

Mapping the Universe of Services Disciplines in PTAs: The Indian Contribution

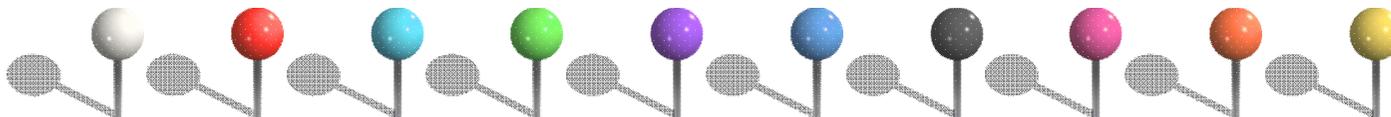
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Introduction

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 WTO GATS negotiation, India has also plunged into signing economic partnership agreements (EPAs).

India's initial journey started with IT and ITES sector but now it is ready to offer many services. India remains a positive position in services negotiation and now through EPA negotiation it is gradually opening up further.

The paper analyses some of these agreements to understand the offer lists comparing them sector by sector. It also identifies main concerns of India in different sectors which it would like to address in ongoing or future negotiation.

Some Facts

With the rising share of services in GDP, few developing countries have come forward with spectacular export growth in services and India is one of them.

Developing countries in Asia account for 75 per cent of all developing countries' services trade. Top 15 developing country services exporters account for 80 per cent of all developing countries services exports. Service sectors are also major destination of inward FDI in these countries .

in recent times many developing countries are taking steps to increase their service exports unilaterally or through regional agreement on services.

RTAs in Services

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.

RTAs in Services: Developing Country Perspective

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.

Along with the liberalisation one of the major objectives of the developing countries is to understand the simplification process required for current regulatory structure and how to bring transparency in the system. During the negotiation process, countries are exposed to different ideas and a process to streamline the offer considering domestic compulsions.

RTAs in Services: Benefits and Challenges to Developing Countries

- 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.
- 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.

Contemporary Variations in PTAs Practice

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. Liberalization may be based on a progressive approach with an implementation period. In some sectors, liberalization is offered in some segments and that may be through only some modes.
- 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.

Contemporary Variations in PTAs Practice

- 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.

India's Current PTA Involvements

Asia/Europe	Africa	Latin America
Operational		
Indo-Lanka FTA SAFTA Bangkok Agreement (now APTA) India-Thailand FTA India-Singapore CECA India-ASEAN FTA India-South Korea CEPA India-Malaysia CECA (from July 2011) India-Japan CEPA India-Finland ECA		Indo-Chile PTA Indo-MERCOSUR PTA
Ongoing Negotiations		
India-GCC Framework Agreement on Economic Cooperation BIMSTEC FTA Indo-Israel PTA India-EU	India-SACU CFTA India-Mauritius CECPA	
Analysis Stage		
Australia, China, Indonesia, New Zealand,		

India's Service Sector

Growth Rate of India's GDP and Service Sector GDP (%)



Source: Economic Survey 2010-11, Govt. of India

India's Service Sector

Growth Rates within the Services Sector (%) at constant prices

	Eighth Plan	Ninth Plan	Tenth Plan	2007-08	2008-09	2009-10
Trade	9.1	7.3	9.3	9.7	6.5	7.2
Hotels & Restaurant	11.2	9.3	9.0	13.1	-3.1	2.2
Railways	1.9	4.7	7.7	9.8	7.6	9.4
Other Transport	8.4	6.0	11.4	8.7	5.2	7.0
Storage	2.4	2.2	5.6	3.4	10.5	10.7
Communications	14.1	21.8	22.1	25.4	25.8	32.1
Banking & Insurance	8.2	9.0	9.3	16.7	14.0	11.3
Real Estate & Business Services	6.1	7.2	8.3	8.4	11.2	7.5
Public Administration	3.9	8.5	5.2	7.6	20.2	13.0
Other Services	7.0	7.0	7.6	6.3	7.4	10.9

Source: For growth rates in various plans data taken from National Accounts Statistics, Government of India; several years, for other years Economic Survey 2010-11, Govt. of India

India's Service Sector

Share of different services categories in GDP at factor cost (current prices)

	2004-05	2005-06	2006-07	2007-08	2008-09@	2009-10*
Trade, hotels & restaurants	16.1	16.7	17.1	17.1	16.9	16.3
Trade	14.6	15.1	15.4	15.4	15.4	14.9
Hotels & restaurants	1.5	1.6	1.7	1.7	1.5	1.4
Transport, storage & communication	8.4	8.2	8.2	8.0	7.8	7.8
Railways	1.0	0.9	0.9	1.0	0.9	1.0
Transport by other means	5.7	5.7	5.7	5.5	5.5	5.2
Storage	0.1	0.1	0.1	0.1	0.1	0.1
Communication	1.7	1.6	1.5	1.4	1.4	1.5
Financing, insurance, real estate & business services	14.7	14.5	14.8	15.1	16.1	16.7
Banking & insurance	5.8	5.4	5.5	5.5	5.7	5.4
Real estate, ownership of dwellings & business services	9.0	9.1	9.3	9.6	10.4	11.4
Community, social & personal services	13.8	13.5	12.8	12.5	13.3	14.4
Public administration & defence	5.9	5.6	5.2	5.1	5.8	6.3
Other services	8.0	7.9	7.6	7.4	7.5	8.1
Construction	7.7	7.9	8.2	8.5	8.5	8.2
Total Services (excluding Construction)	53.0	52.9	52.9	52.7	54.1	55.2
Total Services (including Construction)	60.7	60.8	61.1	61.2	62.6	63.4
Total GDP	100	100	100	100	100	100

Source: Economic Survey 2010-11, Govt. of India

India's Export of Services

Sl. No.	Commodity Groups	Percentage share				CAGR 2000-01 to 2007- 08	Growth rate*			
		2000- 01	2009- 10	April- September			2008- 09	2009- 10	April- September	
				2009- 10	2010- 11	2009- 10			2010- 11	
1	Travel	21.5	12.4	11.5	11.4	18.3	-4.0	8.9	-5.2	26.2
2	Transportation	12.6	11.7	11.6	11.5	25.5	12.9	-1.2	-10.3	26.6
3	Insurance	1.7	1.7	1.8	1.5	29.4	-13.2	12.7	6.2	10.4
4	GNIE	4.0	0.5	0.5	0.4	-9.2	17.6	13.2	-5.2	9.5
5	Miscellaneous	60.3	73.8	74.7	75.2	31.6	22.3	-13.8	-16.4	28.2
	a) Software Services	39.0	51.9	50.8	45.7	30.2	14.9	7.4	-8.2	14.7
	b) Non-software Services	21.3	21.9	24.0	29.5	33.9	33.5	-41.2	-36.6	56.9
	of which:									
	i) Business Services	2.1	11.9	11.6	19.3	75.0	10.9	-38.9	-46.4	111.4
	ii) Financial Services	2.1	3.9	4.2	5.5	37.5	37.7	-15.6	-19.2	64.9
	iii) Communication Services	7.0	1.3	1.7	1.3	11.3	-4.6	-46.5	-42.0	2.3
Total Services Exports		100.0	100.0	100.0	100.0	27.8	17.3	-9.6	-16.8	27.4

GNIE: Govt. Not Included Elsewhere

Growth rate is calculated from values in US\$

Source: Economic Survey 2010-11, Govt. of India

	(US \$ billion)		
	Exports	Imports	Balance
2000-01	16.3	14.6	1.7
2001-02	17.1	13.8	3.3
2002-03	20.8	17.1	3.6
2003-04	26.9	16.7	10.1
2004-05	43.2	27.8	15.4
2005-06	57.7	34.5	23.2
2006-07	73.8	44.3	29.5
2007-08	90.3	51.5	38.9
2008-09	106.0	52.0	53.9
2009-10	95.8	60.0	35.7
2009-10 (April-September)	43.8	24.7	19.1
2010-11 (April-September)	55.7	36.2	19.5

New Motivation for Service Exports

- India is increasingly specializing and exporting non-IT services. Growth of exports in Business Services, Financial services, Travel and Transport services were on the higher side.
- India is now capable of offering south-south solution of many challenges in services sector with help of large pool of professionals, indigenous technology and management practices. Hence, it is seeking market access in developing countries where there is a service market in which India can compete.
- Though developed countries are major export destinations of India's services, 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.

India's Initiative for EPAs

India Singapore CECA

- The Comprehensive Economic Cooperation Agreement (CECA) between India and Singapore was signed on 29th June, 2005 and notified to WTO in 2007. The agreement has been reviewed couple of times.
- This was India's first attempt to negotiate services in a PTA. It received fairly open horizontal offer from Singapore but several crucial sectors remain protected.
- 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. Legal service is unbound but accounting service is open
- In some labour intensive services (both skilled and unskilled) India could not get much market access. 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. Learning about Services negotiation and attempt to go beyond GATS have been two major knowledge gain for India from this agreement

India's Initiative for EPAs

India Korea CEPA

- India and Korea Rep signed CEPA in 2009 and it is operational since January 2010. The agreement has been notified to the WTO. Korea's CEPA with India is the first free trade agreement with a BRIC member and for India also, it is the first such agreement with an OECD member.
- The agreement allows Indian professional in areas such as IT, English teaching etc to temporarily move to Korea for delivering the services.
- India has not made any offer in legal services but Korea has made restricted offer. Korea's offer in accounting services is more restricted compared to India's. India has offer in mode 1 and 2 of architectural services, engineering service, urban planning etc and in some cases with little restriction in mode 3. Among other professional services, India has fairly open offer with some restriction in mode 3 considering the public services offered in many areas and existing FDI norms. Mode 4 is mostly restricted.
- Korea has much detailed offer in software and IT areas which are mostly open in mode 1-3 but unbound in mode4. Mode 3 of Real Estate service is also open in Korea. In many services, Korea has linked mode 1 and 3 entering the text 'local presence required'. Both the countries made detailed offer in telecommunication highlighting the domestic laws and licensing system in case of mode 3

India's Initiative for EPAs

India Korea CEPA

- India has biggest opportunity in audiovisual services as Korea has offered entry in all modes (with some restriction in mode 4) in production of movies, video recording and distribution of that. India is looking for more foreign participation in construction services and made liberal commitment but Korea has restricted offer. Similarly in education services, India has made conditional offer but Korea has kept the sector as unbound. Interestingly India has opened environmental services such as waste disposal etc but it is unbound in case of Korea except technical testing areas.
- This is important to note that in case of India-Singapore CECA, Singapore opened many sectors and restricted few strategic sectors and that too in mode 1 and mode 2 primarily and mode 3 in some cases. However, for India-Korea CEPA, Korea has restricted large number of sectors while India has opened many sectors in line with India's unilateral liberalization strategy. Through this, India would like to send a message about its commitment in liberalizing the services. Here, India's strategy is most likely to get technology and investment in several services sectors.

India's Initiative for EPAs

India Japan CEPA

- India-Japan CEPA has been signed in February 2011 and it is yet to be operational.
- Similarly, as in case of India-Korea CEPA, India has opened largely most of the professional services except in case of mode 4. Construction, distribution, environmental, tourism and hospital services are mostly open. Telecommunication and financial services are unbound.
- In case of Japan's offer India has received detailed commitment in legal services with some restriction mostly as 'exception'. Medical services are kept unbound but in most of the other services India has been able to obtain large concessions including commitments for providing greater market access. Japan has also committed to cover the whole range of engineering services like computer engineers, mechanical, electrical, industrial, design engineers and project management specialists. Significantly, first time, Japan has agreed to grant additional category of instructors for yoga practitioners, classical musical and dance practitioners, chefs and English language teachers.
- It is important to note that gradually India is becoming more prudent in negotiating services issues and it is able to derive better commitments from partners.

India's Initiative for EPAs

India Malaysia CECA

- India and Malaysia signed Comprehensive Economic Co-operation agreement (CECA) on 18th February, 2011. The agreement will come into force from 1st July 2011.
- The agreement aims to enhance the competitive investment environment and provide stimulus to FDI between the two partners. In last few years mutual investment in each other's economy has increased significantly.
- In services sector India received investment from Malaysia in areas telecommunication, tourism and human resources. India also invested in IT , advertisement, audio-visual sector and allied financial services. The Joint study group (JSG) also anticipates that investment will be there in other areas such as medical, healthcare and diagnostic services, advertising, audio visual services, construction and engineering services, distribution services, and accounting and taxation services.
- For most of the professional services, India's commitment is slightly more restrictive compared to India-Korea and India-Japan CEPA. For example, most of the services under R&D are unbound or subject to conditions. However, India has opened up the real estate sector for Malaysian investment. Indian audio visual sector is kept as unbound and other services such as telecommunication provide conditional and restrictive entry. India has opened up environmental services but in hospital sector it offered entry with equity cap

India's Initiative for EPAs

India Malaysia CECA

- Malaysian horizontal commitment explicitly put up the condition related to mergers and acquisition, use of real estate, use of incentives provided by the government etc. Though in most of the professional services Malaysia has offered a commitment, it has put up conditions on both mode 3 and mode 4. Malaysia has opened up medical services and expects that specialized services will be offered by natural person.
- As in case of India –Korea CEPA local representation is required for offering the service in Malaysia. In telecommunication, Malaysia has offered a liberal commitment but for investment purpose only an existing company can be acquired. This is true in case of audio visual and hospital services also. It is noteworthy that Malaysia's commitment in tourism sector is also restrictive as there are equity cap and through locally incorporated JVs. However, for 4 and 5 star hotels these restrictions are not there.
- Comparing India's recent economic partnership agreements it can be said that India got good offer from Japan and Singapore. For Korea, there are restrictions in sectors in their offer and in case Malaysia's offer we have noticed restrictions are there even in mode 3. India has maintained its position by offering more number of sectors but however, other countries are not reciprocating equally. Hence in services, India's gain from these FTAs will also vary widely.

India's Concerns and challenges in Service Sector Negotiation

This section analyses service sector regulations and barriers already exist in many current and potential FTA partner countries based on views expressed by service sector players in India

- 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. Lack of service infrastructure as well as professionals provide opportunities to Indian companies in Sri Lanka. India is interested in hospital, audio-visual service, alternative medicines etc apart from large number of other 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. However, Mutual Recognition of degrees is an important issue.

India's Concerns and challenges in Service Sector Negotiation

- In case of Gulf cooperation Council (GCC), 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.
- Services in EU are having numerous layers of regulation 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.

Nature of barriers in Service Trade

Market Access Exemptions: 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 type of legal entity and the extent of foreign capital participation).

- National Treatment Limitations: Preference towards domestic players (sometimes service providers are govt. owned monopolies)
- Non-Transparency: Non-transparency in service sectors are quite common. Most of the time, it is difficult to find out the list of exact measures affecting the services even in a developed country. (for example, in EU quotas in many services such as film/movie quota follows both national policies and EU audiovisual directives)
- Domestic regulation: Well defined regulatory structure for service sector is welcome. Apparently it is affecting both domestic as well as foreign suppliers equally. However, in some cases, regulatory discretion goes against the foreign players. For example, postal administration may be kept outside regulatory structure and provided some advantages (tax relief).

Analysis of Sector wise issues of concern

Banking Sectors

- Entry Barrier, authorisation, equity limit, barriers on day-to-day transactions, branches recognised as foreign entity, access to fund more costly, limit on expansion, limit on lending, etc. restriction on banks to go into other financial services,
- 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, Mode 4 etc. are major concerns. In some countries, citizenship and residency criteria is also in place. Increasing Finance and Accounting Outsourcing (FAO) opens the opportunity in Mode1 also.
- Strategy should be made to avoid articleship of Indian Accountants in foreign countries. India must concentrate on Mode1 and 4.

Analysis of Sector wise issues of concern

- IT/ITes

- Major 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 in mode 1, 3 and 4. Issues require aggressive negotiation.

- Health Services

- Opportunities are there in telemedicines (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. 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 is also matter of concern in case of mode 2.

- India is interested in all 4 modes. In several countries, limitation on mode 3 needs to be negotiated.

Analysis of Sector wise issues of concern

Telecommunication

- Role of regulators in telecom is very important. 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, Airtel in Africa . Their experience needs to be analysed.

Conclusion and Inferences

RTAs are providing opportunities to countries to go beyond GATS as many developing countries are involved in deeper integration through RTAs in services. These RTAs are not only helping countries to access foreign markets but also developing capacities in institution building which is required for deeper integration.

- 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.
- 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 engineering, construction, tourism, accounting etc.

Conclusion and Inferences

- Mode 4 is an important issue only when there are 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.
- For different destinations, India's interest lies on different sectors. MA exemptions and NT 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.

Thank You

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