

# **Free Trade Agreements**

*Frequently Asked Questions (FAQs)*

Department of Commerce

## **Preface**

This FAQ is intended to be a ready reckoner for trade and industry including their associations and bodies; students of international trade, academicians, trade researchers etc for understanding the specific issues concerning Free Trade Agreements (FTAs) that have been signed by India.

The FAQ has been structured into a general note on FTAs which is then followed by specific questions on individual FTAs that India has signed. These include the agreements with Sri Lanka, Singapore, ASEAN, Malaysia, Japan and Korea. The FAQs in each section have also been demarcated into those pertaining to goods, services and other areas. Efforts have been made to keep the language as simple and concise as possible.

We would encourage stakeholders (including exporters) to examine the concession lists available in India's FTAs with a view to find opportunities for their business.

While acknowledging the efforts of all those who contributed in this endeavour, the Department of Commerce would appreciate any feedback.

## Table of Contents

### **1. Free Trade Agreement General Note .....1**

Question: What is the relationship between Multilateralism (WTO) and FTAs? .....	1
Question: What are Free Trade Agreements (FTAs)?.....	1
Question: What is the difference between the terms such as PTA, CECA, RTA, CEPA, Customs Union, Common Market and Economic Union? How are these related to FTAs? ....	1
Question: What is an Early Harvest Scheme/Programme (EHS) and how different is it from an FTA? .....	2
Question: Which are the major FTAs / PTAs of India? .....	2
Question: How is tariff reduction under an FTA different from WTO tariff negotiation? .....	3
Question: How is CECA different from FTA? .....	3
Question: Why are almost all the countries signing Free Trade Agreements? .....	4
Question: How is India placed globally in terms of its bilateral PTAs/FTAs/ CECAs/CEPAs?....	4
Question: Where can one find tariff concessions available in India's FTA?.....	5
Question: What are Rules of Origin (ROO)? .....	5
Question: What are some of the criteria used in the rules of origin?.....	5
Question: Why are rules of Origin important in the FTA context? .....	5
Question: How are Rules of Origin enforced in an FTA?.....	6
Question: Who are the authorised agencies in India for issuing the certificate of origin?.....	6
Question: What is the procedure for obtaining the certificate of origin?.....	6
Question: What are the rules and regulation relating to certification and verification of origin?.....	6
Question: What are SPS and TBT measures? Do they figure in FTAs?.....	7
Question: What are other non tariff measures (NTMs) that are dealt in FTAs?.....	7
Question: How should stakeholders bring these NTMs to the notice of FTA negotiators?.....	7
Question: What is the mechanism for implementation of FTA tariff concessions?.....	7
Question: Are there provisions for review and implementation of FTAs?.....	7

#### SERVICES

Question: What are the four modes of supply under trade in services?.....	8
Question: What are mutual recognition agreements ?.....	8
Question: What are the different categories of natural persons and how are they defined?..	9

## **2. INDIA-ASEAN CECA .....10**

Question: What is the ASEAN-India Framework Agreement for CECA? .....	10
Question: When did India sign the Agreement on Trade in Goods with ASEAN ?.....	10
Question: When did the India-ASEAN Agreement on Trade in Goods come into force and what is the period the tariff reduction?.....	10
Question: What are the different types of tariff concessions offered? .....	10
Question: What are the tariff concessions offered by India and ASEAN to each other in Merchandise Trade? .....	11
Question: What are the Special Products (Highly Sensitive List) in India's Schedule of Tariff Commitments? .....	11
Question: What is the Exclusion List? How is it different from the Negative List? .....	11
Question: Which products are included in India's Exclusion List? .....	11
Question: Why does India have two Schedules of Tariff Commitments? .....	12
Question: Why are Schedules of Tariff Commitments of ASEAN countries at different HS Code Levels (8/9/10-digit)? .....	12
Question: What are the Rules of Origin under the India-ASEAN-TIG Agreement?.....	12
Question: Can products from a country other than ASEAN (Third Country) enter Indian market through ASEAN countries and benefit from tariff concession under the India-ASEAN Agreement? .....	12
Question: Are there any safeguard mechanisms to protect domestic producers from surge in imports from ASEAN? .....	13
Question: What are the provisions for review and implementation of the Agreement?.....	13
Question : What is the provision for dispute settlement mechanism under the Agreement?.....	13
Question : What are the major export opportunities for India under the Agreement?.....	13

## **3. INDIA MALAYSIA CECA(IMCECA).....15**

Question: What is India- Malaysia CECA? .....	15
Question: What does the India- Malaysia Agreement on Trade in Goods offer? .....	15
Question: What are the different types of tariff concessions offered? .....	15
Question: Have the end dates for duty elimination or duty reduction in the ASEAN Agreement been advanced or fast tracked in the IMCECA? .....	15
Question: What are the Rules of Origin under the IMCECA? .....	16

Question: What are the provisions of Sanitary and Phyto-sanitary (SPS) Measures and Technical Barriers to Trade (TBT)? .....	16
Question: What is the mechanism to overcome disputes, that may arise or what is the Dispute Settlement Mechanism? .....	16
Question: What is the mechanism to deal with the injury caused to the domestic country due to tariff reduction? .....	16
<b>SERVICES</b>	
Question: How many sectors and sub-sectors are covered in the services agreement and what are the services covered and excluded?.....	17
Question: What is the contribution of the Services sector in the economy of Malaysia/India?.....	17
Question: What are the salient features of Malaysia's commitments in services?.....	17
Question: What all categories are covered in the chapter on MoNP (Movement of natural persons) under the India Malaysia CECA?.....	18
Question: How can the Contractual Service Suppliers (CSS) and Independent Professionals (IP) of India benefit from the agreement under Mode 4 (Movement of Natural Persons)?..	18
Question: Enlist the professions covered in the categories of CSS and IP under the agreement?.....	18
Question: What are the beneficial provisions for the categories of Business Visitors and Intra corporate transferees (ICTs) under Mode 4?.....	18
Question: What is the maximum duration of stay allowed in Malaysia for the various categories of Indian service suppliers?.....	18
Question: Is the requirements relating to domestic regulations met?.....	19
Question: What has Malaysia offered to Indian service suppliers under Mode 1 and Mode 2?.....	19
Question: Are the commitments given by Malaysia under the computer Related Services (CRS) satisfactory?.....	19
Question: What is the sectoral commitment of Malaysia in 'Construction Services'?.....	19
Question: What is the sectoral commitment of Malaysia in R&D Services?.....	19
Question: How can Indian service suppliers benefit under various categories of 'Other Business Services'?.....	19
Question: What is the sectoral commitment of Malaysia in 'recreational, cultural and sporting services'?.....	20
<b>GENERAL</b>	
Question: What are the economic prospects for India in Malaysia?.....	20
Question: What is the significance of chapter on Investment? .....	20

<b>4. INDIA SINGAPORE CECA .....</b>	<b>21</b>
Question: What are the objectives of the India Singapore CECA? .....	21
Question: What are the Tariff concessions offered by India and Singapore to each other in Merchandise Trade? .....	21
Early Harvest Program .....	21
Phased Duty Elimination.....	22
Phased Duty Reduction .....	22
Exclusion from any Concession of Duty.....	22
Margin of Preference.....	22
Question: How many times has the India-Singapore CECA Tariff schedule been revisited?.....	22
Question: What has been the India’s Schedule of Tariff Reduction?.....	23
Question: Which are the sections of concentration of negative line under India-Singapore CECA? .....	23
Question: Is there any provision with regard to mutual recognition agreements (MRA) in this agreement?.....	23
Question: What are specifications mentioned in the Rules of Origin under CECA? .....	23
Question: Are there any non-tariff measures imposed under the agreement? .....	24
Question: How are the customs values of the goods determined under the CEPA agreement?.....	24
Question: Are there any restrictions under INDIA-SINGAPORE CECA agreement? .....	24
Question: Are there any transparency measures under the CECA? .....	25
Question: What are the other WTO Agreements applicable as per the CECA? .....	26
Question: What are the Safeguards measure undertaken in the agreement?.....	26
Question: What does the Double Taxation Agreement under CECA specify? .....	26
<b>SERVICES</b>	
Question: What are the key features of Trade in Services? .....	26
Question: What are the key features of Financial Services?.....	26
Question: What aspects of Trade in Services are covered in the India Singapore CECA?.....	27
Question: Which sectors has Singapore undertaken commitments in Services?.....	27
Question: How is the movement of natural persons chapter benefit India?.....	27
<b>5. INDIA-Sri-Lanka FTA .....</b>	<b>29</b>

Question: What are the benefits of Sri Lanka-India FTA? .....	29
Question: When did India sign the Agreement on Trade in Goods with Sri Lanka and what are the dates of implementation by parties? .....	29
Question: What is the status of India-Sri Lanka Agreement on Trade in Services and Agreement on Investment? .....	29
Question: How is the Agreement structured? .....	29
Question: What are the main bilateral export interest's under the ISLFTA? .....	29
Question: What are the different types of tariff concessions offered? .....	29
Question: What are the tariff concessions offered by India and Sri Lanka to each other in Merchandise Trade? .....	30
Question: Why are Schedules of Tariff Commitments of Sri Lanka countries at different HS Code Levels (8/9/10-digit)? .....	31
Question: How many tariff lines are included in Exclusion (Negative) List of India and Sri Lanka? .....	31
Question: Which products are included in India's Exclusion List? .....	31
Question: What are the Rules of Origin applicable for ISLFTA? .....	31
Question: Can the products from a country other than Sri Lanka (Third Country) products enter Indian market through Sri Lanka countries using the India-Sri Lanka Agreement? .....	31
<b>6. Japan India CEPA (JICEPA) .....</b>	<b>32</b>
Question: What is the tariff liberalization/reduction pattern for the agricultural and manufacturing products exported to Japan from India under the JICEPA? .....	32
Question: What are the important categories of products in the negative list of the JICEPA? .....	32
Question: What are the export opportunities for India under the Agreement? .....	33
Question: What is the definition for "originating products" under the agreement? .....	33
Question: What is the de-minimis value of products under the agreement? .....	33
Question: What are the Rules of Origin for non originating products under the JICEPA? .....	34
Question: Is there any talk of Regional Cumulation under the JICEPA? .....	34
Question: Whether any tariff rate quotas applicable for the products covered under the JICEPA? .....	34
Question: Is there any provision for Special Safeguard Mechanism (SSMs)? .....	34
Question: Whether there is any provision for any Bilateral Emergency Actions (BEAs)? .....	34
Question: Whether there is any Early Harvest Program (EHP) provision? .....	34

Question: Whether there are any restrictions or prohibitions imposed on particular products under the agreement? .....	34
Question: Are there any exceptions under the JICEPA?.....	34
Question: Are there any transparency measures under the JICEPA? .....	35
Question: Whether any customs clearance procedures provided in the agreement? .....	35
Question: What are the rules regarding temporary admission of goods in the JICEPA?.....	36
Question: What are the standards followed with regard to Technical Barrier to Trade (TBT)? .....	36
Question: What are the standards followed with regard to Sanitary and Phytosanitary Measures (SPS)? .....	36
Question: Is there any provision in JICEPA on pharmaceutical products?.....	36
Question: Is there any provision with regard to mutual recognition agreements (MRA) in this agreement?.....	36
Question: What are the other WTO agreements applicable as per the agreement? .....	36
<b>SERVICES</b>	
Question: How many service sectors and sub-sectors and what services are covered in the CEPA?.....	37
Question: What is the contribution of the Services sector in the economy of Japan/India?..	37
Question: What are the salient features of Japan's services commitments?.....	37
Question: What all categories are covered in the chapter on MoNP under India Japan CEPA?.....	37
Question: What are the sectoral commitments for various categories of service suppliers under Mode 4?.....	37
Question: What are the professions covered in the categories of CSS and IP under the agreement?.....	38
Question: What is the maximum duration of stay allowed in Japan for the various categories of Indian service suppliers?.....	38
Question: What has Japan offered to Indian service suppliers under Mode 1 and Mode 2?.....	38
Question: Are the commitments given by Japan under the computer Related Services (CRS) satisfactory?.....	38
Question: How can Indian service suppliers benefit under various categories of 'Other Business Services'?.....	38
Question: What is the sectoral commitment of Japan in areas of interest for India?.....	39



<b>7. INDIA KOREA CEPA: FAQs .....</b>	<b>40</b>
Question: What are the objectives of the agreement?.....	40
Question: What are the categories of tariff liberalization/reduction pattern for the agricultural and manufacturing products exported to Korea from India under the IKCEPA?.....	40
Question: What are the important categories of products in the negative list of the IKCEPA?.....	41
Question: What are the export opportunities for India under the IKCEPA?.....	41
Question: When and how are customs duties eliminated or reduced?.....	41
Question: What is the definition for "originating products" under the agreement? .....	42
Question: What is the de-minimis value of products under the agreement? .....	42
Question: What are the Rules of Origin and does the agreement talk of any Regional Cumulation? .....	43
Question: Whether there are any non-tariff measures imposed under the agreement?.....	43
Question: How are the customs values of the goods determined under the CEPA agreement?.....	43
Question: Are there any restrictions under INDIA-KOREA CEPA agreement?.....	43
Question: Whether any customs clearance procedures provided in the agreement?.....	44
Question: Are there any restrictions or prohibitions imposed on particular products under the agreement?.....	44
Question: Are there any transparency measures under the India-Korea CEPA?.....	44
Question: What are rules and regulations pertaining to release of goods in the agreement?.....	45
Question: What are the rules regarding automation provided in the agreement?.....	45
Question: What are provisions related to express shipments in the agreement?.....	45
Question: What are the rules regarding temporary admission of goods in the IKCEPA?.....	45
Question: What are the standards followed with regard to Technical Barrier to Trade (TBT)?.....	45
Question: What are the standards followed with regard to Sanitary and Phytosanitary Measures (SPS)?.....	45
Question: What are the other WTO agreements applicable as per the agreement? .....	46
<b>SERVICES</b>	
Question: What are the salient features of Korea's services commitments?.....	46
Question: How many sectors and sub-sectors are covered in the agreement and what are the services?.....	46

Question: What has Korea offered to Indian service suppliers under Mode 1, Mode 2 and Mode 3?.....	46
Question: Are the commitments given by Korea under the computer Related Services (CRS) satisfactory? .....	47
Question: How can Indian service suppliers benefit under various categories of ‘Other Business Services’? .....	47
Question: What is the sectoral commitment of Korea in ‘Communication Services’?.....	47
Question: What is the sectoral commitment of Korea in ‘Financial Services’?.....	47
Question: What is the sectoral commitment of Korea in ‘Tourism Services’?.....	47
Question: What is the sectoral commitment of Korea in ‘Transportation Services’?.....	47
Question: What all categories are covered in the chapter on MoNP (Movement of Natural Person) under India Korea CEPA? .....	47
Question: What is the maximum duration of stay allowed in Korea for the various categories of Indian service suppliers? .....	48
Question: Is there any ENT/LMTs that poses unnecessary barriers to trade?.....	48
Question: Enlist the professions covered under the agreement?.....	48

## FREE TRADE AGREEMENT GENERAL NOTE

**Question:** What is the relationship between Multilateralism (WTO) and FTAs?

**Answer:** Article 1 of GATT (General Agreement on Tariffs and Trade) which enunciates the most favoured nation (MFN) principle of WTO states that "*any advantage, favour, privilege, or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.*"

However, derogations from this MFN principle are permitted for forming FTAs under specific conditions as per the following provisions of the WTO Agreements:

- Article XXIV of GATT for goods
- Article V of GATS (General Agreement on Trade in Services) for services.

The specific conditions under Article XXIV of the GATT permitting FTAs, are:

- FTA members shall not erect higher or more restrictive tariff or non-tariff barriers on trade with non-members than existed prior to the formation of the FTA.
- Elimination of tariffs and other trade restrictions be applied to "*substantially all the trade between the constituent territories in products originating in such territories.*"
- Elimination of duties and other trade restrictions on trade within the FTA to be accomplished "*within a reasonable length of time,*" meaning a period of no longer than 10 years

Moreover, the "*Enabling Clause,*"<sup>1</sup>, allows developing countries to form preferential trading arrangements without adhering to the conditions under Article XXIV.

**Question:** What are Free Trade Agreements (FTAs)?

**Answer:** FTAs are arrangements between two or more countries or trading blocs that primarily agree to reduce or eliminate customs tariff and non tariff barriers on substantial trade between them. FTAs, normally cover trade in goods (such as agricultural or industrial products) or trade in services (such as banking, construction, trading etc.). FTAs can also cover other areas such as intellectual property rights (IPRs), investment, government procurement and competition policy, etc.

**Question:** What is the difference between the terms such as PTA, CECA, RTA, CEPA, Customs Union, Common Market and Economic Union? How are these related to FTAs?

**Answer:** Preferential Trade Agreement (PTA): In a PTA, two or more partners agree to reduce tariffs on agreed number of tariff lines. The list of products on which the partners agree to reduce duty is called positive list. India MERCOSUR PTA is such an example. However, in general PTAs do not cover substantially all trade.

Free Trade Agreement (FTA): In FTAs, tariffs on items covering substantial bilateral trade are eliminated between the partner countries; however each maintains individual tariff structure for non-members. India Sri Lanka FTA is an example. The key

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<sup>1</sup> Officially called the "*Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*", and adopted under GATT in 1979.

difference between an FTA and a PTA is that while in a PTA there is a positive list of products on which duty is to be reduced; in an FTA there is a negative list on which duty is not reduced or eliminated. Thus, compared to a PTA, FTAs are generally more ambitious in coverage of tariff lines (products) on which duty is to be reduced.

Comprehensive Economic Cooperation Agreement (CECA) and Comprehensive Economic Partnership Agreement (CEPA): These terms describe agreements which consist of an integrated package on goods, services and investment along with other areas including IPR, competition etc. The India Korea CEPA is one such example and it covers a broad range of other areas like trade facilitation and customs cooperation, investment, competition, IPR etc.

Custom Union: In a Customs union, partner countries may decide to trade at zero duty among themselves, however they maintain common tariffs against rest of the world. An example is Southern African Customs Union (SACU) amongst South Africa, Lesotho, Namibia, Botswana and Swaziland. European Union is also an outstanding example.

Common Market: Integration provided by a Common market is one step deeper than that by a Customs Union. A common market is a Customs Union with provisions to facilitate free movements of labour and capital, harmonize technical standards across members etc. European Common Market is an example.

Economic Union: Economic Union is a Common Market extended through further harmonization of fiscal/monetary policies and shared executive, judicial & legislative institutions. European Union (EU) is an example.

**Question:** What is an Early Harvest Scheme/Programme (EHS) and how different is it from an FTA?

**Answer:** Early harvest scheme is a precursor to a free trade agreement (FTA) between two trading partners. This is to help the two trading countries to identify certain products for tariff liberalisation pending the conclusion of FTA negotiation. It is primarily a confidence building measure. A good example of an EHS is between India and Thailand signed in October 2003, wherein 83 products were identified to be reduced to zero in a phased manner. The EHS has been used as a mechanism to build greater confidence amongst trading partners to prepare them for even bigger economic engagement.

**Question:** Which are the major FTAs / PTAs/CEPAs of India?

**Answer:** The major bilateral and regional agreements of India are:

S. No.	Acronym	Groupings	Member Countries		FTAs/PTAs
			No	Names	
1	APTA	Asia Pacific Trade Agreement	5	Bangladesh, China, India, Republic of Korea, Sri Lanka.	PTA
2	India ASEAN TIG	India ASEAN Trade in Goods Agreement	11	Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam and India.	FTA

S.	Acronym	Groupings	Member Countries		FTAs/PTAs
3	BIMSTEC	Bangladesh, India, Myanmar, Sri Lanka, Thailand Economic Cooperation	7	Bangladesh, India, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal.	Under negotiations
4	GSTP	Global System of Trade Preferences	44	Algeria, Argentina, Bangladesh, Benin, Bolivia, Brazil, Cameroon, Chile, Colombia, Cuba, Democratic People's Republic of Korea, Ecuador, Egypt, Ghana, Guinea, Guyana, India, Indonesia, Iran, Iraq, Libya, Malaysia, Mexico, Morocco, Mozambique, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, Romania, Singapore, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, Tanzania, Venezuela, Viet Nam, Yugoslavia, Zimbabwe.	PTA
5	IBSA	India Brazil and South Africa	3	India, Brazil and South Africa.	Under negotiations
6	SAFTA	South Asia Free Trade Agreement	7	India, Pakistan, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives	FTA
7	ISLFTA	Indo Sri Lanka FTA	2	Sri Lanka, India	FTA
8	IMCECA	Indo Malaysia CECA	2	Malaysia, India	FTA
9	ISCECA	India Singapore CECA	2	Singapore, India	FTA
10	JICEPA	Japan India CEPA	2	Japan, India	FTA
11	IKCEPA	India Korea CEPA	2	South Korea, India	FTA

**Source:** Compiled from Commerce Ministry web site "Trade Agreements"<sup>2</sup> and Srivastava. Ajay, Chapter 27, Free Trade Agreements, Business Impact of WTO, FTAs and other International Trade Issues,

**Question:** How is tariff reduction under an FTA different from WTO tariff negotiation?

**Answer:** For the purposes of FTAs, the "base rate" is the critical element in all aspects of negotiations/phasing that are carried out. The base rate is the applied MFN duty of any year which is decided mutually. In an FTA tariff reduction is generally undertaken with reference to the base rate i.e. from the applied MFN tariffs. However, the WTO negotiations are always based on "bound duty rates" and not the MFN applied duties.

**Question:** How is CECA/CEPA different from FTA?

**Answer:** A Comprehensive Economic Cooperation Agreement (CECA) or a Comprehensive Economic Partnership Agreement (CEPA) is different from a traditional Free Trade Agreement (FTA) on two counts.

<sup>2</sup> <[http://commerce.nic.in/trade/international\\_ta\\_current\\_details.asp](http://commerce.nic.in/trade/international_ta_current_details.asp)>

Firstly, CECA/CEPA are more comprehensive and ambitious than an FTA in terms of coverage of areas and the type of commitments. While a traditional FTA focuses mainly on goods; a CECA/CEPA is more ambitious in terms of a holistic coverage of many areas like services, investment, competition, government procurement, disputes etc.

Secondly, CECA/CEPA looks deeper at the regulatory aspects of trade than an FTA. It is on account of this that it encompasses mutual recognition agreements (MRAs) that covers the regulatory regimes of the partners. An MRA recognises different regulatory regimes of partners on the presumption that they achieve the same end objectives.

**Question:** Why are almost all the countries signing Free Trade Agreements?

**Answer:** Countries negotiate Free trade Agreements for a number of reasons.

- By eliminating tariffs and some non-tariff barriers FTA partners get easier market access into one another's markets.
- Exporters prefer FTAs to multilateral trade liberalization because they get preferential treatment over non-FTA member country competitors. For example in the case of ASEAN, ASEAN has an FTA with India but not with Canada. ASEAN's custom duty on leather shoes is 20% but under the FTA with India it reduced duties to zero. Now assuming other costs being equal, an Indian exporter, because of this duty preference, will be more competitive than a Canadian exporter of shoes. Secondly, FTAs may also protect local exporters from losing out to foreign companies that might receive preferential treatment under other FTAs.
- Possibility of increased foreign investment from outside the FTA. Consider 2 countries A and B having an FTA. Country A has high tariff and large domestic market. The firms based in country C may decide to invest in country A to cater to A's domestic market. However, once A and B sign an FTA and B offers better business environment, C may decide to locate its plant in B to supply its products to A.
- Such occurrences are not limited to tariffs alone but it is also true in the case of non-tariff measures. Especially when a Mutual Recognition Agreement (MRA) is reached between countries A and B. Some experts are of the view that slow progress in multilateral negotiations due to complexities arising from large number of countries to reach a consensus on polarising issues, may have provided the impetus for FTAs.

**Question:** How is India placed globally in terms of its bilateral PTAs/FTAs/CECAs/CEPAs

**Answer:** India has preferential access, economic cooperation and Free Trade Agreements (FTA) with about 54 individual countries. India has signed bilateral trade deals in the form of Comprehensive Economic Partnership Agreement (CEPA)/Comprehensive Economic Cooperation Agreement (CECA)/FTA/Preferential Trade Agreements (PTAs) with some 18 groups/countries. India is a late, and cautious, starter in concluding comprehensive preferential tariff agreements covering substantially all trade with some of its trading partners.

**Question:** Where can one find tariff concessions available in India's FTAs?

**Answer:** Information on India's FTAs including the tariff concessions thereof is available in the website of the Department of Commerce at [www.commerce.gov.in](http://www.commerce.gov.in)<sup>3</sup>.

Further, a web portal "*India's Trade Compendium*"<sup>4</sup> has been developed which provides insights into India's trade (both MFN and preferential) through the following information:

- Classification of goods at disaggregated HS levels
- Preferential tariffs for India and its FTA partners
- MFN tariffs for India, ASEAN and India's Top 25 export destinations
- SPS-TBT requirements for India and Top 25 export destinations
- Search Criteria Based on HS Codes and / or Product Names

### RULES OF ORIGIN

**Question:** What are Rules of Origin (ROO)?

**Answer:** Rules of origin (ROO) are the criteria needed to determine the country of origin of a product for purposes of international trade. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

Rules of origin are used:

- to implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures;
- to determine whether imported products shall receive most-favoured-nation (MFN) treatment or preferential treatment;
- for the purpose of trade statistics;
- for the application of labelling and marking requirements; and
- for government procurement.

**Question:** What are some of the criteria used in the rules of origin?

**Answer:** The criteria in the rules of origin sets out specific and detailed conditions on the level of processing that an imported item from a non FTA partner country must undergo in the FTA partner country (or other eligible countries in the region) before being eligible to be called an originating product of a FTA partner country. Some of the common criteria used are

- change in tariff classification (this could be at the tariff chapter, tariff heading or tariff sub heading level)
- regional value addition
- substantial manufacturing or processing by excluding some minimal operations.

**Question:** Why are rules of Origin important in the FTA context?

**Answer:** The Rules of Origin are important in the context of making an assessment on the application of preferential tariff under an FTA. Hence, without the rules of origin, the preferential tariffs under an FTA cannot be implemented. Moreover, the non-members to the FTA are not provided with the benefit of the preferential tariffs, agreed between the FTA partners.

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<sup>3</sup> Under the main head "*International Trade*" and subhead "*Trade Agreements*"

<sup>4</sup> <http://trade.iift.ac.in/>

Question: How are Rules of Origin enforced in an FTA?

**Answer:** The rules of origin are enforced through a certificate of origin that is issued by authorised agencies of the trading partner. An exporter cannot avail of the customs tariff preferences under the FTA without submitting this certificate of origin from the authorised agency.

Question: Who are the authorised agencies in India for issuing the certificate of origin?

**Answer:** The authorised agencies in India for issuing the certificate of origin are listed in Appendix 35 of the Handbook of Procedures Vol-1 under the Foreign Trade Policy. These are:

Agreement	Agencies authorised to issue Certificate of Origin
Asia Pacific Trade Agreement (APTA)	Export Inspection Council (EIC); Export Development Authorities; Development Commissioners of EPZs and SEZs; FIEO
Global System of Trade Preferences (GSTP)	EIC for all products; Tobacco Board, Guntur for tobacco and tobacco products
India Afghanistan PTA	EIC
India ASEAN Trade in Goods Agreement	EIC
India Chile PTA	EIC
India JAPAN CEPA	EIC
India Mercosur PTA	EIC
India Singapore CECA	EIC
India South Korea CEPA	EIC
South Asian Free Trade Agreement (SAFTA)	EIC

Question: What is the procedure for obtaining the certificate of origin?

**Answer:** The exporters would need to apply to the authorised agencies for issuance of the certificate of origin. The fee structure i.e. for the sale of blank form, certification fee and other charges (such as tatkal services) are available on the website of Export Inspection Council (EIC) at [www.eicindia.gov.in](http://www.eicindia.gov.in).

Question: What are the rules and regulation relating to certification and verification of origin?

**Answer:** For the purposes of claiming the preferential tariff treatment for an originating good of the exporting Party, a certificate of origin is submitted to the customs authority of the importing Party by the importer, together with the documents required for the importation of the good in accordance with the laws and regulations of the importing Party. The details regarding certification and verification are set out in the individual FTA provisions.



## OTHER ISSUES

**Question:** What are SPS and TBT measures? Do they figure in FTAs?

**Answer:** SPS measures is an acronym for “*sanitary and phytosanitary*” measures and broadly includes measures for the protection of plant, animal and human health. S.No 1 of Annex A of the World Trade Organisation’s (WTO’s) SPS Agreement<sup>5</sup> describes these measures in detail. TBT is an acronym for “*technical barriers to trade*” and broadly includes standards, technical regulations and conformity assessment procedures as defined in WTO’s TBT Agreement<sup>6</sup>. Since SPS and TBT could be barriers to trade, many FTAs deal with them.

**Question:** What are other non tariff measures (NTMs) that are dealt in FTAs?

**Answer:** Some of the other non tariff measures that figure in FTA chapters are:

- customs procedures
- import licencing procedures
- trade documentation
- pre-shipment inspections

**Question:** How should stakeholders bring these NTMs to the notice of FTA negotiators?

**Answer:** The stakeholders encountering NTMs (including SPS and TBT measures) can bring these to the notice of the territorial divisions of the Department of Commerce. A database of such NTMs is also available on the website of the Department.<sup>7</sup> Any such inputs from stakeholders would enable to update this database.

**Question:** What is the mechanism for implementation of FTA tariff concessions?

**Answer:** The tariff concessions in an FTA are implemented at the ground level through customs notifications. In the case of phased implementation of concessions, the notifications are issued on a yearly basis and are available on the website of the Central Board of Excise and Customs<sup>8</sup>.

**Question:** Are there provisions for review and implementation of FTAs?

**Answer:** Yes, the FTAs have provisions for review and implementation. This is normally done at specified intervals and there is an institutional mechanism to undertake such a review. It is important for stakeholders to provide a regular feedback on the operation of the FTAs for this mechanism to be effective. For example, problems faced in SPS/TBT measures or other NTMs need to be highlighted.

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<sup>5</sup> Agreement on the Application of Sanitary and Phytosanitary Measures

<sup>6</sup> Agreement on Technical Barriers to Trade

<sup>7</sup> <http://commerce.gov.in> under the heading “*international trade*” and sub heading “*non tariff measures*”

<sup>8</sup> [www.cbec.gov.in](http://www.cbec.gov.in) under the heading “*customs*” and subheading “*Notifications*”

## SERVICES

**Question:** What are the four modes of supply under trade in services?

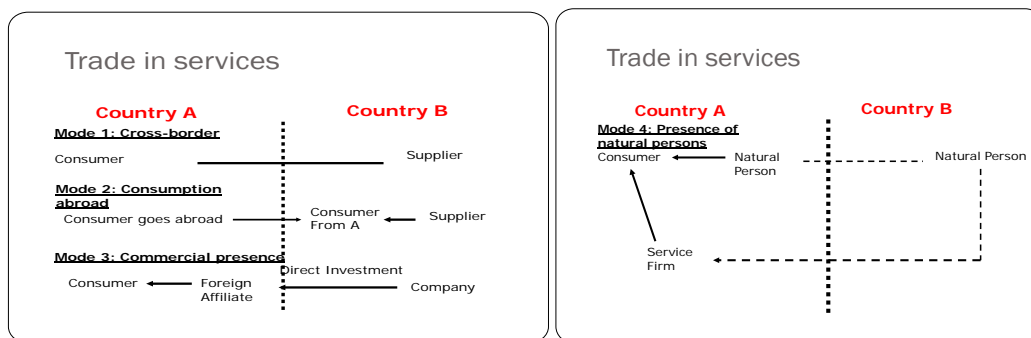
**Answer:** The four modes of supply –

**Mode 1: Cross border supply** (supply from the territory of a Party into the territory of the other Party). For example an architect can send his architectural plan through electronic means; a teacher can send teaching material to students in any other country; a doctor sitting in Germany can advise his patient in India through electronic means. In all these cases, trade in services takes place and this is equivalent to cross-border movement of goods.

**Mode 2: Consumption abroad** ( consumption in the territory of a Party by the service consumer of the other Party). For example a tourist using hotel or restaurant services abroad; a ship or aircraft undergoing repair or maintenance services abroad.

**Mode 3: Commercial presence** (by a service supplier of a Party, through commercial presence in the territory of the other Party). In this case, the service supplier establishes a legal presence in the form of a joint venture/ subsidiary/representative/branch office in the host country and starts supplying services. For example a bank opens its branch in another country.

**Mode 4: Presence/movement of natural persons** (by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party). For example Independent service suppliers or ISS (e.g. doctors, engineers, individual consultants, accountants, etc.) who supply services in another country. However, GATS covers only temporary movement and not citizenship, residence or employment on a permanent basis in the foreign country.



**Question:** What are Mutual Recognition Agreements?

**Answer:** The Mutual recognition relates with qualifications, academic certifications and experience requirements in services. A Mutual Recognition Agreement (MRA) is an agreement by which two or more countries agree to recognize one another's conformity assessments. In Services, these are applied on the recognition of professional qualifications.

Regulatory bodies of various professional services like engineering, accountancy, architecture etc. are encouraged to enter into a mutual recognition agreement (Article VII:4b) with their counterparts.

Question: What are the different categories of Natural persons and how are they defined?

**Answer:** The various categories of natural persons are defined as under:

a) Contractual service suppliers (CSS):

A service supplier of country “A” without a commercial presence in country “B”, sends one of its employees to country “B” to supply a service, pursuant to a service contract it has concluded with a consumer there;

b) Intra-corporate transferees (ICT):

A service supplier of “A” transfers one of its employees to the commercial presence it has established in “B”;

c) Business visitors(BV) and services salespersons:

A service supplier of country “A” sends one of its employees to country “B” for the purpose of either setting up a commercial presence or negotiating the sale of a service on its behalf. Business visitors are not directly engaged in the delivery of the service, but are just facilitating future trade, which may take place through a variety of modes of supply.

d) Independent Professionals (IP):

A service supplier of country “A” goes to country “B” to supply a service in his individual capacity. The supplier would hence not represent or be an employee of any business entity that has the service contract.

## **INDIA-ASEAN TRADE IN GOODS AGREEMENT**

**Question:** What is the ASEAN-India Framework Agreement for CECA?

**Answer:** ASEAN and India signed a Framework Agreement for Comprehensive Economic Cooperation Agreement (CECA) on October 8, 2003. In 2003, only the goods trade was negotiated at the first instance and the services and investment trade is under negotiation. Under the Framework Agreement ASEAN and India agreed to negotiate a Free Trade Agreement covering trade in Goods, trade in Services and Investment. The complete details are available at [http://commerce.nic.in/trade/international\\_ta\\_indasean.asp](http://commerce.nic.in/trade/international_ta_indasean.asp)

**Question:** When did India sign the Agreement on Trade in Goods with ASEAN ?

**Answer:** India and the ASEAN (Association of South East Asian Nations) comprising Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam signed the Trade in Goods Agreement under the broader framework of Comprehensive Economic Cooperation Agreement (CECA) between India and the ASEAN on 13 August, 2009.

**Question:** When did the India-ASEAN Agreement on Trade in Goods come into force and what is the period the tariff reduction?

**Answer:** The India-ASEAN Agreement on Trade in Goods came into force on 1 January 2010 in the case of Malaysia, Singapore and Thailand; 1 June, 2010 for Vietnam; 1 September, 2010 for Myanmar; 1 October, 2010 for Indonesia; 1 November, 2010 for Brunei; 24 January, 2011 for Laos; 1 June, 2011 for Philippines; and 29 July, 2011 for Cambodia. The last period for tariff reduction or elimination under the various tariff categories like normal tracks 1 & 2, sensitive track and highly sensitive track (HST)/special products would be 2019 for ASEAN non LDCs barring Philippines; 2022 for Philippines; and 2024 for all LDCs like Cambodia, Lao PDR, Myanmar and Vietnam.

**Question:** What are the different types of tariff concessions offered?

**Answer:** Tariff concessions are offered either through (1) tariff elimination or (2) tariff reduction. The List of items for which

- tariffs are to be eliminated (including through phasing out periods) is called the Normal Track,
- tariffs are to be reduced to 0% and 5% is called the Sensitive Track and
- tariffs are to be reduced to certain pre-determined levels is called the Highly Sensitive List/Special Products.

**Question:** What are the tariff concessions offered by India and ASEAN to each other in Merchandise Trade?

**Answer:** The Agreement will eliminate tariffs on 80% of the tariff lines accounting for 75% of the trade in a gradual manner starting from 1st January, 2010.

Considering domestic sensitivities, India has excluded 489 tariff lines(HS6 Digit level) from the list of tariff concessions and 590 tariff lines from the list of tariff elimination to address sensitivities in agriculture, textiles, auto, chemicals, petrochemicals, crude and refined palm oil, coffee, tea, pepper etc. ASEAN countries have also maintained country wise exclusion list from the proposed tariff concessions or eliminations.

**Question:** What are the Special Products (Highly Sensitive List) in India's Schedule of Tariff Commitments?

**Answer:** India's Schedule of Tariff Commitments consists of 40 items placed under Special Products. This is also referred to as India's Highly Sensitive List. These items belong to 5 products namely Crude Palm Oil (CPO), Refined Palm Oil (RPO), coffee, pepper and tea.

**Question:** What is the Exclusion List? How is it different from the Negative List?

**Answer:** Exclusion List or Negative List is a list of all items on which no tariff concessions/ any other form of barrier reduction have been offered by individual Parties. The India-ASEAN Trade in goods agreement uses the term EL (Exclusion List) which in common parlance is referred to as Negative List.

**Question:** Which products are included in India's Exclusion List?

**Answer:** Key items in India's Exclusion list are:

**Vegetables** – Tomato, onion, garlic, ginger, carrot, radish, cauliflower, cucumber, peas, beans, chilli, capsicum, potato, etc

**Fruit/Nuts** – coconut, copra, cashew kernel, areca nut, betel nut, banana, pineapple, guava, mango, oranges, grapes, raisin, apple, lemon, watermelon, papaya, cherries, etc

**Spices** – chilli powder, nutmeg, vanilla, cardamom, fenugreek, coriander seeds, cumin, turmeric, mustard seeds, poppy seeds, etc

**Cereals/Grains** – rice, wheat, maize, sorghum, jowar, bajra, ragi, malt, etc

**Oilseeds/Oils** – soyabean, groundnuts, linseed, rapeseed, sunflower seed, soya oil, groundnut oil, sunflower oil, coconut oil, etc

**Fish/Fisheries** – Trout, Sole, Tuna, Herring, Cod, Sardine, Mackerel, Hilsa, Dara, Seer, Pomfret, Cuttlefish, Shrimp, Prawn, Crab, Lobster, processed Tuna, Caviar, etc

**Others** – natural rubber, tobacco, roses, carnations, orchids, milk, butter, ghee, natural honey, starches, sugar, jaggery, tapioca, etc.

**Textiles** – Woven Fabrics of Cotton including dhoti, saree, shirting, casement, upholstery, etc, polyester yarn, certain synthetic fabrics of filament yarn, etc

**Auto** – Cars, buses, 3-wheelers, lorries, trucks, chassis, brakes, clutches, silencers, safety belts, etc

**Petroleum Products** – Kerosene oil, Diesel, Aviation Fuel

**Chemicals** – Zinc Oxide, Red Oxide, Distemper, Herbicides, Disinfectants, etc.

**Question:** Why does India have two Schedules of Tariff Commitments?

**Answer:** Owing to the commitment under the Framework Agreement, India and Philippines have a different time-line for tariff liberalization compared to India and other ASEAN countries. Therefore, India has one Schedule of Tariff Commitment for Philippines and another for the rest of the ASEAN Member Countries. However, but for the timelines, the tariff reduction/elimination offers are identical in both the Schedules.

**Question:** Why are Schedules of Tariff Commitments of ASEAN countries at different HS Code Levels (8/9/10-digit)?

**Answer:** India-ASEAN negotiations were concluded using lists of tariff lines at HS 6-digit level. Thereafter, all Parties agreed to convert the offers to their respective national levels which, for instance, is 8-digit for India, 9-digit for Malaysia, 10-digit for Indonesia, etc. Hence, the offers are at 8/9/10-digit levels.

**Question:** What are the Rules of Origin under the India-ASEAN TIG Agreement?

**Answer:** The products under the India-ASEAN TIG Agreement must meet the triple criteria of (i) tariff classification change (change in tariff sub-heading, CTSH), (ii) regional value addition i.e., the ASEAN-India Free Trade Agreement (AIFTA) content of not less than 35% of the Free on Board (FOB) value and (iii) substantial manufacturing/processing excluding minimal operations like repackaging, simple assembly/disassembly of parts, etc. The origin is proved by a Certificate of Origin at the time of import declaration.

For exporters from India, the Certificate must be issued at the time of exporting the good in order to certify that the product originates in India. Ministry of Commerce & Industry authorises certain agencies to issue Certificates of Origin for Indian exporters.

**Question:** Can products from a country other than ASEAN (Third Country) enter Indian market through ASEAN countries and benefit from tariff concession under the India-ASEAN Agreement?

**Answer.** No. The India-ASEAN Trade in Goods does not allow such products through the mechanism of Rules of Origin. The Agreement has built-in protections to ensure that no third country product enters Indian market and benefit from concessional tariffs without being substantially transformed. These protections are:

A product is considered originating from an ASEAN country if it is a wholly obtained product of that country (generally in case of agricultural products). This rule out third country products.

However, if a product uses some of the third country imported inputs, it will be considered only if:

- (a) the AIFTA content is not less than 35% of the FOB value; and
- (b) third country materials have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System.<sup>9</sup>

The agreement has a rules of origin with twin criteria's of change in tariff sub heading (6 digit transformation) and value addition. Further, it allows for regional cumulation.

**Question:** Are there any safeguard mechanisms to protect domestic producers form surge in imports from ASEAN?

**Answer:** Yes, there are safeguard mechanism to protect the domestic producers against any sudden surge in imports due to tariff concessions that would substantially cause or threaten to cause serious injury to the domestic industry has been included in the Trade in Goods Agreement. A Party shall have the right to initiate a safeguard measure on the imports of a good from the date of entry into force of this Agreement and up to 5 years from the last date of tariff reduction. As a safeguard measure, a Party can suspend the further reduction of any tariff rate or increase the tariff rate on the good concerned to the applied MFN tariff rate level of 1<sup>st</sup> January 2010 and maintain this protection for a period of up to four years.

**Question:** What are the provisions for review and implementation of the Agreement?

**Answer:** The concept of review of the Agreement has been put in place to take stock of the operation of the Agreement and based on this suggest the future course of action. The Agreement is operationalised and implemented through a Joint Committee. The Joint Committee meets biennially to review the Agreement with a purpose of considering additional measures to further enhance the Agreement.

**Question:** What is the provision for dispute settlement mechanism under the Agreement?

**Answer:** The parties shall resolve dispute through consultations and negotiations ,failing which they may resort to an arbitral panel, which shall consist of three members. Each party to the dispute shall appoint a member and the third member who would be the Chair of the panel, shall be appointed by mutual agreement.

**Question :** What are the major export opportunities for India under the Agreement?

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<sup>9</sup> [http://www.dti.gov.ph/uploads/DownloadableForms/\(BITR\)AIFTAroo\\_20Oct10.pdf](http://www.dti.gov.ph/uploads/DownloadableForms/(BITR)AIFTAroo_20Oct10.pdf)

**Answer:** Some of the product categories of export interest to India on which the major ASEAN countries are eliminating their tariffs are:

- Indonesia: marine products, fruits and vegetables, cereals (excluding rice), processed food, organic chemicals, pharmaceuticals, textiles, machinery etc.
- Thailand: processed food, organic chemicals, pharmaceuticals, textiles and clothing, footwear, machinery, automotives etc
- Malaysia: marine products, fruits and vegetables, processed food, petroleum products, organic chemicals, pharmaceuticals, textiles, clothing, footwear, machinery etc.



## INDIA MALAYSIA CECA (IMCECA)

**Question:** What is India- Malaysia CECA?

**Answer:** India and Malaysia signed a Comprehensive Economic Cooperation Agreement (CECA) on 18<sup>th</sup> February, 2011 which came into force on 1st July 2011. The CECA covers Trade in Goods, Services, Investment and Economic Cooperation. It contains 16 Chapters and 15 Annexes *including* schedules of commitments under Goods and Services. The details are available at DoC website: <http://commerce.gov.in/trade/IMCECA/title.pdf>

### GOODS

**Question:** What does the India- Malaysia Agreement on Trade in Goods offer?

**Answer:** The CECA is an addition to the existing India ASEAN Agreement on Trade in Goods. Under the CECA, India has offered *ASEAN-plus* tariff concessions to Malaysia on 76 items and thereby given access to products such as fruits, cocoa, and synthetic textiles etc.

Malaysia has also offered similar tariff concessions to India on 140 items, including on basmati rice, mangoes, eggs, trucks, motorcycles and cotton garments these are items of considerable export interest to India and for which access is being made available for the first time. In the auto sector, India got non-reciprocal market access for motorcycles (HS871120 –up to 150cc) and trucks (HS870410,21,31,32,90 – Dumpsters) for the first time under any FTA.

**Question:** What are the different types of tariff concessions offered?

**Answer:** Tariff concessions are offered either through tariff elimination or tariff reduction. The List of items for which

- a) tariffs are to be eliminated is called the Normal Track,
- b) tariffs are to be reduced to 5% is called the Sensitive Track and
- c) tariffs are to be reduced to certain pre-determined levels is called the Special Products.

Reduction of Applied MFN rates to 50%, by 50% and by 25% is called the Highly Sensitive List

For some tariff lines, reduction in tariff as per the pre-determined schedule is called the Special Track.

**Question:** Have the end dates for duty elimination or duty reduction in the ASEAN Agreement been advanced or fast tracked in the IMCECA?

**Answer:** Yes, the end dates for ASEAN has been advanced in IMCECA by tariff elimination/reduction under Normal Track-1, Normal Track-II and Sensitive Track have been advanced/fast tracked by 3 to 6 months. For example the end dates for tariff

elimination under Normal Track-1 have been advanced from 31 December, 2013 to 30 September, 2013 while those for both Normal Track-II and Sensitive track have been advanced from 31 December, 2016 to 30 June, 2016.

**Question:** What are the Rules of Origin under the IMCECA?

**Answer:** The IMCECA has a rules of origin with twin criteria's of CTH at sub-heading level (6 digit transformation) and a 35% value addition. Further, it allows for Regional Cumulation. In addition, there are Product Specific Rules for 42 items including wood products (Chapter 44), gas pipes/tubes (Chapter 73), aluminium bars/rods (chapter 76) and machine tools (Chapter 82).

**Question:** What are the provisions of Sanitary and Phyto-sanitary (SPS) Measures and Technical Barriers to Trade (TBT)?

**Answer:** The provisions in the Chapters on Sanitary and Phyto-sanitary (SPS) Measures provide the framework for addressing regulations and standards pertaining to human, animal and plant life or health while the Chapter on TBT provides the framework for product testing and certification requirements.

**Question:** What is the mechanism to overcome disputes, that may arise or what is the Dispute Settlement Mechanism?

**Answer:** Under the Chapter of Dispute Settlement Mechanism, the Parties shall resolve the disputes, if any, through consultations and negotiations, failing which, they may resort to an arbitral tribunal, consisting of three members. Each Party to the dispute shall appoint a member and the third member, who would be the Chair of the panel, shall be appointed by mutual agreement.

The CECA provides for (i) reviewing the implementation and operation of the Agreement;(ii) consider any matters relating to the implementation of the Agreement; (iii) supervise and coordinate the work of all Sub-Committees established under this Agreement; and (iv) adopt any decisions and recommendations of the Sub-Committees.

**Question:** What is the mechanism to deal with the injury caused to the domestic country due to tariff reduction?

**Answer:** Both the parties can resort to bilateral safeguards measures in the event of increased imports as a result of tariff reduction which causes or threatens to cause serious injury to the domestic industry. While the measure is to be imposed after due investigation, it can be in the form of

- suspension of further reduction of duty
- increase of tariffs upto the MFN level

On anti-dumping measures, both Parties would conduct all investigations against goods dumped from the other Party keeping in view the recommendations of the WTO

Committee on Anti-Dumping Practices as well application of the lesser duty rule (LDR) and prohibition of zeroing.

## SERVICES

**Question:** How many sectors and sub-sectors are covered in the services agreement and what are the services covered and excluded?

**Answer:** There are broadly 11 sectors and 72 sub- sectors included in the agreement. The sectoral commitments of the agreement covers Business services, Communication Services, Construction And Related Engineering Services, Distribution Services, Educational Services , Environmental Services ,Health Related And Social Services, Tourism And Travel Related Services, Recreational, Cultural And Sporting Services, Transport Services,Other Services (Skills Training Services ). Both India and Malaysia have agreed not to include any additional commitment in Financial Services.

**Question:** What is the contribution of the Services sector in the economy of Malaysia/India?

**Answer:** As per the World Development Indicators of World Bank (2012), Services account for 57% of GDP in India and 49% of GDP in Malaysia. The share of trade in services in GDP for India and Malaysia was 14.9% and 26.3% respectively.

**Question:** What are the salient features of Malaysia's commitments in services?

**Answer:** Malaysia's offer to India on services is more than its is WTO revised Offers in the WTO and also compares favourably with its commitments under other FTAs.

Some of the salient features of these commitments are:

- There is a separate chapter on Mode 4 (Trade through movement of natural persons).
- Malaysia has agreed for common definitions for categories of natural persons resulting in conceptual clarity.
- Commitment for a given duration of stay for each category of natural persons engaged in the supply of services provides a sense of certainty to the service supplier.
- Malaysia has removed all requirements relating to Economic Needs Tests and Labour Market Tests from its schedule of commitments. This is a major gain for India in terms of ensuring clarity and certainty in commitments. Therefore, for approved categories no prior examination of domestic labour availability is required.
- All numerical limitations have been removed from horizontal section.
- Malaysia has agreed for GATS plus disciplines in Domestic regulations.
- Malaysia is committed to encourage conclusion of MRAs in service sectors such as accounting and auditing, architecture, medical (doctors), dental and nursing within a reasonable period of time from the date of entry into force of this Agreement.

Question: What all categories are covered in the chapter on MoNP (Movement of natural persons) under the India Malaysia CECA?

**Answer:** The agreement covers Contractual Service Suppliers (CSS), Independent Professionals (IP), Business Visitors (BV), Intra-Corporate Transferees (ICT) and Installers & servicers.

Question: How can the Contractual Service Suppliers (CSS) and Independent Professionals (IP) of India benefit from the agreement under Mode 4 (Movement of Natural Persons)?

**Answer:** Malaysia has offered commitments in the categories of Contractual Service Suppliers (CSS) and Independent Professionals (IP), the two categories of natural persons delinked from requirements of commercial presence, which are very important for India. Malaysia has offered access for CSS and IP in commercially meaningful sectors and professions including Computer and Related Services (CRS), accounting and auditing, architecture, urban planning, engineering services, specialized medical and dental services, nursing, physiotherapy, paramedics and pharmacy, veterinary services, Management consulting services, Research and Development Services including in Technical testing and analysis services, lecturers in higher education, etc.

Question: Enlist the professions covered in the categories of CSS and IP under the agreement?

**Answer:** Quantity Surveyor/Cost Engineer, Property Valuator, Dental Specialists (For Institution of Higher Learning), Pharmacist, Nurses (Specialist), Physiotherapists & Paramedics, Taxation Professionals, Lecturer (For Institution of Higher Learning), Town Planner, Dock & Harbor Construction Engineer, Information Technology Auditor, Audiovisual Equipment Engineer

Question: What are the beneficial provisions for the categories of Business Visitors and Intra corporate transferees (ICTs) under Mode 4?

**Answer:** Malaysia has agreed that Business Visitors and Intra corporate transferees (ICTs) will be allowed access in all sectors and sub-sectors committed by Malaysia (unless specified). Malaysia has also offered an additional category of 'installers and servicers' too.

Question: What is the maximum duration of stay allowed in Malaysia for the various categories of Indian service suppliers?

**Answer:** Business Visitors (BV)-90 days (multiple entry visa for up to 5 yrs.) Intra Corporate Transferees (ICT) Senior manager-10 yrs; Specialists/Experts- 5 yrs; Installers and servicers- 3 months (extensions may be considered) Contractual Short Term Service Suppliers (CSS)- One yr. Independent Professionals (IP)- One yr. (extendible for one more yr.)

Question: Is the requirements relating to domestic regulations met?

**Answer:** Malaysia has agreed for GATS plus disciplines in Domestic regulations and commitment, albeit best endeavour, for negotiating MRAs in professional services. Further, Malaysia has also agreed for common definitions for categories of natural persons resulting in conceptual clarity.

Question: What has Malaysia offered to Indian service suppliers under Mode 1 and Mode 2?

**Answer:** Malaysia has offered Modes 1 and 2 as 'none' across the board (except for Education services). This is a significant gain for India in view of our strength and technological capability in the IT and ITES industry.

Question: Are the commitments given by Malaysia under the computer Related Services (CRS) satisfactory?

**Answer:** Malaysia has taken very good commitments in CRS – offered almost fully at 3 digit level with cross border 'none'; 100% foreign equity allowed and none limitations in mode 3.

Question: What is the sectoral commitment of Malaysia in 'Construction Services'?

**Answer:** In Construction Services, Malaysia's offers to India both in terms of sectoral coverage and foreign equity ceiling are better compared to Malaysia's offers either at the WTO or to any FTA partner. Other than full sectoral coverage, Malaysia has also committed 51% foreign equity cap for certain high end construction services (foreign equity cap is 30% in Malaysia's RO at the WTO).

Question: What is the sectoral commitment of Malaysia in R&D Services?

**Answer:** Full coverage has been taken for R&D (except for those involving its natural resources, biodiversity and genetic materials). Foreign equity ceiling is 51%.

Question: How can Indian service suppliers benefit under various categories of 'Other Business Services'?

**Answer:** Malaysia has offered commitments in cross border services in 'Other Business Services' such as Collection agency services, Duplicating services and Speciality design services. These 'Other Business Services' are emerging as significant contributor to India's foreign exchange.

Malaysia has also taken almost full commitments with 100% foreign equity in management consulting services and Technical Testing and Analysis Services. These professional managerial and technical consulting services are of vital interest to India.

Question: What is the sectoral commitment of Malaysia in ‘recreational, cultural and sporting services’?

**Answer:** In recreational, cultural and sporting services, Malaysia has taken full commitments for entertainment and sporting services with cross border ‘none’; 100% foreign equity allowed and none limitations in mode 3.

## GENERAL

Question: What are the economic prospects for India in Malaysia?

**Answer:** The economic indicators of Malaysia as shown in the Appendix shows a stable macroeconomic environment in terms of GDP growth and the rate of inflation.

The ‘*Ease of Doing Business 2014 report*’ by the World Bank and the International Finance Corporation, which aims to provide a quantitative measure of business regulations and protection of property rights across 189 economies, lists the Malaysian economy at rank 06, much ahead of Asia’s two big economies, China and India (ranked 96 and 134, respectively).

The Swiss-based Institute for Management Development (IMD), according to its 2013-14 World Competitiveness Yearbook, places Malaysia as the 24th most competitive country in the world (60th position for India out of 148 countries ).

The country has also established five economic growth corridors, namely, Iskandar Malaysia in Southern Johor (IRDA), the Northern Corridor Economic Region (NCER) the East Coast Economic Region (ECER), the Sabah Development Corridor (SDC) and the Sarawak Corridor of Renewable Energy (SCORE), aimed at promoting free trade and business investment.

Malaysia is also emerging as a major potential investor in India – in telecommunications, construction (highway and road development), tourism, healthcare, etc. FDI inflow has its own additional benefits in terms of inflow of technology, increase in economic activity and employment.

## INVESTMENT

Question: What is the significance of chapter on Investment?

**Answer:** The Investment Chapter aims to promote investments and create a liberal, facilitative, transparent and competitive investment regime.

- It would also serve to strengthen cooperation in investment, improve transparency of investment rules and regulations and provide for protection of investments.
- It purports to protect, promote and remove barriers to foreign investment flows in order to stimulate new investment flows between India and Malaysia.

## INDIA SINGAPORE CECA

**Question:** What are the objectives of the India Singapore CECA?

**Answer:** The objectives of this Agreement are:

- (a) to strengthen and enhance the economic, trade and investment cooperation between the Parties;
- (b) to liberalise and promote trade in goods in accordance with Article XXIV of the General Agreement on Trade and Tariffs;
- (c) to liberalise and promote trade in services in accordance with Article V of the General Agreement on Trade in Services, including promotion of mutual recognition of professions;
- (d) to establish a transparent, predictable and facilitative investment regime;
- (e) to improve the efficiency and competitiveness of their manufacturing and services sectors and to expand trade and investment between the Parties, including joint exploitation of commercial and economic opportunities in non-Parties;
- (f) to explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties; (g) to facilitate and enhance regional economic cooperation and integration, in particular, to form a bridge between India and the Association of Southeast Asian Nations (“ASEAN”) region and serve as a pathfinder for the India-ASEAN free trade agreement; and
- (g) to build upon their commitments at the World Trade Organization.

## GOODS

**Question:** What are the Tariff concessions offered by India and Singapore to each other in Merchandise Trade?

**Answer:** (A) **Singapore’s Offer:** Singapore has zero customs tariff on all tariff lines except for six products. Singapore has agreed to bind all their tariff lines at zero customs duty for India.

(B) **India’s Offer:** The key sectors in which India offered tariff concessions include electrical and electronics, instrumentation, pharmaceuticals and plastics. India’s offer has been categorized into four lists, Early Harvest, Phased Elimination, Phased Reduction and the Negative List. Negative List products, whether originating or otherwise, will enter into India from Singapore on the applied MFN duties. An additional list of tariff concessions was released on 15 January, 2008. Under the agreement, goods such as base metal, machinery and mechanical appliances, chemicals, plastic and rubber articles and textiles and textile articles will enjoy reduced tariffs.

### Early Harvest Program

Singapore eliminated all customs duties on all goods originating from India as specified by the rules of origin effective August 1, 2005. A total of 506 tariff lines of Indian goods listed in the EHP were eliminated upon entry into force of the Agreement. The

largest number of tariff lines in the EHP belongs to HS Chapter 85, Singapore's second largest category of exports to India.

#### Phased Duty Elimination

Tariffs on originating goods provided in the list for phased elimination were gradually eliminated in five stages beginning from August 1, 2005. A total of 2,202 items entered India duty free as of April 1, 2009, including 231 items in HS Chapter 84, 57 items in HS Chapter 85, and 21 items in HS Chapter 87. The Margin of Preference offered by India has been indicated in the List.

#### Phased Duty Reduction

Tariffs on originating goods provided in the list for phased duty reduction were gradually reduced in five stages beginning from August 1, 2005. A total of 2,413 items entered India at concessional rates from August 1, 2005 to April 1, 2009, including 525 items under HS Chapter 84, 373 items under HS Chapter 85, and 7 items under HS Chapter 87. The Margin of Preference offered by India has been indicated in the List.

#### Exclusion from any Concession of Duty

No concessions in duties shall be offered on goods provided in this list, such goods whether originating or otherwise, shall enter into India from Singapore on the applied MFN duties.

#### Margin of Preference

Margin of Preference (MOP) offered by India to Singapore on specific products, shall be calculated on the Most Favoured Nation (MFN) import duty applicable on the date of import. For example, if the MFN duty on a particular product is 20%, and India offers a MOP of 10% to Singapore, the duty reduction for import from Singapore will become  $20\% - (10\% \text{ of } 20\%) = 2\%$ . Hence, the applicable rate of duty for that particular originating product coming from Singapore will be  $20 - 2 = 18\%$ . If the MOP of 100% is offered to Singapore, then such originating goods shall receive duty free entry into India from Singapore.

During the review of CECA in December 2007, India made a fresh commitment to offer tariff concessions on 539 additional items. Some of these items were kept in the negative list earlier- articles of base metals, textiles, machinery and mechanical appliances, chemicals, plastic, rubber and textile articles. At the end of this, 93% of India's imports from Singapore will be under reduced tariffs.

**Question:** How many times has the India-Singapore CECA Tariff schedule been revisited?

**Answer:** India-Singapore CECA is reviewed from time to time. The first review was concluded on 1st October 2007. The 2nd Review of India-Singapore CECA was launched by the Commerce & Industry Minister, India on 11th May, 2010. The Secretary level meeting of the 2nd Review was held in Singapore on 3rd August, 2010.



Thereafter, Working Group meetings on Goods and Services & Investment were held time to time, with the last meeting held in Singapore in September 2011.

**Question:** What has been the India's Schedule of Tariff Reduction?

**Answer:** Singapore has only 6 tariff lines which are not at zero duty but under the FTA it has bound all lines at zero duty. India's tariff categories include the early harvest programme (immediate elimination); phased elimination of duty; phased reduction of duty and products excluded from duty cuts (negative lines).

**Question:** Which are the sections of concentration of negative line under India-Singapore CECA?

**Answer:** India's negative list lines are primarily under the product categories of fruits and vegetables, spices, plantation crops, vegetable fats and oils, processed foods, mineral products, plastics and rubber, textiles and clothing, stones, glass and ceramics, base metals, automotives and miscellaneous manufactured articles.

**Question:** Is there any provision with regard to mutual recognition agreements (MRA) in this agreement?

**Answer:** The mutual recognitions agreement will eliminate duplicate testing and certification of products in specific sectors, and facilitate bilateral cooperation in several sectors. CECA provides a framework for concluding Mutual Recognition Agreements (MRAs) to eliminate duplicate testing and certification of products to facilitate entry of goods for sale in the respective markets. These sectoral MRAs serve to reduce costs and shorten time to market. This is especially useful for products with short life cycle.

Two sectoral annexes for trade in electrical and electronic products and telecommunication equipment were concluded under the framework chapter. For products in these two sectors, testing and certification to Indian standards and technical regulations can be done at source. They do not have to be further tested or re-certified on arrival in the market. As most of these products have relatively short life cycles, the result is a reduction in relative cost and improved time to market competitiveness of Singapore certified products entering the Indian market and vice versa.

Of immediate benefit is the food sectoral Annex wherein Singapore has facilitated the import of egg products, dairy products and packaged drinking water from India. This will widen the sources of supply for these food products in Singapore.

**Question:** What are specifications mentioned in the Rules of Origin under CECA?

**Answer:** Only those goods that have at least 40% content value originating from within the exporting country will be eligible for benefits under CECA.

The specifics of the Rules of Origin are important to consider in this case. The three criteria for ROO:

1. Fixed level of minimum value addition from the originating country was agreed to be at 40% of the freight-on-board value,
2. Change of tariff heading (CTH) at the 4-6 digit level as per WTO's Harmonised System code that defines the product
3. Specifications of the kind of value addition

According to the Harmonised System code method, "*origin is given to an exported product if it falls into a tariff classification that is not the same as that of the imported inputs used in its production*". So, the exported good under CECA either has to be wholly manufactured in Singapore, or re-processed/ packaged in such a way that it becomes a completely different item under the HS classification along with a minimum 40% value addition in Singapore. However, Singapore has kept a list of 500 products under alternative ROO, called product specific rules which are different from the general rules. These items, which Singapore considered 'sensitive' items for its economy, include cocoa butter, soya sauce, sewing machines, and static converters among others. The list also includes computers, software, and related goods which have constituted about 10% of Indian imports from Singapore over the last few years.<sup>10</sup>

**Question:** Are there any non-tariff measures imposed under the agreement?

**Answer:** At present there are no non-tariff measures on importation of any goods of the other Party or on the exportation of any goods destined for the territory of the other Party except in accordance with its rights and obligations under the WTO Agreement. Each Party shall ensure that such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

**Question:** How are the customs values of the goods determined under the CEPA agreement?

**Answer:** Each Party shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

**Question:** Are there any restrictions under INDIA-SINGAPORE CECA agreement?

**Answer:** The general exceptions mentioned in GATT 1994 are applicable to the parties concerned. The measures are:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;

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<sup>10</sup> [http://commerce.nic.in/trade/international\\_ta\\_framework\\_ceca.asp](http://commerce.nic.in/trade/international_ta_framework_ceca.asp)

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

- (i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archaeological value;

(e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Along with this the agreement also spells out certain restrictions. They include the following:

- a) Measures for the protection of its essential security interests to protect critical public infrastructure including communications, power and water infrastructure from deliberate attempts to disable or degrade such infrastructure
- b) Protections of essential security interests with respect to a non-party or goods or service suppliers of a non-party or investors.
- c) Preventing a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

**Question:** Are there any transparency measures under the CECA?

**Answer:** Chapter 4 of the CECA deals with the customs procedures. There are many positive rules on transparency for exporters which are laid down in Article 4.2 of CECA. All relevant information related to export and import should be made accessible to the interested parties. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries. The revised custom laws and regulations should be made available in advance. The information related to specific customs matters should be available to the interested parties quickly and accurately. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons with the opportunity to comment prior to their adoption. No party would publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

**Question:** What are the other WTO Agreements applicable as per the CECA?

**Answer:** The Agreement on Anti-dumping and the Agreement on Subsidies and Countervailing Measures is applicable in anti-dumping issues and for countervailing duties respectively.

**Question:** What are the Safeguards measure undertaken in the agreement?

**Answer:** Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. This Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX and the Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX and the Agreement on Safeguards may, to the extent consistent with the obligations under the WTO Agreements, exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.

**Question:** What does the Double Taxation Agreement under CECA specify?

**Answer:** The CECA includes an enhanced Double Taxation Avoidance Agreement (DTAA) between Indian and Singapore. The previous treaty on double taxation was signed in January 1994. The improved version under CECA “provides for avoidance of double taxation of income earned in one Contracting State by a resident of the other and makes clear the taxing rights between the two Contracting States.” Most importantly, tax residents in Singapore will no longer have to pay capital gains tax to India on profits proceeding from sale of shares in India. Since Singapore in any case does not impose capital gains tax, Singaporean investors face no tax for their investments in securities in India. In combination with previously discussed steps to promote investments, the improved.

## SERVICES

**Question:** What are the key features of Trade in Services?

**Answer:** The Trade in Services Chapter provides the general principles for trade in Services between both the countries. It has been decided that all Juridical Persons registered in Singapore or India would be included under CECA irrespective of ownership or control. However, a special carve out has been agreed for, Education, Audiovisual, Telecommunication and Financial Service sectors.

**Question:** What are the key features of Financial Services?

**Answer:** Regarding the Financial Services in this Chapter, it has been decided that the requirement for ownership and/or control by persons of India and/or Singapore shall be required for a period of four years. After this period, there would be a review and there shall be no automatic cessation of this requirement.

In the Schedule of commitments for Financial Services sector, India has offered commitments allowing 28% foreign equity for Life and Non-life insurance. It has also

been agreed to allow three Singaporean banks viz., Development Bank of Singapore Holdings, United Overseas Bank Limited and Overseas Chinese Banking Corporation Limited to incorporate one insurance company, provided none of them individually or collectively hold more than 26% equity. Under Banking, the three Singaporean Banks mentioned above have been allowed to establish 15 branches in four years.

India has also agreed to commit to Singapore the FDI limit of 74% in banking, both FDI and FII put together, subject to the limitation of 'one mode of presence'. India has agreed to accord the same treatment to wholly owned subsidiaries of Singaporean banks as it does to its banks on branching, places of operation and prudential requirements.

Asset managers established in India or Singapore and offering mutual funds to investors in India have been permitted to invest US \$ 250 million in equities and instruments in the Singapore Stock Exchange, over and above the existing cap of US \$ 1 billion allowed for all mutual funds put together. Singapore has also agreed to grant Qualified Full Banking privileges to three Indian banks with or without operations in Singapore. This would provide better market access to our banks in Singapore.

**Question:** What aspects of Trade in Services are covered in the India Singapore CECA?

**Answer:** The India Singapore CECA has two chapters that are related to the trade in services. Chapter 7 related to Trade in Services while Chapter 9 relates to Movement of Natural Persons. Both countries have undertaken commitments under various sectors including the movement of various categories of natural persons.

**Question:** Which sectors has Singapore undertaken commitments in Services?

**Answer:** Singapore has undertaken full commitments in Professional Services like Accounting Auditing, Bookkeeping services, Taxation Services, Architectural Services, landscape Architectural Services, Dental Services, Veterinary Services, Services provided by midwives, nurses, physiotherapists and para-medical personnel as well as Computer related services, Research and Development Services, Advertising Services, Market research and public opinion polling services, Management consulting services, including office management and administrative services, Building cleaning services, Photographic services, Construction and related Engineering services and Telephone answering services. Partial commitments have been undertaken in telecommunication services and mobile services.

**Question:** How is the movement of natural persons chapter benefit India?

**Answer:** In the case of movement of natural persons, short term temporary entry has been committed in the following categories – Business Visitors (5 year multiple journey visa) and Short term service suppliers (for a maximum period of 6 months). Business visitors going into Singapore from India for negotiating of deals, market

exploration may apply for a multiple journey visa up to a validity period of 5 years provided the relevant terms and conditions apply.

Long term temporary entry is granted to Intra Corporate Transferees (upto a maximum period of 8 years) and Professionals (upto a maximum period of one year). A list of 127 professionals (Annex 9-A of the Agreement) have been covered including Interior Architect to Lift Engineer to a Botanist and a Zoologist. Intra-corporate transferees refers to personnel from businesses operating in both countries and requires the transfer of personnel like managers, technical expertise between the two establishments. They can apply for a visa with validity period up to 2 years with possible extensions of up to 3 years at one time upto a maximum of 8 years. All these provisions serve to increase the convenience of businesses and professionals travelling to Singapore.

## INDIA-SRI-LANKA FTA

**Question:** What are the benefits of Sri Lanka-India FTA?

**Answer:** India's GDP was US\$ 64 billion in the 1970, it increased to US\$ 275 billion in 1991 after remaining almost stable for nearly four years the GDP increased at exponential rate to reach US\$ 1848 billion in 2011. On the other hand Sri Lanka GDP was US\$ 2 billion in the 1970, it increased to US\$ 9 billion in 1991 thereafter increased at exponential rate to reach US\$ 59 billion in 2011. Therefore, total market size in GDP terms was US\$ 491 billion in 2000 and by 2011 it increased to US\$ 1907 billion. India-Sri Lanka FTA was the first FTA which India signed.

**Question:** When did India sign the Agreement on Trade in Goods with Sri Lanka and what are the dates of implementation by parties?

**Answer:** The India-Sri Lanka FTA was signed by the Prime Minister of India and the President of Sri Lanka on December 28, 1999 and became operational from December 15, 2001. Recognising the need for progressive reduction and elimination of tariffs in goods, the countries agreed for a mutually acceptable tariff reduction schedule besides other areas of co-operate to expand the bilateral trade. The ISLFTA's coverage was limited to the goods sector.

**Question:** What is the status of India-Sri Lanka Agreement on Trade in Services and Agreement on Investment?

**Answer:** Both agreements , Services and Investment, are in the process of negotiations.

**Question:** How is the Agreement structured?

**Answer:** The ISLFTA Agreement sought co-operation in areas like: state trading enterprises (Article VI); rules of origin (Article VII); safeguard measures (Article VIII); domestic legislation (Article IX); balance of payment measures (Article X) and settlement of disputes (Article XIII). The ISLFTA did not cover the areas like services, investment and intellectual property rights, etc. It has fairly clear "rules of origin" (ROO) criteria and prohibition.

**Question:** What are the main bilateral export interest's under the ISLFTA?

**Answer:** The main Indian exports to Sri Lanka are petroleum (crude & products), transport equipment's, cotton, yarn fabrics, sugar, drugs pharmaceuticals & fine chemicals. The main Sri Lankan exports to India are, spices, electrical machinery except electronic, transport equipment's, pulp & waste, natural rubber and paper board.

**Question:** What are the different types of tariff concessions offered?

**Answer:** The present status under the ISLFTA, as on the 2012, is that both the parties have eliminated tariff on all the products lines, except those which fall under the negative/exclusion list.

**Concession offered by India**

The Government of India agreed to grant duty free access to all exports from Sri Lanka in respect of items freely importable into India, except on items listed in Annexure 'D' of this Agreement, in accordance with the phase out schedule detailed below:

Upon entry into force of the Agreement:

- a) Zero duty access for the items in Annexure 'E' of the Agreement;
- b) 50% margin of preference on the remaining items except on items listed in Annexure 'D' of the Agreement. Concessions on items in Chapters 51 to 56, 58 to 60 and 63 shall be restricted to 25%.
- c) The margin of preference on the items mentioned in (b) above shall be increased to 100% in two stages within three years of the coming into force of the Agreement, except for the textiles items referred to in 1(b) above.

### **Concession offered by Sri Lanka**

Government of Sri Lanka shall provide tariff concessions on exports from India to Sri Lanka in respect of items freely importable into Sri Lanka, as detailed below:-

Zero duty for the items in Annexure 'F' – I, upon entering into force of the Agreement.

50% margin of preference for the items in Annex 'F –II, upon coming into force of the Agreement. The margin of preference in respect of these items shall be deepened to 70%, 90% and 100%, respectively, at the end of the first, second and third year of the entry into force of the Agreement.

For the remaining items except those in Annexure 'D', the tariffs shall be brought down by not less than 35% before the expiry of three years and 70% before the expiry of the sixth year and 100% before the expiry of eight years, from the date of entry into force of the Agreement.

**Question:** What are the tariff concessions offered by India and Sri Lanka to each other in Merchandise Trade?

**Answer:** The tariff concessions offered by Sri Lanka are the negative list of no tariff reductions in Annexure D of the Agreement (1216 items); immediate tariff elimination in Annexure F-1 of the Agreement (319 items); phased tariff elimination in Annexure F-II of the Agreement (889 items) ; and a residual list for longer period for tariff elimination (2742 items). India's categories are a negative list of no tariff reductions in Annex D (431 items); 25% tariff reduction (605 items); immediate tariff elimination in Annexure E (1357 items); 50% tariff reduction; and a residual list of longer phase out period for tariff elimination (2870 items).



Question: Why are Schedules of Tariff Commitments of Sri Lanka countries at different HS Code Levels (8/9/10-digit)?

**Answer:** India-Sri Lanka negotiations were concluded using lists of tariff lines at HS 6-digit level.

Question: How many tariff lines are included in Exclusion (Negative) List of India and Sri Lanka?

**Answer:** The Annexure D of the ISLFTA Agreement has the negative lists for both the countries. India has a total number of 431 products and Sri Lanka maintains 1216 products in the negative list.

Question: Which products are included in India's Exclusion List?

**Answer:** Excluded products of India are edible fruit and nuts; beverages; plastic products; rubber products; manufactures of straw; paper and paperboard; silk; vegetable textile fibres; man-made filaments; man-made staple fibres; wadding, felt and nonwovens; carpets; articles of apparel and clothing accessories, knitted or crocheted and articles of apparel and clothing accessories, not knitted or crocheted.

Question: What are the Rules of Origin applicable for ISLFTA?

**Answer:** Cumulative rules of origin was permitted under the Agreement provided the exporting country was subjected to a minimum value addition of 25 percent and to the condition that the aggregate value addition in the territories of the Contracting Parties is not less than 35 per cent of the f.o.b. value of the product under export. The ISLFTA was agreed at 6 digit level HS code.

Question: Can the products from a country other than Sri Lanka (Third Country) products enter Indian market through Sri Lanka countries using the India-Sri Lanka Agreement?

**Answer:** No Only Products that met the requirements of the Rules of Origin shall be eligible for preferential treatment, subject to the provisions of clauses (a), (b),(c) and (d) of rule 7 of the Agreement.

## JAPAN INDIA CEPA (JICEPA)

Question: What is the tariff liberalization/reduction pattern for the agricultural and manufacturing products exported to Japan from India under the JICEPA?

**Answer:** Tariff liberalization/reduction pattern under the JICEPA for agricultural and manufacturing products are classified in to the following five categories:

**Category A:** Custom duties on products under this category is currently '0', as they have been eliminated on the date of entry into force of the JICEPA, which is i.e. 1 August 2011

**B10 Category:** Duties on the products under this category shall be eliminated in 11 equal annual instalments from the Base Rate to '0'. Duty reduction began on the date the JICEPA entered into force (i.e. 1 August 2011). Such goods shall be duty free, effective January 1 of year eleven (i.e. 1 January 2021).

**B15 Category:** Custom duties on the products in this category shall be eliminated in 16 equal annual instalments from the Base Rate to '0'. Duty reduction began on the date the JICEPA entered into force (i.e. 1 August 2011). Such goods shall be duty free, effective January 1 of year 16 (i.e. 1 January 2026).

**B7 Category:** Duties on products in this category will be eliminated in eight equal annual instalments from the Base Rate to free, beginning on the date this Agreement enters into force i.e. August 2011 and such goods shall be duty free, effective January 1 of year eight i.e. 1 January 2018.

**X Category:** Duties on products in this category is excluded from any commitments of reduction or elimination of customs duties.

Question: What are the important categories of products in the negative list of the JICEPA?

**Answer:** The key categories in which products figure in India's negative list under the JICEPA are:

- Marine products
- Dairy products
- Fruits, vegetables, spices and nuts
- Cereals
- Vegetable oils
- Processed agricultural products
- Liquor and tobacco
- Organic chemicals
- Plastics, rubber and paper
- Leather
- Mechanical and electrical machinery
- Automotives and auto components

Question: What are the export opportunities for India under the Agreement?

**Answer:** Japan has undertaken immediate tariff liberalisation on a number of products of India's export interest. These are seafood (prawns, shrimps, lobsters), textiles, chemicals, vegetables, fruits, meat and meat products, mineral stones and products of the cottage industry. These are potential areas of benefit for India.

Question: What is the definition for "originating products" under the agreement?

**Answer:** The goods which are wholly obtained or produced entirely in the party country or if the product is not wholly or partly produced in the country then it has to satisfy certain conditions. They are as follows:

The good has a qualifying value content of not less than 35 per cent

All the non-originating materials used for production have undergone a change in tariff classification at the six-digit level.<sup>11</sup>

Question: What is the de-minimis<sup>12</sup> value of products under the agreement?

**Answer:** Non-originating materials used in the production of a good that do not satisfy an applicable rule for the good shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value or weight of the good.

Such percentages shall be:

in the case of a good classified under Chapters 15 through 24 (except 1604.20, 1605.20, 1605.90, 2101.11, 2101.20, 2106.10, 2106.90, 2207.10 and 2207.20), 2501.00, 2906.11, 2918.14, 2918.15, 2940.00, 3505.10, 3505.20, 3809.10 and 3824.60 of the Harmonized System, 7 percent in value of the good;

in the case of a good classified under Chapters 28 through 49 (except 2905.44, 2906.11, 2918.14, 2918.15, 2940.00, 3502.11, 3502.19, 3505.10, 3505.20, 3809.10, 3824.60, 4601.29, 4601.94 and 4602.19) and 64 through 97 of the Harmonized System, 10 percent in value of the good; and

in the case of a good classified under Chapters 50 through 63 (except 5001.00, 5003.00, heading 51.02, 51.03, 52.01 through 52.03, 53.01 and 53.02) of the Harmonized System, 7 percent in weight of the good.

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<sup>11</sup> [http://commerce.nic.in/trade/IJCEPA\\_Basic\\_Agreement.pdf](http://commerce.nic.in/trade/IJCEPA_Basic_Agreement.pdf)

<sup>12</sup> de minimis Latin for "of minimum importance" or "trifling." Essentially it refers to something or a difference that is so little, small, minuscule, or tiny that the law does not refer to it and will not consider it. In a million dollar deal, a \$10 mistake is de minimis. **Source:** <http://legal-dictionary.thefreedictionary.com/De+Minimis>

Question: What are the Rules of Origin for non originating products under the JICEPA?

**Answer:** Any goods would qualifying for preferential tariff under the JICEPA if value content not less than 35 percent; and all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification at the six-digit level (i.e. a change in tariff subheading) of the Harmonized System. Further, there are some deviations in the case of the product mentioned for the specific rules.

Question: Is there any talk of Regional Cumulation under the JICEPA?

**Answer:** Article 31(Accumulation) of the Agreement clearly specifies the existence of Regional Cumulation. For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party, provided that such good has undergone its last production process in the former Party which goes beyond the operations provided for in Article 33.

Question: Whether any tariff rate quotas applicable for the products covered under the JICEPA?

**Answer:** Not Applicable

Question: Is there any provision for Special Safeguard Mechanism (SSMs)?

**Answer:** No

Question: Whether there is any provision for any Bilateral Emergency Actions (BEAs)?

**Answer:** No

Question: Whether there is any Early Harvest Program (EHP) provision?

**Answer:** No

Question: Whether there are any restrictions or prohibitions imposed on particular products under the agreement?

**Answer:** At present there are no restrictions or prohibitions on any imported or exported products.

Question: Are there any exceptions under the JICEPA?

**Answer:** The general exceptions mentioned in GATT 1994 are applicable to the parties concerned. The measures are:

- a) Necessary to protect public morals
- b) Necessary to protect human, animal or plant life or health
- c) With regard to importation or exportation of gold or silver

- d) Necessary to secular compliance with laws or regulations which are not inconsistent with the provisions of the agreement
- e) Relating to products of prison labour
- f) Measures which are imposed for the protection o national treasures of artistic historic or archaeological value
- g) Conservation of exhaustible natural resources which are kept for domestic production or consumption.
- h) Obligation taken under any intergovernmental commodity agreements
- i) Restrictions which are necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is below the world price.
- j) Essential acquisition or distribution of products in general or local short supply.

Along with this the agreement also spells out certain restrictions. They include the following:

- a) Measures for the protection of its essential security interests to protect critical public infrastructure including communications, power and water infrastructure from deliberate attempts to disable or degrade such infrastructure
- b) Protections of essential security interests with respect to a non-party or goods or service suppliers of a non-party or investors.
- c) In a situation where the enterprise or a juridical person is owned or controlled by an investor or persons of a non-party and the denying party does not maintain diplomatic relations with the non-party.
- d) If the service provider is not a natural person under this agreement.

**Question:** Are there any transparency measures under the JICEPA?

**Answer:** Chapter 4 of the JICEPA deals with the customs procedures. There are many positive rules on transparency for exporters which are laid down in Article 44 of the JICEPA. All relevant information related to export and import should be made readily available to the interested parties. The revised custom laws should be made available in advance. The information related to specific customs matters should be available to the interested parties quickly and accurately.

**Question:** Whether any customs clearance procedures provided in the agreement?

**Answer:** All the rules regarding the customs procedures should be predictable, consistent, transparent and fair manner. According to the agreement all the measures with regard to customs clearance will be simplified. The help of information and communications technology will be used for simplifying the customs procedures. The countries will be using international standards and recommended practices to harmonise the customs procedures. The chances of administrative and judicial review are also provided for affected parties.

Question: What are the rules regarding temporary admission of goods in the JICEPA?

**Answer:** Facilities with regard to temporary admission of goods are provided according to terms and conditions provide in Revised Kyoto Convention.

Question: What are the standards followed with regard to Technical Barrier to Trade (TBT)?

**Answer:** All the technical regulations, standards and conformity assessment procedures will be defined according to Annex 1A of the WTO Agreement on Technical Barriers to Trade.

Question: What are the standards followed with regard to Sanitary and Phytosanitary Measures (SPS)?

**Answer:** The sanitary and phytosanitary measures mentioned in Annex 1A in the Agreement on Sanitary and Phytosanitary Measures of WTO will be applicable for food products. (Article 50)

Question: Is there any provision in JICEPA on pharmaceutical products?

**Answer:** Yes, Article 54 of the Agreement covers “*Cooperation on Generic Medicine*”. Some of the key features of this Article are:

- Exchange of information on regulatory measures on generic medicine
- Non discriminatory treatment of applications by Indian exporters for registration of generic medicines in Japan.

Question: Is there any provision with regard to mutual recognition agreements (MRA) in this agreement?

**Answer:** The Mutual Recognition Agreements (MRAs) in sectors like electrical products, telecommunications terminal equipment and radio equipment will be mutually agreed by the countries through sub-committees on Technical Regulations, Standards and Conformity Assessment Procedures. The sub-committees on the Sanitary Phytosanitary (SPS) measures undertaking science-based consultations to identify and address specific issues that may arise from the application of SPS measures and It would be consulting cooperative efforts between the Parties in international fora in relation to technical regulations, standards and conformity assessment procedures, and SPS measures..

Question: What are the other WTO agreements applicable as per the agreement?

**Answer:** The Agreement on Anti-dumping and the Agreement on Subsidies and Countervailing Measures is applicable in anti-dumping issues and for countervailing duties respectively.

## SERVICES

Question: How many service sectors and sub-sectors and what services are covered in the CEPA?

**Answer:** Broadly 12 sectors and more than 100 sub-sectors have been included in the agreement. The sectoral commitments of the agreement covers Business Services, Communication, Construction, Distribution, Education, Environment, Health Related, Tourism and Travel-Related Services, Recreational, Transportation Services and Other Services.

Question: What is the contribution of the Services sector in the economy of Japan/India?

**Answer:** As per the World Development Indicators of World Bank (2012), Services account for 57% of GDP in India and 73% of GDP in Japan. The share of trade in services in GDP for India and Japan was 14.9% and 5.4% respectively.

Question: What are the salient features of Japan's services commitments?

**Answer:** The Salient features of Japan's commitments

- Japans' offer to India is WTO plus.
- In fact, Japan's offer to India is significantly superior to Japan's Revised Offers in the WTO and also compares favourably with its commitments under other FTAs including its Agreements with various ASEAN countries.
- There is a separate chapter on Mode 4 (Trade through movement of natural persons).
- Japan has agreed for GATS plus disciplines in Domestic regulations.
- Japan is committed to encourage conclusion of MRAs in any regulated service sectors within a 12 months from the date of entry into force of this Agreement after a request is made in writing by either Party.

Question: What all categories are covered in the chapter on MoNP under India Japan CEPA?

**Answer:** The agreements covers Business Visitors (BV), Intra-Corporate Transferees (ICT), Investor, Certified professionals of India, Contractual Service Suppliers (CSS), Independent Professionals (IP) and Instructors.

Question: What are the sectoral commitments for various categories of service suppliers under Mode 4?

**Answer:** The sectoral commitments are:

- (i.) Business Visitors (BV) & Intra Corporate Transferees (ICT)- all sectors covered under the Schedule (unless otherwise specified)
- (ii.) Certified professionals: Legal, Accounting, taxation
- (iii.) Contractual Service Suppliers (CSS) & Independent Professionals (IP)- 24 professions as given in the list as a answer to next question.
- (iv.) Instructors included for the following areas:
  - activities to teach Indian Yoga;
  - activities to teach Indian cuisine;

- activities to teach Indian classical music and dance; or
- activities to teach English language.

Question: What are the professions covered in the categories of CSS and IP under the agreement?

**Answer:** The professions covered in the categories of CSS and IPP are computer and related services; research and experimental development services on natural sciences and engineering ; interdisciplinary research and experimental development services; architectural services; engineering services; technical testing and analysis services; tourism; accounting and auditing services; bookkeeping services(except tax returns); market research and public opinion polling services; management consulting services; services related to management consulting; sale or leasing services of advertising space or time; planning, creating and placement services of advertising; specialty design services; and trade fair & exhibition organisation services

Question: What is the maximum duration of stay allowed in Japan for the various categories of Indian service suppliers?

**Answer:** The maximum duration of stay for categories of Indian service suppliers are:

- (i.) Business Visitors (BV)- 90 days (extendable)
- (ii.) Intra Corporate Transferees (ICT) 1-3 years(extendable)
- (iii.) Investors: 1-3 years (extendable)
- (iv.) Certified Professionals: 1 -3 years (extendable)
- (v.) Contractual Short Term Service Suppliers (CSS)- 1 -3 years (extendable)
- (vi.) Independent Professionals (IP)- 1 -3 years (extendable)

Question: What has Japan offered to Indian service suppliers under Mode 1 and Mode 2?

**Answer:** Japan has offered Modes 1 and 2 as 'None' across the board (except for very few sub sectors such as Architecture Services).

Question: Are the commitments given by Japan under the computer Related Services (CRS) satisfactory?

**Answer:** Japan has taken significant commitments in CRS – offered full commitments at 2 digit level across the board in all modes of supply. This means that there are no restrictions/limitations on market access for Indian service suppliers in Japan. This is a significant gain for India in view of our strength and technological capability in the IT and ITES industry.

Question: How can Indian service suppliers benefit under various categories of 'Other Business Services'?

**Answer:** Japan has offered commitments in cross border services in 'Other Business Services' such as Management Consulting Services, packaging, printing and publishing, Speciality Design, Technical Testing Services etc. These 'Other Business Services' are emerging as significant contributor to India's foreign exchange.



**Question:** What is the sectoral commitment of Japan in areas of interest for India?

**Answer:** The sectoral commitments of Japan on potential areas of interest for India are:

- **R&D Services:** Full Sectoral Coverage with full commitments in all modes 1, 2 and 3.
- **Communication Services-** Full Sectoral Coverage including extensive commitments in telecom sector, good coverage in audio visual sector.
- **Construction:** Full sectoral coverage with good commitments.
- **Distribution, Education and Environment:** Full sectoral coverage in with good commitments.
- **Financial Services:** Commitments as per the Understanding on Financial Services with substantive commitments.
- **Tourism and Recreation and Sporting Services:** Good sectoral coverage and commitments.
- **Transportation:** Extensive commitments for maritime, air,(including computer reservation system and selling and marketing of Air Transport services), railways , roads and pipeline.

## INDIA KOREA CEPA (IKCEPA)

### GENERAL

**Question:** What are the objectives of the agreement?

**Answer:** The objectives of this Agreement, as elaborated more specifically through its principles and rules are to:

- a) liberalise and facilitate trade in goods and services and expand investment between the Parties;
- b) establish a cooperative framework for strengthening and enhancing the economic relations between the Parties;
- c) establish a framework conducive for a more favourable environment for their businesses and promote conditions of fair competition in the free trade area;
- d) establish a framework of transparent rules to govern trade and investment between the Parties;
- e) create effective procedures for the implementation and application of this Agreement;
  - explore new areas of economic cooperation and develop appropriate measures for closer economic partnership between the Parties;
- f) improve the efficiency and competitiveness of their manufacturing and services sectors and expand trade and investment between the Parties; and
- g) establish a framework for further regional and multilateral cooperation to expand and enhance the benefits of this Agreement throughout Asia, and thereby, to encourage the economic integration of Asian economies.

### GOODS

**Question:** What are the categories of tariff liberalization/reduction pattern for the agricultural and manufacturing products exported to Korea from India under the IKCEPA?

**Answer:** Tariff liberalization/reduction pattern under the IKCEPA for agricultural and manufactured products are classified into the following five categories:

**E-0 CATEGORY:** Duties on originating goods provided for in the items in staging category E-0 shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force i.e. 1 January 2010.

**E-5 CATEGORY:** Duties on originating goods provided for in the items in staging category E-5 shall be removed in five equal annual stages beginning on the date this Agreement enters into force i.e. 1 January 2010, and such goods shall be duty free, effective January 1 of year four i.e. 1 January 2014.

**E-8 CATEGORY:** Duties on originating goods provided for in the items in staging category E-8 shall be removed in eight equal annual stages beginning on the date this

Agreement enters into force i.e. 1 January 2010, and such goods shall be duty free, effective January 1 of year seven i.e. 1 January 2018.

**SEN (SENSITIVE):** Duties on originating goods provided for in the items in staging category SEN shall be reduced by fifty percent of the base rate in ten equal annual stages beginning on the date this Agreement enters into force i.e. 1 January 2010, and such goods shall remain at fifty percent of the base rate, effective January 1 of year nine i.e. 1 January 2019.

**RED:** Duties on originating goods provided for in the items in staging category RED shall be reduced to one to five percent from the base rate in eight equal annual stages beginning on the date this Agreement enters into force i.e. 1 January 2010, and such goods shall remain at one to five percent, effective January 1 of year seven i.e. 1 January 2017.

**EXC (EXCLUDED):** Duties on originating goods provided for in the items in staging category EXC shall remain at the base rate prescribed in the CEPA agreement.

**Question:** What are the important categories of products in the negative list of the IKCEPA?

**Answer:** The key categories in which products figure in India's negative list under the IJCEPA are:

- Poultry
- Dairy products
- Fruits, vegetables, spices and nuts
- Cereals
- Vegetable oils
- Processed agricultural products (sugar, juice, liquor)
- tobacco
- Petroleum products and Organic chemicals
- Plastics, rubber and paper
- Textiles and clothing
- Leather
- Mechanical (engineering goods) and electrical machinery
- Automotives and auto components
- Instruments

**Question:** What are the export opportunities for India under the IKCEPA?

**Answer:** Korea has undertaken immediate tariff liberalisation on product categories of India's export interest which includes marine products (prawns, shrimps and lobsters), textiles, chemical and chemical products, vegetables, fruits, meat and meat products, spices, castor and rapeseed oil, tobacco and mineral stones.

**Question:** When and how are customs duties eliminated or reduced?

**Answer:** Except as otherwise provided for in this Agreement, each Party shall reduce or eliminate its customs duties on originating goods of the other Party in accordance with its Schedule.

Upon the request of either Party, the Parties shall consult each other to consider the possibility of accelerating the reduction or elimination of customs duties as set out in their Schedules including the goods that are excluded from tariff concessions in the Annex. An agreement by the Parties to accelerate the reduction or elimination of customs duties on any goods shall supersede any duty rate or staging category established for those goods in this Article of the Agreement.

**Question:** What is the definition for "*originating products*" under the agreement?

**Answer:** The goods which are wholly obtained or produced entirely in the party country or if the product is not wholly or partly produced in the country then it has to satisfy certain conditions. They are as follows:

1. Goods wholly obtained or produced in the territory of the exporting party, in accordance with Article 3.3; or
2. Goods not wholly obtained or produced in the territory of the exporting party, provided that the said products are eligible under Article 3.4

**Question:** What is the *de-minimis*<sup>13</sup> value of products under the agreement?

**Answer:** The *de-minimis* value in the case of a good that does not undergo a change in tariff classification pursuant to "Not wholly obtained or Produced" and "Products Specific Rules" (Annex 3-A) in the final process of production shall be considered as originating if:

- a. for goods except for those falling within Chapters 1 through 14 and Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production, which do not undergo the required change in tariff classification, does not exceed ten percent of the FOB value of the good;
- b. for goods falling within Chapters 50 through 63 of the HS, the total weight of non-originating basic textile materials used in its production, which do not undergo the required change in tariff classification, does not exceed seven percent of the total weight of all the basic textile materials used; and
- c. the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

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<sup>13</sup> "*de minimis*" is Latin for "of minimum importance" or "trifling." Essentially it refers to something or a difference that is so little, small, minuscule, or tiny that the law does not refer to it and will not consider it. In a million dollar deal, a \$10 mistake is *de minimis*. Source: <http://legal-dictionary.thefreedictionary.com/De+Minimis>

The value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement for the good.

**Question:** What are the Rules of Origin and does the agreement talk of any Regional Cumulation?

**Answer:** The Rules of Origin followed under the India-Korea CEPA was with twin criteria having the regional value content is not less than 35 percent of the FOB value. The ROO need the goods to have undergone a change in tariff classification in a subheading, at the six digit level, of the HS from tariff classification and a value addition criterion. The Article 3.7 (Accumulation) in the Agreement talks of extending preferential treatment for originating materials from the territory of a Party, incorporated in the production of a good in the territory of the other Party to be eligible to be considered to originate in the territory of the other Party.

**Question:** Whether there are any non-tariff measures imposed under the agreement?

**Answer:** At present there are no non-tariff measures on importation of any goods of the other Party or on the exportation of any goods destined for the territory of the other Party except in accordance with its rights and obligations under the WTO Agreement.

**Question:** How are the customs values of the goods determined under the CEPA agreement?

**Answer:** Each Party shall determine the customs value of goods traded between the Parties in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

**Question:** Are there any restrictions under INDIA-KOREA CEPA agreement?

**Answer:** The general exceptions mentioned in GATT 1994 are applicable to the parties concerned. The measures are:

- a) Necessary to protect public morals
- b) Necessary to protect human, animal or plant life or health
- c) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) The prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
  - (iii) Safety; or
- d) Inconsistent with Article 6.5, provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>10</sup> imposition or collection of direct taxes in respect of services or service suppliers of the other Party..

Along with this the agreement also spells out certain restrictions. They include the following:

- a) Measures for the protection of its essential security interests to protect critical public infrastructure including communications, power and water infrastructure from deliberate attempts to disable or degrade such infrastructure
- b) Protections of essential security interests with respect to a non-party or goods or service suppliers of a non-party or investors.
- c) Preventing a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
- d) In a situation where the enterprise or a juridical person is owned or controlled by an investor or persons of a non-party and the denying party does not maintain diplomatic relations with the non-party.
- e) If the service provider is not a natural person under this agreement.

**Question:** Whether any customs clearance procedures provided in the agreement?

**Answer:** All the rules regarding the customs procedures should be predictable, consistent, transparent and fair manner. According to the agreement all the measures with regard to customs clearance will maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. Each Party shall also endeavour to maintain a system under which goods in need of emergency can go through the customs procedures for 24 hours a day including holidays. The help of information and communications technology will be used for simplifying the customs procedures. The countries will be using international standards and recommended practices to harmonise the customs procedures. The chances of administrative review are also provided for affected parties.

**Question:** Are there any restrictions or prohibitions imposed on particular products under the agreement?

**Answer:** There are no restrictions or prohibitions on any imported or exported products.

**Question:** Are there any transparency measures under the India-Korea CEPA?

**Answer:** The agreement mandatorily requires the parties to publish all its customs laws, regulations, and administrative procedures through internet. It requires the government to maintain one or more enquiry points to address the queries of interested parties. It is also compulsory to circulate the information regarding the procedures for making such enquiries.

Apart from this the agreement also asks the party to provide opportunity for the interested parties to comment on the new regulations prior to their adoption.

Question: What are rules and regulations pertaining to release of goods in the agreement?

**Answer:** It has been recommended to adopt simplified customs procedures to facilitate trade between parties. All the parties should ensure speedy procedures of release of goods. There should be facilities for advance electronic submission and processing of information before physical arrival of goods to enable the release of goods on arrival. It is also recommended to provide procedures to importers to obtain release of imported goods without transfer to bonded warehouses or other similar facilities.

Question: What are the rules regarding automation provided in the agreement?

**Answer:** According to the agreement every party shall endeavour to use information technology to expedite its procedure for release of goods. It is recommended to make electronic systems accessible to customs users. It also mandates to use international standards in accordance with World Customs Organisation Customs Data Modal and related WCO recommendations and guidelines

Question: What are provisions related to express shipments in the agreement?

**Answer:** According to the agreement the parties should try to provide a separate and expedited customs procedures for express shipments and to provide for an advance electronic submission and processing of information before physical arrival of express shipments to enable their release upon arrival.

Question: What are the rules regarding temporary admission of goods in the IKCEPA?

**Answer:** Facilities with regard to temporary admission of goods are provided according to terms and conditions provide in Revised Kyoto Convention.

Question: What are the standards followed with regard to Technical Barrier to Trade (TBT)?

**Answer:** All the technical regulations, standards and conformity assessment procedures will be defined according to Annex 1A of the WTO Agreement on Technical Barriers to Trade.

Question: What are the standards followed with regard to Sanitary and Phytosanitary Measures (SPS)?

**Answer:** The sanitary and phytosanitary measures mentioned in Annex 1A in the Agreement on Sanitary and Phytosanitary Measures of WTO will be applicable for food products. (Article 50)

Question: What are the other WTO agreements applicable as per the agreement?

**Answer:** The Agreement on Anti-dumping and the Agreement on Subsidies and Countervailing Measures and Agreement on Safeguards are applicable for, safeguard, anti-dumping and countervailing duties respectively.

## SERVICES

Question: What are the salient features of Korea's services commitments?

**Answer:** Korea's offer to India is significantly superior to Korea's Revised Offers in the WTO and also compares favourably with its commitments under other FTAs. Some of the salient features are:

- There is a separate chapter on Mode 4 (Trade through movement of natural persons).
- There is also a separate Annex of 163 professions in which commitments have been taken.
- Korea has agreed for common definitions for categories of natural persons resulting in conceptual clarity.
- Commitment for a given duration of stay for each category of natural persons engaged in the supply of services provides a sense of certainty to the service supplier.
- Agreed to remove labour market test as a condition for temporary entry or impose numerical restriction relating to temporary entry for business visitors and ICTs.
- All numerical limitations have been removed from horizontal section.
- Korea has agreed for GATS plus disciplines in Domestic regulations.
- Korea is committed to encourage conclusion of MRAs in any regulated service sectors within a 12 months from the date of entry into force of this Agreement after a request is made in writing by either Party.

Question: How many sectors and sub-sectors are covered in the agreement and what are the services?

**Answer:** Broadly 12 sectors and around 100 sub-sectors have been included in the agreement. The sectoral commitments of the agreement covers Business Services, Communication, Construction, Distribution, Education, Environment, Financial, Health Related, Tourism and Travel-Related Services, Recreational, Transportation Services, Other Services.

Question: What has Korea offered to Indian service suppliers under Mode 1, Mode 2 and Mode 3?

**Answer:** Korea has offered Modes 1 and 2 as 'None' across the board (except for local presence requirement in certain sectors like Architectural Services, Engineering



Services, Urban planning and landscape architectural services etc. In Mode 3 (i.e. Commercial Presence abroad), no FDI limitation full market access and national treatment commitments across sectors only with a few exceptions.

**Question:** Are the commitments given by Korea under the computer Related Services (CRS) satisfactory?

**Answer:** Yes, Korea has provided robust commitments in Computer-Related Services. Moreover, full Commitments have been made at 3 digit level in Modes 1, 2 and 3.

**Question:** How can Indian service suppliers benefit under various categories of ‘Other Business Services’?

**Answer:** A broad coverage has been provided under “*Other Business Services*” (ex: Advertising, market Research and Opinion polling; management consulting; technical testing and analysis; consulting services related to agriculture, fishing, animal husbandry, mining; placement services for personnel; photographic services; stenography; translation and interpretation; specialty design etc) and has been scheduled as “*None*” in Cross Border Supply (Mode 1 & 2) in most of the above mentioned sectors. In addition, full commitments have been taken in Mode 3 in the above mentioned sectors.

**Question:** What is the sectoral commitment of Korea in ‘Communication Services’?

**Answer:** Korea has taken on the full coverage of Communication services It includes courier, telecom, audio visual (except Postal courier services committed). Broad commitments have also been taken in Modes 1, 2 and 3 in all the above sectors.

**Question:** What is the sectoral commitment of Korea in ‘Financial Services’?

**Answer:** Korea has taken extensive commitments in all sub-sectors of Financial Services.

**Question:** What is the sectoral commitment of Korea in ‘Tourism Services’?

**Answer:** In tourism, except for ‘*others*’, all sectors have been covered with full commitments under Mode 1, Mode 2 and Mode 3.

**Question:** What is the sectoral commitment of Korea in ‘Transportation Services’?

**Answer:** On transportation service, extensive commitments have been taken for maritime, air,(including computer reservation system and selling and marketing of Air Transport services), railways , roads and pipeline.

**Question:** What all categories are covered in the chapter on MoNP (Movement of Natural Person) under India Korea CEPA?

**Answer:** The categories of Business Visitors (BV), Intra-Corporate Transferees (ICT) and Professionals are covered under the agreement.

Question: What is the maximum duration of stay allowed in Korea for the various categories of Indian service suppliers?

**Answer:** Maximum duration of stay for the various categories of Indian service suppliers are given below:

- Business Visitors -90 days
- Intra Corporate Transferees (ICT) – 2yrs (extendable indefinitely provided the conditions on which it is based remain in Effect)
- Professionals (as per Annex 8A)- 1 yr or period of contract

Question: Is there any ENT/LMTs that poses unnecessary barriers to trade?

**Answer:** Korea has removed all requirements relating to ENT (Economic Needs Tests) and LMT (Labour Market Tests) from its schedule of commitments. This is a major gain for India in terms of ensuring clarity and certainty in commitments. Further, all numerical limitations have been removed from horizontal section.

Question: Enlist the professions covered under the agreement?

**Answer:** A list of 163 professionals are included as ANNEX 8-A in the agreement. These, inter alia, include:

- **Different types of Engineers** such as Computer, and IT, Telecom (various kinds including mobile and basic and network and equipment), Network, Aircraft, Gas turbine, Diesel machine, Satellite, Refrigerator, Machine tool and Machine, Industrial robotic design, Automobile, Car electronic, Petroleum and Chemical, pesticide and fertilizer, Cosmetic and soap, Natural gas, Tyre production, Gasoline, Brewage production, Metal, Power plant, Electronic equipment, Construction Engineer, Industrial machine Engineer, Ship, Aircraft Rail, Marine Engineer, Oil and Exploration Engineer, Civil Engineer etc.
- **Different types of Consultants** such as IT, Network, Database, Information Security, Information System, General management, Financial management , Marketing, Human resources management, Production management, Public relations etc.
- **Different kinds of Designers, Programmers, Developers and Analysts** in various sectors
- Biologist
- Biochemist
- Advertising
- Assistant English teachers for primary and secondary school

