries. India is also currently engaged in developing a comprehensive agreement with the EU which includes service sector. India must look for importing technology and related services from EU especially in health, environment, telecom etc, where Mode 3 and 4 are important. At the same time attracting European tourists in India in Mode 2 must be looked into. India must seek market access in developing EU members in number of services it can offer including health and construction services. Audiovisual sector is quite protective in the EU and India needs a market access in the sector also. An analysis of EU's bilateral services agreements (such as with Chile) revels that EU is looking for a transparent and well regulated market which may be clearly spelt out in the offer document. Services in EU are having numerous layers of barriers such at the EU level and at the national level. Most of the services are covered by some Directives which provides information about regulatory environment and movement of liberalization. However, national regulations go beyond the EU Directive and EU has limited success till now in streamlining national regulatory structure of its Members. Hence, negotiation with EU needs to be done cautiously only looking at the market structure of the target EU countries. Also looking at EU's strategy, India needs to develop a skill to draft the offer document in such a way so that it can provide transparency as well as incentives to the sectors for their growth with adequate competition and quality.

6. Analysis of Sector wise issues of concern

Banking Sectors

In general there exists entry barrier in most of the countries. Apart from this, several regulations especially related to authorisation, equity limit, barriers on day-to-day transactions, limit on expansion, limit on lending etc. act as barriers to foreign banks. In many countries, branches are treated as foreign entities. In EU access to fund is more costly for foreign banks. There are also restrictions on banks in expanding to other financial services. Indian banks are now taking up the strategy to go abroad and developing countries with large population of Indian origin are the immediately preferred destinations. Hence, as a part of the negotiation strategy Mode 3 issues may be negotiated especially for issues like number of branches, their legal entity, etc. India may seek better harmonisation of rules like minimum capital requirement, etc. Visa and work permit related issues may also be negotiated.

Accountancy Services

Issues related to MRA (requirement of various accreditations), Licensing requirement, movement of professionals etc. are of major concerns. In some countries, citizenship and residency criteria is also in place which act as potential barrier. Increasing Finance and Accounting Outsourcing (FAO) opens the opportunity in Mode1 also. As Indian accountants need to clear domestic professional requirements in most of the countries, strategy should be made to avoid articleship of Indian Accountants in foreign countries. India must concentrate on Mode1 and 4 only.

IT/ITes

The major areas concerns are visa requirements (longer time to get work permits), investment regulations, tax discrimination, data protection and labour market regulations. Indian companies interested in investment abroad are unable to bring sufficient number of Indian workers. India's interest lies in mode 1, 3 and 4. Issues require aggressive negotiation strategy as India's competency in this field is well known.

Health Services

Opportunities are there in tele-medicines (bio-informatics), clinical trials and research, medical tourism, collaborative research, back office support (transcriptions, coding, etc.). Several interrelated regulatory issues are matter of concern from Indian perspective which are mainly MRA, data protection, visa requirements, etc. Several countries would like to see mode 3 and 4 together but India wants to view and negotiate them separately. In some countries Registration and work permits to be taken separately. For Indian doctors it is a matter of concern. Insurance issues for international patient are also matter of concern in case of mode 2. Several countries are not so inclined to share medical history of patients with Indian companies understanding that data protection laws are not so strong in India. This creates problems for Indian companies in supplying services (such as tele-medicines, online transcriptions of medical reports, preparation of pathological reports, etc) through Mode 1. India is interested in all four modes. In several countries, limitation on mode 3 needs to be negotiated. Beyond this, there is a great demand of Indian nurses, technicians, para-medical professionals in the Middle East, USA, Canada, etc. Mode 4 issues in this case are also very important for India.

Telecommunication

Role of regulators in telecom is very important. The International Telecommunication Union, for instance, sets global standards for the telecommunication sector (Bailey, 2005. In other services sectors, national standards are still prevailing. However, it remains inconsistent in many countries especially in case of spectrum allocation, pricing and bundling of services. Restrictions are there in the form of licensing, equity limits, limit on resale, etc. Markets are often fragmented. Large investment is required and hence Govt. needs to understand the benefit of commercial presence of Indian players outside. VSNL is now present in Sri Lanka, EU. Their experience needs to be analysed. Indian companies may not be very interested in basic telephony. However, an exploratory exercise may be carried out in some value added services.

7. Issues in Rules of Origin

The degree of trade preferences depends critically on the rules of origin adopted by a RTA. In the case of goods trade, rules of origin typically lay down in a rather detailed way which levels of transformation good needs to undergo in the partner country in order for it to be exported to another FTA partner at a preferential tariff (Roy et al, 2007). In goods RTAs, rules of origin are used to ensure that non-members do not benefit from the RTA by routing their exports through an RTA member country. Rules of origin (RoOs) list the parameters relating to the minimum amount of domestic content that must be present in goods to qualify as domestic goods and benefit from preferential tariffs in the RTA. Denial clauses in services are similar to such RoOs in goods. Denial clauses set the parameters which a company needs to satisfy to benefit from the RTA. In the case of services FTAs rules of origin based on value added criteria are not used. This may be the case because the concepts of imported service inputs and domestic transformation are conceptually and statistically not well-developed in the case of services trade. Based on the guiding principle that RTAs should facilitate liberalization of trade and not result in reducing the trade prospects of non-RTA countries, GATS has included a disciplining provision for ensuring that denial clauses are framed in a liberal fashion, thereby benefiting non-members also. Article V on Economic Integration mandates that denial clauses cannot prohibit service suppliers of any other member if they are a juridical person of a party to the RTA and are engaged in 'substantive business operations' which implies that if an Indian company has substantial operations in Singapore and is registered in Singapore, it can benefit from the Singapore US FTA. However, GATS text also provides for loopholes to make the denial clauses more restrictive. For instance, by expanding the ambit of parameters, a company may require to qualify as being engaged in 'substantial business operations'[6]. Indeed, it is not clear whether a transformation rule could be meaningfully applied in this area. In the case of modes 1 and 2, rather than using a value added criterion, services RTAs merely stipulate that liberalization measures apply

[6] Article V.6 of the GATS states: 'A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.'

to services that are supplied from or in the territory of another party. It is not clear from to what extent services relying on imported services inputs would be eligible for trade preferences. In the case of modes 3 and 4, RTAs do not provide for any rule of origin for services. Instead of focusing on the origin of services, RTA provisions have mainly sought to delineate the origin of service providers. Indeed, the need for physical proximity between services suppliers and consumers implies a strong link between the service and its supplier, whether in the form of a juridical or natural person.

8. Conclusion and Inferences

Regional trade agreements operate alongside global multilateral agreements under the WTO. RTAs are providing opportunities to countries to go beyond GATS as many developing countries are involved in deeper integration through RTAs in services. They can be attractive because it may be easier for a small group of neighbouring countries with similar concerns and cultures to agree on market opening in a particular area than to reach agreement in a wider forum such as the WTO. They can also offer new approaches to rule-making and so act as stepping stones on the way to a multilateral agreement. Also regional services agreements are quite important to develop regional infrastructure and common regulations in related services of transport, communication, energy etc. Liberalisation process in services go hand in hand with several barriers which are mainly in the form of quota, licenses, investment barriers, equity limits, restrictions of movement of people and regulatory framework. Most services agreements focus on transparent business environment along with liberalisation. RTAs in services is not only helping developing countries to access foreign markets but also developing capacities in institution building which is required for deeper integration.

Apart from services such as IT/ITes, Health, etc India has varied degree of opportunities in several countries with which currently it is negotiating/intends to negotiate trade agreements. Some of the other services where India has opportunities are transport, engineering, construction, tourism, accounting etc. Mode 4 is an important issue only when there is large demand of skilled manpower in the destination countries. Apart from this, India must look into mode 1 of several services which can be provided through internet or telecommunication. India’s interest in mode 3 lies in several services such as in hotels, financial services, health and education where big Indian players are willing to incur large investment abroad. However, India must look into the employment generation in the SME sectors through economic linkages mainly in tourism, logistics, courier etc. Market access issues in these sectors must be seen from this angle. For different destinations, India’s interest lies on different sectors. Market Access exemptions and National Treatment limitations need to be tuned according to the threat and opportunity lies in each country. India may seek for phased market access in some of the protected sectors asking its RTA partners for timeline of some of the market access exemptions. Last but not least, as the developed country markets are getting saturated, more opportunities are lying in relatively advanced developing countries and RTAs can work as a major instrument to India in negotiating the market access of potentially exportable services.

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