

The Chinese University of Hong Kong

From the Selected Works of Julien Chaisse

Fall September 1, 2011

The Three-pronged Strategy of India's Preferential Trade Policy - A Contribution to the Study of Modern Economic Treaties

Julien Chaisse



Available at: https://works.bepress.com/julien_chaisse/52/

THE THREE-PRONGED STRATEGY OF INDIA'S PREFERENTIAL TRADE POLICY

A CONTRIBUTION TO THE STUDY OF MODERN ECONOMIC TREATIES

*By Julien Chaisse, Debashis Chakraborty, and Biswajit Nag**

ABSTRACT

Before the inception of the WTO, India generally did not pursue any regional economic agreement route to promote trade or to achieve any other goal. In the Post-Cancun Ministerial period, however, it has progressively entered into a number of preferential trade arrangements with several Asian, as well as non-Asian partners. Looking into India's regional economic integration approach, the current analysis makes an attempt to identify the major determinants behind the shift in the country's interests, and the policy implications of this change. We conclude that India's approach towards preferential trade can be depicted as a three-pronged PTA strategy: it can compensate for loss in the goods sector through gain in services or within the goods sector; loss in some sectors (due to tariff reduction) is to be compensated through effective market access of other products in which India has a potential advantage; or identification of India's specific interest in the partner country (which may be commercial, regional development or political).

INTRODUCTION

Over the last few years India has enhanced its presence in global commerce, fueled by the liberalization measures initiated since 1990. India has consistently experienced a GDP growth rate of more than six percent, even during recession periods. The growth pattern of India's economy enhanced its output level and consequently the urge to trade increased.¹ India's global share of merchandise exports has increased from 0.60 percent in 1998 to 1.30 percent in 2009, and commercial services has increased from 0.82 percent to 2.60 percent over the same period. In addition, since the Cancun Ministerial, India has been able to project itself as a major leader of developing countries in multilateral trade forums through

* Dr. Julien Chaisse is Assistant Professor at the Faculty of Law, Chinese University of Hong Kong. Debashis Chakraborty is Assistant Professor of Economics at the Indian Institute of Foreign Trade, New Delhi. Dr. Biswajit Nag is Associate Professor at the Indian Institute of Foreign Trade, New Delhi. The authors would like to thank Habib Gherari, Bryan Mercurio, Satchidanand Seethanen, and Nick Thomas for comments on earlier drafts of this paper. The views expressed by the authors here are personal.

1. Michele Alessandrini et al., *Tariff Liberalization and Trade Specialization in India 2-6* (Asian Dev. Bank, Working Paper No. 177, 2009).

negotiating groups like the G-20, G-33 and NAMA-11.² Even though India was one of the original General Agreement on Tariffs and Trade (GATT) contracting parties, it only recently started active negotiations at the World Trade Organization (WTO).

The evolution of India's bilateral and regional trade agreement approach has taken a definitive pattern. It has been observed that India entered into numerous preferential trade agreements³ (PTAs) over the past few years. Though India's policy had delayed new multilateral negotiations, it has now, paradoxically, aided in many regional negotiations.

We will not trace the evolution of India's PTAs as V.S. Seshadri attempted to do in his 2009 analysis.⁴ The study noted that during the early stage of India's PTA agenda it entered into agreements of limited scope with developing countries and into more comprehensive agreements with neighboring countries. India then negotiated PTAs with some of the major Organization for Economic Cooperation and Development (OECD) economies - a change in their policy emphasis. Another paper published in 2008 carried out a holistic analysis of these PTAs in light of India's commitments at the WTO.⁵ It concluded that many of India's PTAs might not be fully consistent with applicable WTO rules. Additionally, the study focused on an "implementation deficit" with respect to India's PTAs, and recommended changes to the existing Indian foreign trade policy - so as to make India's regional trade endeavors complimentary to the WTO's multilateral process.⁶

The goal of this article is to look at India - who is one of the most paradoxical players in the international trade - and provide an analysis of India's expanding PTA network. Our article takes stock of previous publications and intends to further the exploration of Indian preferential trade policy in order to identify its salient patterns and characteristics. If preferential trade (negotiated within bilateral and regional trade) agreements has emerged as a structuring trend of contemporary

2. The G-20 (<http://www.g20.org>) is an informal group of 19 countries and the European Union which finance ministers and central bank governors began meeting in 1999, at the suggestion of the G7 finance ministers in response to the global financial crisis of 1997-99. Since then, there has been a finance ministerial meeting every fall. The NAMA-11 is a group of eleven developing countries working toward strengthening Non-Agricultural Market Access. In contrast, the G-33 is a larger group of developing countries that coordinate on trade and economic issues.

3. The current paper uses the term Preferential Trade Agreements rather than Regional Trade Agreement or Free Trade Agreement (or even bilateral and regional trade agreements). As stated by Lester and Mercurio, many of the so-called FTAs favor certain countries in trade relations and are basically discriminatory rather than "free trade." The term PTAs encompass many different kinds of bilateral and regional trade agreements and underscores their common denominator which is to establish preferences for the signatories over other in trade relations. See BILATERAL AND REGIONAL TRADE AGREEMENTS: COMMENTARY AND ANALYSIS 4-5 (Simon Lester & Bryan Mercurio eds., 2009).

4. V.S. Seshadri, *Evolution in India's Regional Trading Arrangements*, 43 J. OF WORLD TRADE 903 (2009).

5. Shadan Farasat, *India's Quest for Regional Trade Agreements: Challenges Ahead*, 42 J. OF WORLD TRADE 433 (2009).

6. Julien Chaisse & Debashis Chakraborty, *Implementing WTO Rules Through Negotiations and Sanctions: The Role of Trade Policy Review Mechanism and Dispute Settlement System*, 28 U. PA. J. INT'L ECON. L. 153, 158-63 (2007).

trade diplomacies, it remains to be seen whether India has been able to develop such a model in its growing network of agreements.

This article is organized along the following lines: a discussion on India's PTA formation experience and then an analysis of the determinants of India's PTA strategy. It is the contention of this article that India has learned considerably from the PTA integration experience, and is currently more focused on compensating for the potential losses in trade in merchandise than incorporating trade in services and investment provisions in their agreements. The article concludes that the liberalizations being undertaken during PTA integrations are going to help India in its multilateral negotiations in the long run.

I. MAPPING THE ARCHITECTURE OF INDIAN PREFERENTIAL TRADE

PTAs really began coming into their own in the 1990s. Prior to 1970, there were virtually no such agreements and less than fifty by 1990. This suggests that greater reduction in trade barriers - initially tariffs and increasingly non-tariff ones since the Kennedy Round - was achieved in the earlier rounds of the GATT, which precluded the need for countries to resort to PTAs. Also import-substitution continued to be the guiding motives of many non-member countries up to the 1980's, thereby reducing their urge for multilateral or preferential trade reform. Once, however, this initial thrust via the multilateral route was saturated, countries took recourse to other avenues for expanding their trading opportunities.⁷

Regional cooperation between countries enhances the trade in goods or services potential among themselves, as well as helping them realize economies of scale and greater specialization in production by overcoming the constraints of the domestic market.⁸ The benefits from free trade to many developing countries is limited as today's world is ridden with multiple distortions in the forms of tariffs and non-tariff barriers, controls on exchange rate and movement of factors of production, and complexities arising from different political and economic set-ups. This limitation could explain the recent upsurge in the number of PTAs.

Before 1997 most lawyers and economists considered economic cooperation in Asia (through trade and investment) as an example of a successful *de facto* regionalism, *i.e.*, explained by the predominant interplay of market forces and not based on legal instruments. To that extent, Asia appeared to be a late comer⁹ to formal regional deals with few agreements signed prior to 2000.

In the past five years, however, many trade agreements were concluded, and even more are under negotiation. This increase in trade agreements gives rise to the 'noodle bowl syndrome,' which describes the continued proliferation of PTAs with

7. See generally JAGDISH BHAGWATI, TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE (2008).

8. See, e.g., U. N. ECON. & SOC. COMM. FOR ASIA AND THE PAC., MEETING THE CHALLENGES IN AN ERA OF GLOBALIZATION BY STRENGTHENING REGIONAL DEVELOPMENT COOPERATION, 24, U.N. Doc. ST/ESCAP/2319, U.N. Sales No. E.04.II.F.24 (2004).

9. See Richard E. Baldwin, *Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade*, 29 WORLD ECON. 1451, 1456 (2006).

the associated overlapping risks and difficulties associated with achieving manageable trade pacts. This shift towards regionalism can be explained by a phenomenon of contagion as described by Baldwin and Jaimovich.¹⁰ Other parameters also play a role, such as the financial crisis of 1997 and the resulting necessity to promote regional economic cooperation. But the slow progress of WTO negotiations in the Doha Development Agenda fueled the shift further.¹¹

The financial crisis revealed the weaknesses of informal regional cooperation arrangements. The crisis, and its subsequent effects on a number of economies in East and Southeast Asia, painfully demonstrated that the East Asian economies were closely intertwined, and that a resolution of the crisis called for heightened regional cooperation in the fields of trade and finance.¹²

Observed in many regions of the world, this scenario can also be applied to India. Although India was not part of the regionalization drive during the 1990s, since mid-2003 (*i.e.*, the post-Cancun Ministerial period) it has initiated the process of entering into a number of PTAs around the world. There is a need to evaluate the actual as well as potential benefits for India from this activity given the worldwide trend towards PTA formation. In other words, while India stands to gain market access in major trade partners, it nonetheless must still compete with other PTA partners in the countries involved -- *e.g.*, with China, Japan and Korea in the ASEAN market.¹³ Moreover, the overlapping PTAs make the application of the rules of origin (ROOs) provision very cumbersome, which may lead to future trade disputes.¹⁴

Due to the modest outcome of the WTO Hong Kong Ministerial Conference¹⁵

10. See generally Richard Baldwin & Dany Jaimovich, *Are Free Trade Agreements Contagious?* (Swiss Nat'l Ctr. of Competence in Research, Working Paper No. 2009/31, 2009).

11. The Doha Round of world trade negotiations was launched in Doha (Qatar) in November 2001. Named the Doha Development Agenda, this round of trade negotiations aims to take the WTO into a new era. The agenda of the Doha Round is much broader than past global trade negotiations and is specifically targeted at addressing the needs of developing countries. The focus of negotiations has been on reforming agricultural subsidies, improving the access to global markets and ensuring that new liberalisation in the global economy respects the need for sustainable economic growth in developing countries. See, Debashis Chakraborty, Julien Chaisse & Animesh Kumar, *WTO Negotiations on Subsidy and Countervailing Measures – Potential Implications on Trade Flows in Fishery Sector*, 6 ASIAN J. WTO & INT'L HEALTH L. & POL'Y. 201, 204-7 (2011).

12. See Julien Chaisse, Debashis Chakraborty & Aryup Guha, *India's Multilayered Regulation of Foreign Direct Investment: Between Resistance to Multilateral Negotiations and Unilateral Proactivism*, in EXPANSION OF TRADE AND FDI IN ASIA: STRATEGIC AND POLICY CHALLENGES 240, 241-42 (Julien Chaisse & Philippe Gugler eds., 2009).

13. The Bangkok Declaration united the ASEAN Member Countries in a joint effort to promote economic cooperation and the welfare of the people in the region. See generally RODOLFO C. SEVERINO, ASEAN (Saw Swee-Hock ed., Southeast Asia Background Series, no. 10, 2008). See also Debashis Chakraborty & Dipankar Sengupta, *Integration Experience and Trade Performance of the Indo-ASEAN FTA: Learning By Doing to Live Up Great Expectations*, in COMPETITIVENESS OF ASEAN COUNTRIES: CORPORATE AND REGULATORY DRIVERS 207 (Philippe Gugler & Julien Chaisse eds., 2010).

14. See Debashis Chakraborty & Nag Biswajit, Regionally Sharpening the Multilateral Agenda? India's Recent Involvement in Trade Blocs, address at the UNCTAD Seminar on 'International Competitiveness and Inclusive Development' CDS, Trivandram, (Oct. 20-21, 2008).

15. The Hong Kong Ministerial Conference represented a modest step forward in the Doha Round. The Ministerial Declaration provided a basis for further negotiation with a view to the completion of the Doha Round in 2006. The atmospherics of the meeting were positive, but no

in December 2005 and the slow progress of multilateral negotiations since then the advantages of regional integration for WTO Members have become increasingly more lucrative in recent times. The December 2008 proposals received mixed response from the WTO members. Emerging countries, such as India, are in a strong position to provide new leadership at the WTO. Due acknowledgement of this role would be instrumental in breaking the current impasse, leading to conclusion of the Doha round.¹⁶ As long as its leadership role, as well as its policy positions face resistance, the only way for India to fulfill its objectives lay in its regional trade policy.

A. Regional Integration of Indian Economy

A regional trade agreement is an economic trade agreement that aims to reduce tariffs and other restrictions on trade. Depending on the depth of the agreement they can cover goods or services between two or more nations. One way to assess the effectiveness of a PTA is to analyze the merchandise exports volume within a bloc.

Trade statistics indicate that while intra-bloc exports for developed nation blocs are typically high, this is not the case for all developing country blocs. Table 1 indicates the higher trade inwardness of various developed country blocs (*e.g.*, Asia-Pacific Economic Cooperation (APEC), the European Union (EU), and the North American Free Trade Agreement (NAFTA)). India is a member of two developing-country blocs: the Bangkok Agreement (recently changed to the Asia Pacific Trade Agreement (APTA)) and South Asian Association for Regional Cooperation (SAARC). Both blocs started from a low baseline and have experienced a slow increase in trade inwardness. Perhaps the inability on the part of SAARC to evolve into a vibrant trade bloc has been one of the driving forces behind India's move to opt for newer PTAs beyond South Asian sub-continent.¹⁷

Table 1: Merchandise exports within bloc (percentage of total bloc exports)

Blocs	1995	2000	2003	2004	2005	2006
APEC	71.8	73.1	72.5	72.2	70.8	69.4
EU	67.1	66.8	67.2	66.8	66.0	66.2
NAFTA	46.2	55.7	56.1	55.9	55.8	53.8
MERCOSUR	18.9	16.4	10.3	11.1	11.0	11.6

significant progress was made on the toughest issues, especially the key area of agricultural market access.

16. See generally Suparna Karmakar, *Developing Countries in the 21st Century WTO: New Contours of India's Global Engagement*, 2 L. DEV. REV. 25 (2009); Dongsheng Zang, *Divided by Common Language: 'Capture' Theories in GATT/WTO and the Communicative Impasse*, 32 HASTINGS INT'L & COMP. L. REV. 423, 423-24, 476 (2009).

17. Trade among the SAARC countries did not increase as per expectation owing to various reasons, not necessarily economic. See Debashis Chakraborty & Debdeep De, *Trade Performance and Integration Experience of SAFTA: A Review of Issues*, in SAARC: SOCIO-ECONOMIC TRANSFORMATION 79, 102-103 (Iqbal Ahmed Saradgi, S.K. Sahni & R.N. Srivastava eds., 2008).

ASEAN	24.5	23.0	24.7	24.9	25.3	24.9
Bangkok Agreement/APTA	6.8	8.0	10.0	10.6	11.0	10.7
SAARC	4.4	4.2	5.8	5.7	5.6	5.6

Table 2 summarizes India's current participation in major PTAs and Comprehensive Economic Cooperation Agreements (CECA) using official data of the Government of India obtained from the Ministry of Commerce.¹⁸ In addition, India also extends various forms of trade preferences to some Asian neighbors, *e.g.*, Afghanistan,¹⁹ Bangladesh,²⁰ Bhutan,²¹ Mongolia, and Nepal.²² The operational PTAs currently involve Asian and Latin American partners, while negotiations are currently taking place with several partners located in Asia and Africa.

Table 2: India's current PTA involvements

Asia	Africa	Latin America
Operational		
Indo-Lanka FTA ²³ SAFTA ²⁴ Bangkok Agreement (now APTA) ²⁵ India-Thailand FTA ²⁶ (Early harvest Programme) India-Singapore CECA ²⁷ India-ASEAN FTA ²⁸ India-South Korea CEPA ²⁹ India-Malaysia CECA ³⁰ India-Japan CEPA ³¹ India-Finland ECA ³²		Indo-Chile PTA ³³ Indo-MERCOSUR PTA ³⁴

18. *Gov't of India Ministry of Commerce & Indus. Dep't of Commerce, Trade Agreements*, GOV'T OF INDIA MINISTRY OF COMMERCE & INDUS., DEP'T OF COMMERCE http://www.commerce.nic.in/trade/international_ta.asp?id=2&trade=i (last visited Aug. 7, 2009).

19. Under the agreement, Afghanistan provides preferential tariff for 8 products, while India provides the same for 38 products. *Preferential Trade Agreement Between the Republic of India and the Transitional Islamic State of Afghanistan, India-Afg.*, available at, http://www.commerce.nic.in/trade/international_ta_indafg.asp (last visited Aug. 7, 2009).

20. *Trade Agreement Between India and Bangladesh, India-Bangl.*, Mar. 21, 2006, available at http://www.commerce.nic.in/trade/n_dia_Bangladesh_Trade_Agreement.pdf.

21. *Agreement on Trade, Commerce and Transit Between the Government of the Republic of India and the Royal Government of Bhutan, India-Bhutan*, July 29 2006, available at <http://www.commerce.nic.in/trade/bhutan.pdf>.

22. *Revised Indo-Nepal Treaty of Trade, India-Nepal*, Oct. 27, 2009, available at <http://www.commerce.nic.in/trade/nepal.pdf>. The transit provision in the agreements with Nepal and Bhutan is also important, given the fact that these two countries are land-locked economies.

23. There are 429 products in India's negative list, while there are 1180 products in Sri Lanka's negative list. *Free Trade Agreement Between the Republic of India and the Democratic Socialist Republic of Sri Lanka, India-Sri Lanka*, available at http://www.commerce.nic.in/trade/international_ta_indsl_1.asp.

Ongoing Negotiations		
India-GCC Framework Agreement on Economic Cooperation BIMSTEC FTA Indo-Israel PTA India-Malaysia CECA India-Japan CECA	India-SACU CFTA India-Mauritius CECPA	
Analysis Stage		
Australia, China, Indonesia, New Zealand ³⁵ , EU ³⁶		

24. Here the non-LDC countries are supposed to reduce their tariff in the range of 0-5 percent. Agreement on South Asia Free Trade Area, *available at* <http://www.commerce.nic.in/trade/safta.pdf>.

25. Here the tariff preference is in line with the economic performance of the countries. For instance, Bangladesh, China, India, South Korea and Sri Lanka provide concessions to 209, 1697, 570, 1367 and 427 commodities respectively. Asia-Pacific Trade Agreement, *available at* http://www.commerce.nic.in/trade/bangkok_agreement.pdf.

26. 82 product groups at HS 6-digit level has been selected during the early harvest program. Framework Agreement with Thailand, India-Thai., source, *available at* http://www.commerce.nic.in/trade/international_ta_framework_thailand_1.asp.

27. Comprehensive Economic Cooperation Agreement Between the Republic of India and the Republic of Singapore, India-Sing., *available at* http://www.commerce.nic.in/trade/international_ta_framework_ceca.asp.

28. The two sides signed the FTA on August 13, 2009 after a prolonged negotiation. *India Signs FTA With ASEAN Amidst Protests*, BILATERALS.ORG (Aug. 14, 2009), http://www.bilaterals.org/article.php?id_article=15734.

29. The two sides entered into the Partnership Agreement in 2009. India Korea Comprehensive Economic Partnership Agreement, India-S. Kor., (Aug. 7, 2009), *available at* <http://commerce.nic.in/trade/INDIA%20KOREA%20CEPA%202009.pdf>.

30. The two sides entered into the Cooperation Agreement on October 27, 2010. Comprehensive Economic Cooperation Agreement between The Government of The Republic of India and The Government of Malaysia, India-Malay., *available at* <http://commerce.nic.in/trade/IMCECA/title.pdf>.

31. The Agreement was signed on October 25, 2010. Comprehensive Economic Partnership Agreement between The Republic of India and Japan, India-Japan, *available at* http://commerce.nic.in/trade/IJCEPA_Basic_Agreement.pdf.

32. The Agreement was signed on March 26, 2010. Agreement on Economic Cooperation Between The Government of the Republic of India and The Government of the Republic of Finland, India-Fin., Mar. 26, 2010, *available at* <http://commerce.nic.in/trade/India%20Finland%20AGR.pdf>.

33. India provides tariff preference to Chile for 178 tariff lines at the 8 digit level, while Chile reciprocates for 296 tariff lines. Preferential Trade Agreement (PTA) with Chile, *available at* http://www.commerce.nic.in/trade/international_ta_indchile.asp (last visited Aug. 7, 2009).

34. MERCOSUR offered tariff concession for export of 452 products from India at HS 8-digit level, while India is reciprocating the same for 450 products. India-MERCOSUR PTA, India-Mercosur, *available at* http://www.commerce.nic.in/trade/international_ta_indmer.asp (last visited Aug. 7, 2009).

35. In cases of Australia, China, Indonesia and New Zealand, the Joint Study Groups are either expected to submit their reports shortly, or have just submitted a report, recommending formation of a PTA. *Agreements in the Pipeline (As on: 01/06/2009)*, GOV'T OF INDIA MINISTRY OF COMMERCE & INDUS., DEP'T OF COMMERCE, http://www.commerce.nic.in/trade/international_ta_pipeline_details.asp#b5b (last visited Aug. 7, 2009).

36. Since June 2007, India and the EU are negotiating for entering into a broad-based bilateral trade and investment agreement. Currently the India-EU High Level Trade Group is working on that goal. *India-EU Joint Statement*, GOV'T OF INDIA MINISTRY OF COMMERCE & INDUS., DEP'T OF COMMERCE, http://www.commerce.nic.in/trade/India_EU_Joint_Stat.asp (last visited July 5, 2009).

A note on India's non-Asian collaborations is worth mentioning here. Since 2003, discussions on the India-Brazil-South Africa (IBSA) Enhanced Trade and Energy Cooperation have surfaced several times - with the three countries keeping in close contact with each other at WTO negotiating forums as well.³⁷ The proposed IBSA PTA, however, is still pending. In mid-2006, the Indian Cabinet cleared a proposal for a framework agreement ultimately leading to a Comprehensive Free Trade Agreement (CFTA) with the Southern African Customs Union (SACU). The modalities of entering into a PTA with SACU are currently being negotiated. Similarly, the PTA between India and Chile, which was signed in March 2006, may be extended to the Indo-Chile FTA/Comprehensive Economic Cooperation Agreement (CECA) in the future. Recently, the possibility of entering into PTAs with Canada was also discussed. In fact, a Canadian team visiting India in March 2007 expressed their interest in entering into a PTA with India, if the Doha round of talks fails at the WTO.³⁸ A similar spirit was echoed during the early phase of the Indo-EU FTA negotiation as well.³⁹ The EU-India bilateral trade and investment agreement may also be concluded in the future.⁴⁰ Currently, the two sides have agreed on a joint action plan for building the strategic cooperation.⁴¹

While it is good that a number of countries with diverse backgrounds have displayed interest in entering into preferential agreements with India, actual progress has been very slow so far (SACU and MERCOSUR being primary examples).⁴² On the other hand, the agreement with the Association of Southeast Asian Nations (ASEAN) was only concluded in 2010, while the negotiation started almost six years earlier. The delay in concluding those negotiations led to the under-realization of some potential market access for India in ASEAN markets. The slow progress of the ASEAN FTA, and the simultaneous announcement of several trade blocs, likely diverted the attention of the negotiators from the specifics of the agreement.

37. See generally Debashis Chakraborty & Dipankar Sengupta, *IBSAC (India, Brazil, South Africa, China): A Potential Developing Country Coalition in WTO Negotiations* (Ctr. de Sci. Humaines, Occasional Paper No. 18/2006, 2006). See also *IBSA Wants Balanced, Successful Doha Talks*, HINDUSTAN TIMES, Oct. 18, 2007.

38. See *Canada for FTA With India, if WTO Talks Fail*, CENTER FOR TRADE AND DEVELOPMENT (Mar. 13, 2007), http://www.centad.org/tradenews_250.asp.

39. See *EU hints at FTA talks even if WTO discussions fail*, THE HINDU (Jul 28, 2008), <http://www.bilaterals.org/spip.php?article12791>.

40. See *Visa Rules for Professionals to Ease After India-EU FTA*, ZEE NEWS (Feb. 17, 2007), http://www.bilaterals.org/article.php?id_article=7172.

41. The India-EU Strategic Partnership Joint Action Plan, India-EU, Sept. 7, 2005, official source, available at http://www.commerce.nic.in/trade/India_EU_jap.pdf.

42. India started on the PTA agenda after failure of Cancun Ministerial (2003), and hence deeper collaboration with G-20 partners Argentina, Brazil, Paraguay and Uruguay (MERCOSUR) and South Africa (SACU) was understandably one major agenda. In the case of MERCOSUR and SACU, the framework agreement was finalized on June 17, 2003 and September 6-7 2004, respectively. However, the FTA with these groups is yet to materialize.

B. Geographical Spread of India's PTAs

Table 3, which breaks down India's trade destinations between proposed and existing PTA partners, indicates that India's PTA strategy is heavily skewed towards Asian partners. While the trade volume of the South Asian Free Trade Area (SAFTA) in South Asia is still below its potential, the newly formed Indo-Lanka PTA has been quite successful in this regard. Over the years, India's exports to ASEAN countries have increased considerably, which explains the recent negotiations, initially with ASEAN, and later individually with Indonesia, Malaysia, Singapore and Thailand. Also, in an attempt to link South Asia with its geographically closer ASEAN neighbors, negotiations on the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) PTA was initiated, but has now reached a stalemate.⁴³ The negotiations on PTAs in Africa and Latin America involve SACU and MERCOSUR respectively, but the actual targets are the key regional players: South Africa and Brazil, respectively. The recent interest shown towards Canada, the EU and Russia, however, may be interpreted as an attempt to strengthen India's export presence in those markets. In the EU market, the focus is most likely on the EU-15 Member States, because India's trade volume with the newer members is still quite low.

Table 3: An analysis of trade scenarios between India and proposed partners, by continent (Percentage Share of Values)

Regions where the proposed and existing partners are located	Export		Import	
	1996-97	2007-08	1996-97	2007-08
Implemented and ongoing negotiations				
West Asia	7.30	14.33	11.16	18.46
South Asia	5.08	5.90	0.61	0.84
East And Southeast Asia	19.20	25.39	20.65	28.90
Africa	1.44	1.67	0.85	1.46
Latin America	0.83	2.29	1.16	1.94
Overall	33.86	49.60	34.42	51.60
New Interest				
Canada (North America)	1.05	0.78	0.80	0.78

43. For the earlier negotiations and disagreements, see generally, Debashis Chakraborty, *Trade Performance and Integration Experience of BIMSTEC: A Review of Issues*, CTR. FOR STUDIES IN INT'L RELATIONS AND DEV., Discussion Paper No. 30, June 2007. In November 2008, the summit meeting of BIMSTEC countries attempted to solve the problems and said that the next task would be to conclude agreement in the area of trade in services and investment. See also Manmohan Pitches for Early Conclusion of BIMSTEC Trade Pact, THE HINDU, Nov. 13, 2008, http://www.bilaterals.org/article.php3?id_article=13758.

Russia (Europe and Asia)	2.42	0.58	1.35	0.98
EU-15	25.86	20.17	26.53	14.64
EU-27	26.49	21.17	27.16	15.28

C. Foreign Policy Drivers of Indian Preferentialism

The changing perspective of Indian foreign policy also played a key role in shaping the country's PTA agenda. Table 3 shows that a major portion of India's trade partners are from East and Southeast Asia. India's integration with these trade partners, however, was quite limited during the 1980s. Since the initiation of the economic reforms in 1991, India has adopted a "Look East Policy" to correct this imbalance. This policy is geared towards developing economic and strategic relations with East and Southeast Asia in general, and Asian tigers in particular.⁴⁴

The benefits of the Look East Policy are expected to be numerous. First, it provides opportunities for merchandise and services trade with partner countries in East and Southeast Asia. Second, the northeast of India is linked to the rest of the economy through a narrow corridor (popularly referred to as "chicken's neck"), while granting of and obtaining an economic transit corridor through Bangladesh is hopefully forthcoming.⁴⁵ The absence of a logistic framework in the North-Eastern States creates a lower economic growth enclave when compared to the rest of India. Closer trade facilitation and cooperation with East Asian neighbors is going to be instrumental in utilizing full economic capacity of the resources of the northeast. For instance, when products of northeast India need to be brought to Kolkata, the nearest sea and airport, the high cost of transportation would render them uncompetitive in the international market. If India can export the product through Myanmar ports (e.g., Sittwe), however, its products become more competitive on the international market. Understanding this situation, India invested heavily in road infrastructure in Myanmar, which helps stabilize relationships with neighbors, as well as reduce poverty and inequality and promote trade.⁴⁶ Third, East, Far East, and Southeast Asia not only provide an opportunity for collaboration in terms of trade, but also in terms of investment collaboration. India's desire to enter into CECA / Comprehensive Economic Partnership Agreement (CEPA) with Singapore, South Korea, Australia and Japan, with specific focus on technology cooperation, is proof of India's attempts to seize on this opportunity.

44. Isabelle Saint-Mezard, *India and East Asia: Through the Looking Glass*, in GOVERNANCE AND REGIONALISM IN ASIA 173, 173 (Nicholas Thomas ed., 2009).

45. K. M. Dixit, *Connectivity: The India-Bangladesh Land Bridge* (Feb. 2011), <http://www.himalmag.com/component/content/article/3614.html> (last visited on March 7, 2011).

46. Anushree Bhattacharyya & Debashis Chakraborty, *India's Cross-Border Infrastructure Development Initiatives in, A Comparative Analysis of South and Southeast Asia*, in SAARC: TRADE AND INVESTMENT SCENARIO, FOUNDATION FOR PEACE AND SUSTAINABLE DEVELOPMENT 43 R.N. (Srivastava Ed.) (forthcoming).

An interesting feature of trade integrations within and outside Asia is the presence of both China and India on the trade agreement list of several countries.⁴⁷ For instance, China has already entered into PTAs with ASEAN, Thailand, Niger, Chile, Pakistan, New Zealand, Peru, and Singapore. China is also negotiating similar blocs with Australia, Iceland, Norway, and Costa Rica, and groups like Southern Africa Customs Union (SACU) and Gulf Cooperation Council (GCC). India, having already entered into PTAs with South Asian neighbors through SAFTA, concluded negotiations with Singapore, ASEAN, South Korea, and Chile. While agreements are likely to follow with GCC, MERCOSUR, Mauritius, Japan, Indonesia, Malaysia, Israel, Egypt, SACU, New Zealand, and Australia. As India began the PTA route later than China, it could be argued that the urge to ensure equal footing in these markets *vis-à-vis* China played a major role in the minds of the Indian negotiators.

The recently concluded Indo-ASEAN PTA is an example. In the last decade ASEAN PTAs have had resounding success with almost all major industrialized countries, including China. India would have been the only industrialized region facing tariffs on the ASEAN market. Therefore, a PTA between ASEAN and India not only meant more liberalized trade, but also less discrimination between significant trade partners. The importance for India of concluding the PTA was magnified by the fact that India and other industrialized countries compete to provide the same goods and services within the same quality range.

II. INDIAN VARIATIONS IN PTAS CHARACTERISTICS

PTAs are typically bilateral, regional, or plurilateral agreements. The trade rules, such as Rules of Origin (ROO), and trade remedies contained in a PTA may differ from other PTAs. There is no consensus in the WTO on ROOs yet and each PTA has its own ROO. As the number of PTAs increases, discrepancy between ROO norms incorporated in many PTA agreements may become a serious problem. Among Indian PTAs, the most important variations are the implementation period, the product coverage, and the ROO diversity.

A. Tailoring the Implementation Period

In order to minimize opposition towards the creation of the PTAs with the developing and least-developed country (LDC) partners, the implementation period for Indian PTAs generally ranges from five to ten years, or even longer for blocs. For instance, it was initially decided that for the Indo-ASEAN PTA, the elimination

47. See also, Jiangyu Wang who reviews very interesting developments in the role of China and India to promote Asian integration. Wang identifies and scrutinizes the options available to the two Asian giants: bilateralism, pan-Asian free trade area, and sub-regional integration. Wang's main finding is that Asian integration should first advance the sub-regional integration in East Asia and South Asia, while simultaneously linking up the two sub-regions with bilateral free trade agreements (FTAs), amongst which the most important one should be between China-India FTA. Muthucumaraswamy Somarajah & Jiangyu Wang, *The Role of China and India in Asian Regionalism*, in CHINA, INDIA, AND THE INTERNATIONAL ECONOMIC ORDER 372 (Cambridge Univ. Press 2010).

of the tariff on trade in merchandise products would be completed by 2011 for developing countries and 2016 for newly joined ASEAN members -- Laos and Myanmar.⁴⁸ The recently signed Indo-Korea CEPA also has a transition period of ten years, as well.

During the BIMSTEC PTA negotiation, however, it was discussed that the elimination of tariffs for developing country imports following the normal track would be achieved by June 2012, having started in July 2007. While LDCs like Bangladesh, Bhutan, and Nepal would have until 2017 to do so.⁴⁹ During talks for the Indo-Thailand PTA, it was discussed that the zero-duty on mutual imports would be achieved by 2010.⁵⁰ SAFTA, which involves both LDCs and non-LDCs (India, Pakistan and Sri Lanka), became operational in January 2006 and the tariff liberalization program is expected to be completed by 2013 for India, Pakistan and the Maldives; by 2014 for Sri Lanka; and by 2016 for Bangladesh, Bhutan and Nepal.⁵¹

Determining the product coverage - *i.e.* agreeing to a negative list - for the India-centric blocs and ROOs emerged as a hotly debated issue during most of the negotiations. Despite the longer transition period, the initiation timelines are still often missed. This is an area of concern for India. Asian blocs, as well as, individual countries engaged through PTA with India, will have greatly liberalized their tariff schedule by 2010-2016. Given the slow pace of India's PTAs negotiations, it is likely that the initiation of liberalization programs will need some more time. Therefore, India may lose any leverage it has with its partners and come under increasing pressure to liberalize its tariff schedule towards the end of the time period (*i.e.* 2016).

B. Product Coverage in Selected PTAs

PTAs can also enable a broader coverage of economic issues than what is available multilaterally. In terms of competition policy, investment and movement of natural persons is a good example. The opposite, however, is also possible: PTAs can limit India's access to certain goods. As a result, the trade coverage of many PTAs is incomplete, with many "sensitive" sectors exempted from trade liberalization. That situation is especially true with respect to agriculture. The

48. Framework Agreement on Comprehensive Economic Cooperation Between the Republic of India and the Association of South East Asian Nations, art. 3, ¶ 2, India-Ass'n S. E. Asian Nations, available at http://www.commerce.nic.in/trade/international_ta_framework_asean.asp.

49. See Debashis Chakraborty, *Trade Performance and Integration Experience of BIMSTEC: A Review of Issues* 23 (Ctr. for Studies in Int'l Relations and Dev., Discussion Paper No. 30, June 2007).

50. Framework Agreement with Thailand, art. 8, para. 1, India-Thai., Oct. 9, 2003, available at http://www.commerce.nic.in/trade/international_ta_framework_thailand_1.asp.

51. See Debashis, Chakraborty, & Debdeep De, *Trade Performance and Integration Experience of SAFTA: A Review of Issues*, in SAARC: SOCIO-ECONOMIC TRANSFORMATION 79 (Iqbal Ahmed Saradgi, S.K. Sahni & R.N. Srivastava eds., 2008.)

determination of PTA coverage is particularly important in India's case, given the fact that the PTAs are to be formed under the "Enabling Clause."⁵²

When the "Enabling Clause" was negotiated in the 1970s, one of its main objectives was to enhance south-south trade (*i.e.* among developing countries) without the need to extend the agreed-upon conditions to developed countries. WTO members must grant immediate and unconditional most-favored-nation treatment to the products of other members with respect to tariffs and other trade-related measures. Historically, programs such as the Generalized System of Preferences (GSP), under which developed countries grant preferential tariff rates to developing country products, are inconsistent by nature, with this obligation because they accord goods of some countries more favorable tariff treatment than that accorded goods of other WTO members. However, Contracting Parties to the GATT provided a legal basis for one-way tariff preferences, and certain other preferential arrangements, in a 1979 decision known as the Enabling Clause.⁵³ In 2004, the WTO Appellate Body (AB) ruled that the Enabling Clause allows developed countries to offer different treatment to developing countries, but only if identical treatment is available to all similarly situated GSP beneficiaries. Where WTO Members' preference programs have provided benefits in excess of GSP programs, the WTO has granted Members waivers of WTO obligations. The Enabling Clause plays a "vital role . . . in promoting trade as a means of stimulating economic growth and development."⁵⁴ The AB found that the Enabling Clause was not a typical GATT exception or defense and that the intent of WTO members through the Enabling Clause was permissible to encourage the adoption of preference schemes.⁵⁵

The PTAs involving India mostly include developing countries and LDCs, and the CEPA with Japan coming only recently into existence. Given the similarity in the export baskets, the question of maintaining a safeguard provision to curb imports under certain conditions is always very important. Moreover, given the similarity in the structure of manufacturing output, mutual agreement on maintaining a negative/sensitive list for each country, which would be excluded from the tariff reform commitments, was vital.

52. See Lorand Bartels and Christian Häberli, *Binding Tariff Preferences for Developing Countries Under Article II GATT*, 13(4) J. INT'L. ECON. L. 2010, 969-95.

53. At the end of the Tokyo Round of Multilateral Trade Negotiations in 1979, developing countries secured adoption of the Enabling Clause, a permanent deviation from MFN by joint decision of the GATT Contracting Parties. The Clause states that notwithstanding GATT Article I, "contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties" and applies this exception to: (1) preferential tariff treatment in accordance with the GSP; (2) multilateral non-tariff preferences negotiated under GATT auspices; (3) multilateral arrangements among less developed countries; and (4) special treatment of the least developed countries in preference programs. To describe the GSP, the Clause refers to the above-quoted description in the 1971 waiver. The Enabling Clause has since been incorporated into the GATT 1994. Agreement Establishing the World Trade Organization, Annex 1A, General Agreement on Tariffs and Trade 1994, 1(b)(iv); see Appellate Body Report, *European Communities — Conditions for the Granting of Tariff Preferences to Developing Countries*, ¶ 90.3 WT/DS246/AB/R (Apr. 7, 2004).

54 World Trade Organization, Appellate Body Report, *European Communities — Conditions for the Granting of Tariff Preferences to Developing Countries*, ¶ 104 WT/DS246/AB/R (Apr. 7, 2004).

55. *Id.*

For instance, the objective of SAFTA is to reduce intra-bloc tariff barriers to less than five percent.⁵⁶ Hence, to balance any consequent adverse impacts, the SAFTA members were allowed to maintain a sensitive list to protect their domestic sector, with the non-LDCs maintaining a smaller list than the LDCs. It was also agreed that a country's "sensitive list" would be reviewed once every four years, or more frequently, to reduce its size.⁵⁷ Moreover, the non-LDCs are supposed to compensate the LDCs for their loss of revenue caused as a result of the tariff reforms undertaken during the integration process in the form of a grant in US dollars.⁵⁸ Hence, determination of this "sensitive list" involves intense negotiation. India's "sensitive list" under SAFTA includes several tariff lines relating to agro-commodities.⁵⁹ The sensitive list of India under SAFTA was been updated in 2006, and currently includes 744 products with respect to LDC trade partners.⁶⁰

In the BIMSTEC⁶¹ PTA (which includes all SAFTA members, barring Pakistan and two ASEAN countries: *i.e.*, Myanmar and Thailand) a sectoral initiative approach was followed, whereby textiles and clothing, drugs and pharmaceuticals, gems and jewelry, horticulture and floriculture products, processed foods, automotive industry and parts, rubber, tea and coffee, and coconut and spices were identified for deepened cooperation among members. It was decided that the import duties on items excluded from the mutually agreed negative list would gradually be lowered down to zero as compared to a zero to five percent tariff rate as it is in SAFTA. To balance this effect, however, it was decided that a list of products coming under safeguard measures (*i.e.* products eligible for a short-term tariff increase during a surge in imports) would be prepared, enabling members to protect their domestic interests.

One interesting feature of the BIMSTEC PTA is that it does not have any provision for compensating LDCs for loss of revenue/welfare resulting from reduction and elimination of tariffs. Hence, it makes more sense for India and Sri Lanka to access the markets of Nepal and Bangladesh following BIMSTEC ROO norms rather than the same under SAFTA. This aspect contributed significantly towards delaying the BIMSTEC negotiation process. Bangladesh withdrew from the BIMSTEC PTA negotiations in 2004 for a brief period over the revenue compensation provision, but later rejoined expressing the view that textiles must be included in its negative list.⁶² On the other hand, Indian domestic industry favored incorporation of textiles, completely-built units of all four-wheelers (including

56. Chakraborty, *supra* note 49, at 92.

57. See generally, M. Aftab, *Can SAFTA Lead to a South Asian Economic Union?* (Jan. 19, 2004), available at http://www.bilaterals.org/article.php3?id_article=320 (last visited on July 29, 2009).

58. Agreement on South Asia Free Trade Area, available at <http://www.commerce.nic.in/trade/safta.pdf>.

59. Press Release, Government of India, Ministry of Commerce, Cabinet Clears Implementation of South Asia Free Trade Agreement-A Historic Milestone for SAARC, Says Kamal Nath (Dec. 26, 2005) available at http://www.commerce.nic.in/Dec05_release.htm#h22.

60. Appendix 1 Sensitive List.

61. The Members of the proposed BIMSTEC FTA include Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand.

62. See Rafiq Hasan, *Dhaka to Finally Sign BIMST-EC Trade Deal*, DAILY STAR, (Mar. 14, 2004), available at http://www.bilaterals.org/article.php3?id_article=739.

buses, trucks, utility vehicles and passenger cars) and two-wheelers from Thailand in their negative list.⁶³ The BIMSTEC countries are currently negotiating to determine the number of commodities eligible for preferential ROOs and the safeguard list, and the deadline for conclusion of that negotiation has already been missed. Understandably, the Indian proposal for having a smaller safeguard list did not find much support from other BIMSTEC partners.⁶⁴ During the November 2008 meeting of the BIMSTEC countries, the partners agreed to incorporate thirteen areas for mutual cooperation, namely: energy, agriculture, transportation and communication, trade investment, technology, tourism, public health, combating terror, people-to-people contact, etc. The remaining discords are likely to be resolved in subsequent meetings.⁶⁵

A similar discord marked the negotiations under the Indo-ASEAN PTA. In 2003, the two sides signed the Framework Agreement for establishing an FTA. The negotiations were hampered in mid-2006, however, because of India's desire to include several agriculture and textile products in its negative list.⁶⁶ Later, when the PTA negotiation process restarted, the negotiating agenda of both sides focused on minimization of the others' negative list. Also capping the tariff on palm oil exports from ASEAN countries was a major problem area.⁶⁷ Only in mid-2009 were the two sides able to finalize the text of the agreement, which was implemented on the January 1, 2010.⁶⁸ The negotiations on trade in services and investment were delayed in the process, as they could begin only after conclusion of the agreement on trade in goods.

The negative list determination in the course of the Indo-Lanka PTA has comparatively been a reasonably smooth-running affair. India and Sri Lanka agreed to have 429 and 1180 tariff lines, respectively, in their negative list.⁶⁹ The negotiations under APTA are also in progress, where a fresh round of tariff concessions (although for a relatively smaller set of commodities) were implemented from September 1, 2006 onwards.⁷⁰ APTA is now moving towards another round of negotiations and its ministerial meeting held on December 15,

63. See Rupali Mukherjee, *Auto Sector Wary of Bimstec FTA*, FIN. EXPRESS, INDIA, (May 25, 2005), http://www.bilaterals.org/article.php?id_article=1953.

64. See Amiti Sen & Huma Siddiqui, *BIMSTEC FTA Needs to Cross One More River*, FIN. EXPRESS INDIA (Feb. 2 2006), http://www.bilaterals.org/article.php?id_article=3707.

65. See *Bimstec Free Trade Agreement on Anvil*, STATESMAN, (Nov. 12, 2008), http://www.bilaterals.org/article.php?id_article=13752.

66. See Amiti Sen, *ASEAN Negative List Covers Only 80% Products: India*, ECON. TIMES (Oct. 10, 2006), <http://economictimes.indiatimes.com/articleshow/2132812.cms>.

67. See Rituparna Bhuyan, *Indo-Asean FTA Talks May Slip on Palm Oil*, BUS. STANDARD (Oct. 1, 2007), http://www.bilaterals.org/article.php?id_article=9792.

68. See P. R. Ramesh, *India, ASEAN FTA Finalised*, ECON. TIMES, July 17, 2009, http://www.bilaterals.org/article.php?id_article=15570.

69. The two countries are currently discussing the possibility of reducing the number of commodities in their negative lists. See Jayant Singh, *India, Sri Lanka to Revise Negative Lists*, INDIAN EXPRESS, July 3, 2008, <http://www.indianexpress.com/news/india-sri-lanka-to-revise-negative-lists/330492/>.

70. Third Round Tariff Concessions Under APTA, UN ESCAP, available at <http://www.unescap.org/tid/apta/enterforce.pdf> (last visited Aug. 20, 2008).

2009 in Seoul, South Korea resulted in framework agreements on investment⁷¹ and trade facilitation promotion.⁷² It is expected that APTA will make attempts to include issues related to services, investment, and non-tariff measures in future.

The PTAs involving Latin American partners have not generated major friction so far, perhaps because the coverage of trade is modest. For instance, in the course of the PTA negotiations, India and Chile agreed to provide fixed tariff preferences ranging from ten to fifty percent on 178 and 296 tariff lines, respectively, to the partner, at the Harmonized System (HS) 8-digit level.⁷³ The covered product lines, including primary and industrial products, accounted for more than 90 percent of the value of total Indo-Chile bilateral trade during 2004 and 2005.⁷⁴ In the case of the Indo-MERCOSUR PTA, in 2005, India and MERCOSUR agreed to give tariff concessions to the partners on 450 and 452 tariff lines, respectively. In November 2006 India presented a wish list of 626 additional products (expecting tariff concessions). In December 2006, MERCOSUR responded by presenting its wish list of 2,099 products. The negotiations on this granting of additional preference are ongoing.⁷⁵

The discord during the progress of negotiations augments the concerns raised above. While in the short run the delays appear inevitable in terms of protecting national interest, in the long run they might cost India leverage vis-à-vis partners in completion of tariff liberalization programs.

C. *The Rules of Origin Provisions*

The main purpose of the ROOs in PTAs is to ensure that products coming from non-members are not merely routed through a PTA partner as a means of obtaining tariff preference in another PTA member country. Usually three criteria may be applied for determining ROOs for the goods qualified for tariff preference in the intra-PTA trade:

1. Value-added method (*i.e.*, increase in the price of the final product as a result of processing while coming through an PTA partner);
2. Change in tariff heading (*i.e.*, actual transformation of the product at the HS 6 or 8-digit level⁷⁶ within the physical boundaries of an PTA partner);

71. *Framework Agreement on the Promotion, Protection and Liberalization of Investment in APTA Participating States*, Dec. 15, 2009, http://www.unescap.org/tid/apta/fa_inv.pdf.

72. *Framework Agreement on Trade Facilitation in APTA Participating States*, http://www.unescap.org/tid/apta/fa_tf.pdf.

73. *Preferential Trade Agreement (PTA) with Chile*, GOV'T OF INDIA: DEPT. OF COM., http://www.commerce.nic.in/trade/international_ta_indchile.asp (last visited on April 26, 2011).

74. *Focus LAC: Measure taken by the Government of India*, GOV'T OF INDIA: DEPT. OF COM., <http://commerce.nic.in/flac/flac9.htm>.

75. *Agreement on South Asia Free Trade Area (SAFTA)*, Jan. 6, 2004, *available at* http://commerce.nic.in/india_rta.htm.

76. The Harmonized Commodity Description and Coding System, commonly known as the "Harmonized System" or "HS," is an internationally standardized nomenclature for the description, classification and coding of goods. It is developed and maintained by the World Customs Organization (WCO). A harmonised nomenclature system beyond the HS six-digit level would further facilitate trade.

3. Local content requirement (*i.e.*, definitive proof of processing of the product within the physical boundaries of an PTA partner, using locally acquired inputs).

The blocs, however, may also prefer to apply more than one criterion in their ROO norms. India is a case in point, which prefers to adopt twin criteria. Some Southeast Asian countries on the other hand prefer single criteria.⁷⁷

Determining balanced norms for ROOs is all the more important for India, because of the overlap of the PTAs that it has entered into. For instance, India proposes to collaborate with Bangladesh through APTA, BIMSTEC and SAFTA; with Sri Lanka through APTA, BIMSTEC, ILFTA and SAFTA; with Thailand through the BIMSTEC FTA, the Indo-ASEAN FTA and the Indo-Thai FTA. Therefore, unless properly specified, goods coming from one partner may be eligible for more than one ROO norm, leading to future trade disputes. As mentioned earlier, given the difference in compensation provisions in different PTAs involving multiple partners (*e.g.*, SAFTA and BIMSTEC), the members have an implicit incentive to prefer some ROOs over others.

Furthermore, the presence of multiple ROOs with respect to one country might create an additional problem. For instance, India has already agreed on the ROO norms for the Indo-Singapore CECA and the Indo-Thai PTA (forty percent value addition criteria). The Indo-ASEAN PTA, however, comes out with a thirty-five percent value addition criteria. This difference may create trade discords in future, and lead to the need to revise the ROO provisions in the existing PTAs.

The Indo-Lanka PTA was one of the early PTAs that India entered into. According to its ROOs, if the raw materials or inputs are sourced from one country by the other, the value addition criteria would be more lenient (twenty-five per cent as opposed to thirty-five percent under normal circumstances).⁷⁸ It has, however, been observed that the ROOs failed to tackle the question of value-addition properly and, as a consequence, several primary and manufacturing producers in India have suffered. For instance, the traditional products of Kerala, such as rubber and spices have suffered at times owing to mere passage of these commodities through Sri Lanka from several ASEAN countries.⁷⁹ Copper was another classic case: currently eighty per cent of India's copper imports come from Sri Lanka, even though Sri Lanka has no copper mines. The fact is that Indian firms establishing factories there imported copper scrap without paying any import duty, then melted and re-shaped the scrap into ingots which were exported back to India. The companies in Sri Lanka also imported copper from other countries. It has been alleged that violations of ROOs norms led to this situation.

77. See Tiziana Bonapace & Mia Mikic, *Asia-Pacific Regionalism Quo Vadis? Charting the Territory for New Integration Routes*, in MULTILATERALISM, REGIONALISM AND BILATERALISM IN TRADE AND INVESTMENT: 2006 WORLD REPORT ON REGIONAL INTEGRATION 75 (Philippe De Lombaerde ed., 2007).

78. *Free Trade Agreement between the Republic of India and the Democratic Socialist Republic of Sri Lanka*, GOV'T OF INDIA. MINISTRY OF COMM. & IND'Y, http://www.commerce.nic.in/trade/international_ta_indsl_1.asp#b7 (last visited on April 26, 2011).

79. See Gaurav Choudhury, *Vanaspati Firms Feel Free Trade Heat*, THE TELEGRAPH Jan. 8 2006, http://www.bilaterals.org/article.php3?id_article=3466.

During the subsequent PTA negotiations, India showed strong support for including both the value addition and change in tariff heading (CTH) norms for determination of ROOs. They argued that the value addition method alone is not adequate for the purpose, as high wage rates or high rent can increase the product value even without substantial physical value addition.⁸⁰ The partners in APTA, BIMSTEC FTA, Indo-ASEAN FTA and Indo-Thai FTA, however, did not agree with this view, and preferred only value addition norms for that purpose.⁸¹ The final Indo-Thai FTA Framework Agreement incorporated a mix of CTH criteria at the HS 4-digit and 6-digit level.⁸² Currently the negotiations on ROOs are in progress for the BIMSTEC FTA. The preferential rules of origin implemented by India are mentioned below in Table 4.⁸³

Table 4: Preferential rules of origin in Indian PTAs

Agreement	Rules of Origin
Regional	
SAFTA	Up to 40% of the f.o.b. value of the finished good for India and Pakistan, 35% for Sri Lanka; 30% for LDCs with change in tariff heading (CTH) if produced in a single country and 50% for regional accumulation. Product specific rules exist for 180 products.
APTA	Not less than 45% of the Free on Board (f.o.b) value of the finished good for developing member countries, 35% for LDCs and 60% aggregate content for regional accumulation
Preferential Areas	Not less than 50% of the ex-factory cost of the finished good
GSTP	Not less than 50% of the f.o.b. value of the finished good, 60% for regional accumulation
Bilateral	
Bhutan	No specific rules
Chile	40% value addition criteria and change in Tariff Headings
Nepal	Twin criteria of change in four-digit tariff and 30% value addition at ex-factory price

80. See Tiziana Bonapace & Mia Mikic, *Asia-Pacific Regionalism Quo Vadis? Charting the Territory for New Integration Routes*, in MULTILATERALISM, REGIONALISM AND BILATERALISM IN TRADE AND INVESTMENT: 2006 WORLD REPORT ON REGIONAL INTEGRATION 75, 83-85 (Philippe De Lombaerde ed., 2007). See also K. N. Harilal, & Sejuti Jha, *Rules or Origin Regime and South Asia: A Preliminary Survey of Issues*, in SOUTH ASIAN YEARBOOK OF TRADE AND DEVELOPMENT 2006 10 (B. S. Chimni ed., 2006).

81. See *New Rules of Origin for India-Asean FTA in July*, FIN. EXPRESS, Jun. 11, 2005, available at http://www.bilaterals.org/article.php3?id_article=2094.

82. Framework Agreement for Establishing Free Trade Area Between the Government of the Republic of India and the Government of the Kingdom of Thailand, Aug. 30, 2004, India-Thai, available at http://www.commerce.nic.in/trade/international_ta_framework_thailand_2.asp#b2.

83. It needs to be noted that there is substantial scope to improve the language of the drafting of the ROOs in the Indian PTAs, or there should be a set of frequently asked questions available, so as to avoid ROO confusions at the time of entry. This finding is on the basis of the authors deep analysis of the ROO texts of the existing agreements.

Myanmar	No specific rules
Japan	35% value addition criteria and change in Tariff headings at HS 6-digit level
Singapore	At least 40% of the f.o.b. value of the product must originate in parties to the agreement; change in HS four-digit code. Product specific rules exist for some 380 products (including food products, chemicals, plastics, paper and paperboard, books, nuclear reactors, boilers and machinery parts, electrical machinery and parts, railway or tramway locomotives, photographic and cinematographic products, and apparatus).
South Korea	35% value addition criteria and change in Tariff Headings at HS 6-digit level, product-specific 40% regional value content criteria for vegetable fat products, meat and fish preparations, textile products etc.
Sri Lanka	Minimum local value-added content of 35% with CTH (25% if the raw material or inputs are sourced in either country subject to the condition that the aggregate value addition in the contracting parties is not less than 35% of the f.o.b. value of the product
Thailand	40% value addition criteria and change in Tariff Headings at HS 4-digit level
Afghanistan	Not less than 50% of the f.o.b. value of the finished product and CTH

Following these incidents, the Indian domestic sector has often voiced its concern about the preparation of the ROOs during the negotiations to the Government.⁸⁴ In response, in 2005, the Ministry of Commerce and Industry created a FTA cell to deal with the adverse impact, if any, of PTAs on specific sectors, and also to obtain suggestions for amendments to the agreements for inclusion or exclusion of items of concern to domestic industry.⁸⁵ It also sought the help of Asian Development Bank (ADB) to constitute a fund for compensating industries that are suffering from PTAs with Asian countries.⁸⁶ The slow progress in the PTA negotiations on ROOs was arguably an outcome of the concerns raised by these stakeholders.

D. Beyond Trade in Goods

While freeing trade in goods has been identified as one of the major goals in all the PTAs involving India, attempts have also been made to further strengthen

84. See *FICCI Urges Caution on Free Trade Pacts*, HINDU BUS. LINE, July 15, 2005, <http://www.blonnet.com/2005/07/15/stories/2005071501241700.htm> (last visited on April 27, 2011).

85. Press Release, Government of India, India to Host G-20 Meet in Delhi on March 18: Kamal Nath WTO Mini-Ministerial Urges Progress of Doha Talks, Jan. 31, 2005, http://commerce.nic.in/Jan05_release.htm.

86. See *India Seeks ADB Funding to Help FTA-Hit Firms*, FIN. EXPRESS, Sept. 30, 2008, <http://www.financialexpress.com/news/India-seeks-ADB-funding-to-help-FTA-hit-firms/367470/>.

the association through additional provisions in several agreements. For instance, SAARC includes provisions on cooperation in agriculture and rural development (including water resources management, integrated pest management, regional program for food security and control of trans-boundary diseases), health and population activities, environment and forestry (to protect and manage the environment and to strengthen disaster management capabilities), science, technology, meteorology, and transport.⁸⁷ The purpose of incorporating these provisions is to provide more support to the LDC partners.

This trade-plus approach could be viewed as an effort on the part of India to generate goodwill among the South Asian countries facing political instability and economic challenges. The initiatives may also be seen as a means to create more deeply integrated production networks within South Asia, taking into consideration regional competencies, and future development of infrastructural collaborations (*e.g.*, developing an oil pipeline from Iran through Pakistan and building natural gas pipelines from Bangladesh).

Similarly, the BIMSTEC FTA in goods is expected to be followed by a PTA in services and investment collaboration, in addition to cooperation in certain key sectors (*e.g.*, technology, transportation and communications, energy, tourism, fisheries, collaborations with micro, small and medium enterprises, and establishment of a BIMSTEC Technology Transfer and Exchange Facility, poverty alleviation and food security, and joint research programs to increase agricultural productivity and secure public health).⁸⁸ The idea here is to exploit the regional complementarities together (*e.g.*, telecoms in the case of India and Thailand, where the countries have comparative advantages in software and hardware segment respectively).

Investment cooperation is likely to play a key role in the ongoing Indo-GCC (Gulf Cooperation Council) PTA negotiation, and in other blocs as well. For instance, the CECA with Singapore includes service and investment cooperation, the Double Taxation Avoidance Agreement (DTAA), a more liberal air services agreement, and open skies for charter flights, among others, which is in line with mutual economic interests. India is more interested in bringing investment and services together as it has interests in Mode 3 of the services agreement. This aspect is reflected in the recently concluded Indo-Japan and Indo-Korea CEPA, which include provisions on services, movement of natural persons, intellectual property rights, investment, government procurement, and competition policy. It has been noticed, however, that ground-level regulatory framework is still far from a simplified structure, even in many of the developed countries. Lack of

87. See SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION, <http://www.saarc-sec.org/?t=2> (click on the drop-down menu to select the area of cooperation of interest) (last visited Aug. 7, 2009).

88. BIMSTEC, BAY OF BENGAL INITIATIVE FOR MULTI-SECTORAL TECHNICAL AND ECONOMIC COOPERATION (NOV. 13, 2008), [http://www.bimstec.org/2ndBimstecSummit_pdf/2nd_BIMSTEC_Summit_Declaration\[1\].pdf](http://www.bimstec.org/2ndBimstecSummit_pdf/2nd_BIMSTEC_Summit_Declaration[1].pdf).

information has slowed down the negotiation process in the PTAs where India is involved.⁸⁹

In addition, implementation issues in most of the supporting agreements require serious examination. For instance, some of the core supporting issues, such as cross-border transportation and trade facilitation, need special attention, especially in SAFTA. Transit trade, human resource development in trade, and transport areas, among others, are quite neglected in most of these agreements. India, being a major player, needs to provide adequate focus on these areas.⁹⁰

III. REGIONALLY SHARPENING THE MULTILATERAL AGENDA

Although India has encountered problems, for example over coverage of products and ROOs, during the PTA negotiation process the incentives for making these blocs operational have become apparent since the WTO Hong Kong Ministerial Conference (2005), and especially in light of the slow progress of the Doha round negotiations. The WTO members are yet to agree on the reform modalities, both in case of agriculture and non-agriculture. In addition, liberalization of trade in services is still largely stuck at the request-offer stage, which makes the PTA route an attractive option for countries. India is no exception to this trend, and is trying to incorporate services in several agreements.⁹¹ Given this scenario it is hardly surprising that the major determinants behind India's regionalism drive have been the trade expansion motive, strengthening the communication infrastructure and transport facilities, ensuring access to the necessary resources (financial, natural and technical), and many others. Furthermore, the WTO compulsions at multilateral negotiations, *i.e.*, the urge to form closer ties with like-minded parties, also played a key role in this regard. The major determinants of India's PTA strategy are briefly discussed below.

A. Enhancing Trade

In India's traditional major export destinations, such as the EU and the U.S., even in the post-WTO accession period the continuance of several standard-related barriers (sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT)), procedural barriers, and contingency measures (anti-dumping duties) constitute the major barriers.⁹²

89. See *e.g.* Biswajit Nag & Debdeep De, *Services in Regional Trade Agreements: Implications for India* (UNCTAD-JUECON Programme, Dept. Of Economics, Jadavpur University, Working Paper No. 05-08, 2008), available at <http://mpr.ub.uni-muenchen.de/15871/>.

90. For instance, the total two-way informal trade between India and Sri Lanka is around \$207 million, which is almost 30% of the formal trade. See Nisha Taneja, *India's Informal Trade with Sri Lanka* (Indian Council For Research on International Economic Relations, Working Paper No. 82, 2002). The high proportion of informal trade suggests that there exist sufficient scope to improve the formal channel of trade.

91. See generally Kasturi Das, *GATS 2000 Negotiations and India: Evolution and State of Play*, 41 J. WORLD TRADE 1185 (2007).

92. See Rajesh Mehta, *Non-Tariff Barriers Affecting India's Exports 18* (RIS Discussion Paper No. 97 2005).

Moreover, newer procedural non-tariff barriers (NTBs) were introduced on Indian exports in South Asian and ASEAN markets in the late 1990s as well.⁹³ These events prompted India to consider regional integrations with East and Southeast Asian neighbors to ensure a steady export market,⁹⁴ covering trade in merchandise and services as well as investment measures. Table 5 demonstrates that India's trade complementarity indices (TCI) with several PTA partners have generally increased from 1999.⁹⁵ From an Indian standpoint this signifies a high export potential in these markets from an Indian standpoint, which could further be augmented with a preferential arrangement.⁹⁶ Perhaps in addition to the failure at the Cancun Ministerial (2003), this also has prompted India to go for PTAs since 2004.

Table 5: India's Trade Complementarity Index (TCI) (Export) with selected Partners

Partner	TCI 1999	TCI 2007	Partner	TCI 1999	TCI 2007
Argentina	27.18	35.97	Nepal	39.72	41.65 ⁹⁷
Brazil	25.29	34.49	Saudi Arabia	32.11	34.58
China	24.90	30.18	Singapore	21.81	39.94
Indonesia	29.01	35.37 ⁹⁸	South Africa	36.86	34.80
South Korea	30.39	32.64	Sri Lanka	35.60	42.60
Malaysia	20.64	35.27	Thailand	28.66	30.74
Maldives	28.22	40.36	Uruguay	28.94	35.78

* The higher the calculated index, the higher the trade complementarity between the partners.

93. See e.g. Mohammed Saqib & Nisha Taneja, *Non-Tariff Barriers and India's Exports: The Case of ASEAN and Sri Lanka* (ICRIER Working Paper No. 165, 2005).

94. See Nagesh Kumar, *Towards a Broader Asian Community: Agenda for the East Asia Summit* (RIS, Discussion Paper No. 100, 2005).

95. Trade Complementarity Index is calculated by the following formula:

$$TC_{ij} = 100 - \sum \left(\frac{|m_{ik} - x_{ij}|}{2} \right)$$

where x_{ij} is the share of good i in global exports of country j and m_{ik} is the share of good i in all imports of country k . The index is zero when no goods are exported by one country or imported by the other and 100 when the export and import shares exactly match.

96. See Nag Biswajit, *Trade Cooperation and Performance in East and South Asia: Towards a Future Integration*, 12 ASIAN PAC. DEV. J. 29 (June 2005).

97. The TCI for Argentina is reported for the year 2003.

98. The TCI for Indonesia is reported for the year 2003.

In addition to trade in final products, the trade potential in intermediate goods between India and its partners can be seen in Table 6, which looks at the intra-industry trade (IIT) index. The IIT measures the simultaneous export and import of the same commodities. While the IIT index is relatively higher for the Indo-ASEAN FTA, the BIMSTEC FTA, the proposed Indo-China FTA and the SAFTA, for the Indo-SACU PTA it has been moderate.⁹⁹ This helps explain India's growing interest in PTAs with Asian partners. SAFTA negotiations, however, have progressed slowly despite the high IIT index. Political factors can be held blamed for the slow speed.¹⁰⁰

Table 6: India's Intra-Industry Trade (ITT) with selected partners

Trade Bloc	IIT-Index	Trade Bloc	IIT-Index
Indo- ASEAN FTA	32.81	Indo-SACU PTA	9.96
Indo-Australia TEF	17.09	SAFTA	39.16
BIMSTEC FTA	38.17	Indo-Lanka FTA	18.95
Indo-China FTA	31.42	Indo-Thai FTA	27.20
Indo-MERCOSUR PTA	22.28	India-Singapore CECA	25.24

In most cases the proposed PTA partners of India have a much more liberalized tariff regime.¹⁰¹ Therefore, in the proposed PTAs, India's gain would not be in terms of tariff reduction, but through removal of various NTBs (e.g., orders and license measures for considerations of public safety, health and the environment, among others). Analyzing the tariff profiles of Argentina, Brazil and South Africa, a similar conclusion might be drawn for India's proposed PTA with MERCOSUR and SACU.¹⁰² This also explains India's insistence on adopting of dual criteria for determination of ROOs. Therefore, the focus of future negotiations by India on the PTAs should be on reform of the NTBs in partner countries.

Apart from trade in merchandise products, given the falling Revealed Comparative Advantage (RCA) trends in the service sector for ASEAN as a whole, and also in some of its member countries,¹⁰³ India is likely to gain through the

99. For an industry i with exports X_i and imports M_i the Grubel-Lloyd IIT index is:

$$I = \frac{[X_i + M_i] - |X_i - M_i|}{(X_i + M_i)} * 100$$

Higher value of the index indicates higher IIT.

100. For instance, Pakistan still does not provide India with most-favoured nation (MFN) status and direct maritime trade is not possible. Mohsin S. Khan, *India-Pakistan Trade: A Roadmap for Enhancing Economic Relations* (Peterson Institute for International Economics, Policy Brief No. PB09-15, 2009).

101. World Trade Organization, *World Tariff Profile 2008*, 94 (Jul. 23, 2008); See World Trade Organization, *World Trade Report 2005* (2005).

102. See *id.*

103. See, e.g., Suparna Karmakar, *Developing Countries in the 21st Century WTO: New Contours of India's Global Engagement*, 2 L. & DEV. REV. 1 (2009); Prabir De, *The Growth of International*

export of financial services, educational services, IT and telecommunication services, and the movement of professionals and other business services into those markets. The proposed gain would come from India's better grasp of the English language and strong higher education and technical education systems, which is reflected in India's enhanced global market share in these areas.¹⁰⁴ India's recent inclination towards including services in all the PTAs with Southeast Asian countries (e.g., Singapore,) and also with the EU, is evidence of this fact. Like with trade in goods, boosting competitiveness is also important for services. Especially given the presence of other players, such as Australia, China and the US, in the ASEAN services market.¹⁰⁵

Two further points should be mentioned here. First, potential markets put up many kinds of barriers to India's service exports, and therefore their removal will be a major challenge. For instance, the barriers on trade in services in the GCC markets mostly relate to the regulatory issues (e.g., presence of local monopolies, equity participation limits, and commercial presence requirement), and local employment criteria and restrictions on movement of natural persons (Economic Needs Test (ENT), and verification of the requisite qualifications).¹⁰⁶ Similar problems regarding the movement of natural persons also surface in some of the Southeast Asian markets, and every new market has specific barriers based on local conditions.¹⁰⁷ This poses a major challenge to Indian negotiators.

Second, successful operation of the PTA in goods does not necessarily guarantee the same for trade-in services. For instance, despite the success of the Indo-Lanka PTA in the goods sector, the progress in the case of services and investment between the two countries has been relatively slow. This is true in spite of existence of large numbers of Indian companies in Sri Lanka. In the case of services, especially in health services, India is keen in negotiating the movement of health professionals. Thus, India raised the issues of residency permits for doctors and application of long-term registration of medical professionals. Sri Lanka would prefer to look into mode 3 and mode 4 holistically, as Indian investment will be associated with entry of Indian professionals. India, however, is inclined to de-link commercial presence from the movement of natural persons.¹⁰⁸ These kinds of

Trade in Services in Developing Countries: Some Implications, 4 J. INT'L LOGISTICS & TRADE 75 (2006).

104. See generally Debashis Chakraborty & Dipankar Sengupta, *Integration Experience and Trade Performance of the Indo-ASEAN FTA: Learning by doing to live up great expectations*, in COMPETITIVENESS OF ASEAN COUNTRIES: CORPORATE AND REGULATORY DRIVERS (Philippe Gugler Philippe & Julien Chaisse eds., London: Edward Elgar, forthcoming 2010); See also the data presented by various annual issues of WTO "International Trade Statistics", supporting this claim.

105. *Id.*

106. See WTO Secretariat, *Trade Policy Review United Arab Emirates*, WT/TPR/G/162 (Nov. 20, 2006); WTO Secretariat, *Trade Policy Review Qatar*, WT/TPR/G/144 (Jan. 24, 2005); WTO Secretariat, *Trade Policy Review: Bahrain*, WT/TPR/G/185 (June 13, 2007).

107. The barriers in services trade in the Southeast Asian countries can be observed from WTO Secretariat, *Trade Policy Review: Indonesia* WT/TPR/S/184, (May 23, 2007); WTO Secretariat, *Trade Policy Review: Malaysia*, WT/TPR/G/156 (Dec. 12, 2005); WTO Secretariat, *Trade Policy Review: Thailand*, WT/TPR/S/191 (Oct. 22, 2007).

108. See Biswajit Nag, *A Review of India-Sri Lanka Trade Cooperation* (New Delhi: Indian Inst. of Foreign Trade, Occasional Paper No. 24, 2006).

differences in standpoint place stress on the negotiations and policymakers must take note of this.

C. Boosting Investment

Within South Asia, India is by far the leading host country for Foreign Direct Investment (FDI). It received around US\$ 41.55 billion in fiscal year 2008, or around eighty-four percent of total regional FDI inflow (Table 7).

Table 7: Net FDI inflows to South Asian countries (2005–2006)

Country	FDI (US\$ Million)				Share of regional FDI total (%) (2008)
	2005	2006	2007	2008	
Afghanistan	271	238	243	300	0.610
Bangladesh	800	793	666	1086	2.208
Bhutan	9	6	73	30	0.061
India	7661	20336	25127	41554	84.501
Maldives	10	14	15	15	0.031
Nepal	2	-7	6	1	0.002
Pakistan	1459	4273	5590	5438	11.058
Sri Lanka	234	480	603	752	1.529

India's dominance in FDI in South Asia is largely due to the size of its economy - the largest in the region.¹⁰⁹ India's policy reforms geared towards liberalization have also played an important part in ensuring its dominance as a destination for FDI.

For example, after its independence in 1947, India adopted a planned economy model. Inefficiency was a problem in all sectors, making it a high-cost economy. Regulations on imports and FDI were strict, and the domestic market suffered from various entry restrictions for the next forty years. During the late 1980's, however, the government gradually liberalized the economy and lifted restrictions on FDI. Consequently, India achieved high economic growth in 1988 and 1989.¹¹⁰ In July 1991, the New Industrial Policy was announced. Under this policy, conditions on foreign investment were relaxed, formalities for granting import licenses were simplified, and private companies were permitted to enter fields that government-owned enterprises had previously dominated.¹¹¹ In line with similar trends emerging

109. See Satya P. Das, *An Indian Perspective on WTO Rules on Foreign Direct Investment*, in *INDIA AND THE WTO* 141 (Aaditya Mattoo & Robert M. Stern eds., 2003).

110. See Prabhash Ranjan, *International Investment Agreements and Regulatory Discretion: Case Study of India*, 9 *J. WORLD INVESTMENT & TRADE* 209, 240 (2008).

111. See generally Julien Chaisse, Debashis Chakraborty & Arup Guha, *India's Multilayered FDI Regulation: Between resistance to multilateral negotiations and unilateral proactivism*, in *EXPANSION OF TRADE AND FDI IN ASIA: STRATEGIC AND POLICY CHALLENGES* 240, 240 (Julien Chaisse & Philippe Gugler eds., 2009).

in South Asia, India evolved from a closed economy to an open economy. Along with the increase in FDI inflow level, the volume of FDI outflow from India has also increased considerably over the last decade.¹¹²

The Asian-Pacific region is a major recipient of global investment, which is largely due to the integrated production network developed across ASEAN countries.¹¹³ Since the early 1990's, India's attempt to attract East Asian capital has met limited success.¹¹⁴ FDI is an area in which India appears to lag behind China, as Table 8 indicates.

Table 8: BRIC inward FDI flows, 2000-2009 (US\$ billion)

Country	India	China*	Brazil*	Russia*
2000	2.3	40.8	32.8	2.7
2001	0.34	46.9	22.5	2.5
2002	3.5	52.7	16.6	3.5
2003	4.3	53.5	10.1	8
2004	5.3	60.6	18.2	11.7
2005	6.7	72.4	15.1	12.8
2006	20.3	72.7	18.8	29.7
2007	25.1	83.5	34.6	55.1
2008	41.6	108.3	45.1	70.3
2009	27	90.0	22.8	41.4

* Estimated

In 2005, China attracted almost eleven times more FDI than India. This is because China's policies on foreign investors were more liberalized than those of India. Moreover, the Chinese economy has been growing at a faster rate and the infrastructure base connectivity remains better organized.¹¹⁵ The increases in FDI in China is not surprising bearing in mind the sheer size of the market and the opportunities for resource exploitation. Although strict protection policies are still maintained in certain sectors of the Chinese economy, such as the automobile

112. See, eg., RESERVE BANK OF INDIA-INDIA'S CENTRAL BANK, Reserve Bank of India Annual Reports, various years, available at <http://www.rbi.org.in/> (last visited Nov. 6, 2010) (The Reserve Bank of India has increased the overseas investment limit of the Indian firms from 300 percent of the net worth to 400 percent of the net worth in the energy and natural resources sectors, such as oil, gas, coal and mineral ores. The limit on overseas portfolio investment by Indian companies has also been increased from 35 percent of their net worth to 50 percent of their net worth. Similarly mutual funds has been allowed to make an aggregate investment to the tune of US\$ 5 billion in overseas avenues, from an earlier level of US\$ 4 billion. Owing to these procedural changes, FDI outflow from India is recently on the rise.)

113. See generally Chia Siow Yue & Hadi Soesastro, *ASEAN Perspectives on Promoting Regional and Global Freer Trade*, in AN APEC TRADE AGENDA? THE POLITICAL ECONOMY OF A FREE TRADE AREA OF THE ASIA PACIFIC 133 (C.E. Morrison & E. Pedrosa eds., 2007).

114. See generally Isabelle Saint-Mezard, *India and East Asia: Through the looking glass*, in GOVERNANCE AND REGIONALISM IN ASIA 173, 173 (Nicholas Thomas ed., 2009).

115. See Karl P. Sauvant, *New Sources of FDI: The BRICs: Outward FDI from Brazil, Russia, India and China*, 6 J. WORLD INVESTMENT & TRADE, 639 (2005).

industry, India's restrictive labor laws and limits on foreign shares in ownership constrain foreign investment. China is certainly a star performer in attracting FDI, but India has not performed as badly as expected when compared to China. As bigger economies normally attract more investment, China currently tends to be the preferred destination for foreign investors.

Table 8 demonstrates a change in FDI inflows, and the growing attractiveness of India. Indeed, India inflows rocketed to US \$20 billion in 2006, and further doubled to US \$42 billion in 2008 - transforming India into the world's thirteenth largest host to FDI. In the context of the 2009 global economic and financial crisis, inflows have been reduced to US \$27 billion, but these were nonetheless larger than 2007 levels.

Given the recent rise in FDI outflow from India the introduction of an agreement on services and investment provisions would be quite helpful for the Asian partners (*e.g.*, India-Singapore CECA, India-Japan CEPA, and India-South Korea CEPA).¹¹⁶ From analyzing the current level of investment interest it can be concluded that while the potential candidates for Southeast Asian investment in India include the manufacturing sector and infrastructure projects, its outward FDI interests in East and Southeast Asia are likely to be focused on IT services and software, pharmaceuticals, herbal-based medicines, and dairy development.¹¹⁷ The idea here is that the applied tariff rate of India is still much higher as compared to the ASEAN countries. Hence, given India's market size the ASEAN countries would benefit from tariff-jumping FDI inflow. India's leading firms in the area of IT services and pharmaceuticals, however, are likely to reach out to the Southeast Asian market for the cheap and available production they provide.

The role of preferential agreements and bilateral investment treaties (BIT) in ensuring higher investment inflow has been extensively covered in trade literature.¹¹⁸ While it is argued that foreign investors are attracted to countries belonging to PTAs,¹¹⁹ it is believed that having many BITs can undermine the likelihood of getting a PTA. It is also argued that developing countries are more likely to enter into BIT if there is a competition for attracting investments.¹²⁰ The number of international investment agreements (IIA) - instruments for the promotion and protection of foreign investment - has sharply increased over the

116. See Nagesh Kumar, *Towards a Broader Asian Community: Agenda for the East Asia Summit*, (RIS Discussion Paper No. 100, 2005).

117. See generally RAM UPENDRA DAS, SOMCHAI RATANAKOMUT & SOTHITORN MALLIKAMAS, A FEASIBILITY STUDY ON A FREE TRADE AGREEMENT BETWEEN INDIA AND THAILAND, (2002), available at www.thaifta.com/thaifta/Portals/0/file/Study_ftain.pdf. (Prepared for joint working group on India-Thailand Free Trade Agreement).

118. See generally Asha Kaushal, *Revisiting History: How the Past Matters for the Present Backlash Against the Foreign Investment Regime*, 50 HARV. INT'L L.J. 491 (2009).

119. See Tim Büthe & Helen Milner, *The Politics of Foreign Direct Investment into Developing Countries: Increasing FDI through International Trade Agreements?*, 52 AM. J. POL. SCI. 741, 742 (2006).

120. See Zachary Elkins, Andrew T. Guzman & Beth A. Simmons, *Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000*, 60 INT'L ORG. 811, 822-23, 836 (2006).

past two decades, taking the form of a patchwork of bilateral, regional, interregional, and plurilateral treaties.¹²¹

Asia has been the developing region that is most active in completing preferential trade and investment agreements. As a center for growth in the world economy, large parts of Asia have become particularly attractive places for market-seeking FDI. It is in Asia that many of the recent, and most innovative, agreements are signed, and a detailed analysis of preferential commitments is available.¹²² In several Asian countries FDI restrictions have been reduced, leading to accelerated technological exchange and globally integrated production and marketing networks.

Given the FDI-enhancing capabilities of regional economic integration, India's move towards PTAs is in line with its earlier attempts to project itself as an investment destination as part of the broader trade and investment network developed between the ASEAN members. The inclination to complete PTAs with the capital rich economies of the region (*e.g.*, Singapore, Japan and South Korea) should be viewed in the same light. Given Japan's close association with the production network in Southeast Asia, the proposed India-Japan Economic Partnership Agreement¹²³ is likely to further boost investment collaboration. Although concerns have been raised over the import of toxic products to India under this agreement.¹²⁴

The intra-regional flow of FDI has increased recently, especially from Malaysia and Singapore to ASEAN and West Asia in infrastructure and construction services.¹²⁵ The same is true for India's FDI sources, as well as its outbound investment. One explanation is the lack of deeper integration to date, which is likely to be corrected in the near future. For instance, as per the India-ASEAN integration provisions, negotiations on PTAs in merchandise were completed first and the negotiations on services and investment followed thereafter. Understandably the investment integration between India and ASEAN remained lower. The moment India and ASEAN got closer in 2008, however, investment proposals started pouring in. In September 2008 Honda Motors expressed their intention to source components from India for its manufacturing sites at other

121. The WTO and its predecessor organization, GATT, have not directly tackled the broad issue of foreign investment rules. Instead, GATT and the WTO have dealt with a narrow set of very specific issues, which has left nations to formulate their own policies or through bilateral investment treaties. *See generally* Julien Chaisse, *The Regulation of Trade-Distorting Restrictions in Foreign Investment Law*, 3 EUR. Y.B. INT'L ECON. L. 69 (2012).

122. *See generally* Carsten Fink & Martin Molinuevo, *East Asian Free Trade Agreements in Services: Key Architectural Elements* 11 J. INT'L ECON. L. 263 (2008).

123. To date, eleven meetings of the Joint Task Force established for analyzing the sustainability of the Indo-Japan CECA have been held. Both sides are currently working on the modalities of negotiations on market access of Trade in goods. ASEAN and India Free Trade Agreement negotiations, Dept. of Comm., gov't of India, available at http://www.commerce.nic.in/trade/international_ta_current_details.asp#b11 (last visited April 27, 2011).

124. *See* Papri Sri Raman, *Treaty with Japan may legalize dumping toxic waste in India*, RXPNG NEWS (May 8 2007, 9:01:19 AM), http://www.rxpngnews.com/india/Treaty-with-Japan-may-legalize-dumping-toxic-waste-in-India_26960.shtml.

125. *See* United Nations Conference On Trade and Development, *World Investment Report 2008: Transnational Corporations and the Infrastructure Challenge*, U.N. Doc. E.08.II.D.23 (2008).

locations, especially within the ASEAN market.¹²⁶ Similarly, Mitsubishi Motors also expressed their inclination to start production in India in order to make it an export hub and link the operations with existing ASEAN bases.¹²⁷ The implementation of the Indo-ASEAN FTA in January 2010 and the signing of the Indo-Japan and Indo-South Korea CEPA in October 2010 are likely to facilitate investment from the East in the Indian market.

C. At the Periphery of Trade Diplomacy: Communications Infrastructure, Transport and Energy

Communications infrastructure in several East and Southeast Asian countries such as South Korea, Hong Kong, Singapore, and Malaysia, are at a much better stage than in India.¹²⁸ In the case of IT-enabled services and ICT products, however, India is better positioned than the Southeast Asian nations, given its beneficial situation. For instance, the developing countries of the region (*e.g.*, Thailand) have specialized in hardware,¹²⁹ while India's comparative strength lies in software.¹³⁰ Hence, collaboration would benefit both sides, and this has prompted India to include technology among the areas of interest in negotiations.¹³¹ Furthermore, knowledge of English is a major advantage for India. ASEAN partners would gain by collaborating with India on communication services in this regard. The formation of IT business forums by representatives from India and ASEAN is expected to facilitate this process further.¹³²

The concentration of India's PTAs in the South and Southeast Asian region provides an opportunity for the partners to collectively improve the infrastructural

126. See Aekapol Chongvilaivan, *India's ties to Asean must look beyond trade in goods*, THE NATION Nov. 4, 2008, available at http://www.nationmultimedia.com/2008/11/04/opinion/opinion_30087511.php.

127. See *Mitsubishi looks at ASEAN trade pact for hub in India*, ECON. TIMES (Nov. 2, 2008), available at <http://economictimes.indiatimes.com/articleshow/3664904.cms>.

128. See U.N. Dev. Program, *Human Development Report 2007/2008*, 273-75 (2007) (observed upon analysis of the data on telephone connection, internet usage etc). The number of telephone machines per 1000 people is 6 in India, as compared to 441 in Japan, 434 in Hong Kong, 346 in Singapore, 310 in Korea, and 89 in Malaysia. *Id.*

129. See WORLD TRADE ORG., INTERNATIONAL TRADE STATISTICS 2008, 80 (2008). In the global export market of office and telecom equipment, in 2007, China held a market share of 22.9 percent, Hong Kong a share of 9.0 percent, Singapore 7.9 percent, Japan 6.8 percent, South Korea 6.1 percent, Malaysia 4.5 percent, and Thailand 2.1 percent. *Id.* India does not figure among the top 15 exporter countries. *Id.*

130. See *id.* In the global export market of computer and information service, in 2006, India held a share of 17.8 percent among top 15 economies. The corresponding figures for China, Japan, Singapore, Malaysia and Hong Kong are 2.5, 0.8, 0.5, 0.5 and 0.3 percent respectively. *Id.*

131. India's inclination towards including IT and ITES in Singapore and other agreements is a reflection of this. Most of the South East Asian nations are also interested in receiving benefits from India's advantage in the IT area. There is less conflict in this sector.

132. See K.J. Joseph & Govindan Parayil, *India-ASEAN Cooperation in Information and Communication Technologies: Issues and Prospects* 26-27 (Res. & Info. Sys. for the Non-Aligned & Other Developing Countries, Discussion Paper RIS-DP # 70/2004).

facilities. Such a move is likely to lower the transaction costs significantly,¹³³ which coupled with tariff barriers and NTBs usually create high informal trade volume in the SAARC region.¹³⁴ For instance, lack of adequate transport linkages with the BIMSTEC members in Southeast Asia has been compounded by the lack of recognition of Indian vehicles in Bangladesh. The two countries are, however, currently trying to repair the transit linkage.¹³⁵ Similarly, if transit rules concerning India through Pakistan improve, having access to Central and West Asian markets through those road and rail network would greatly facilitate trade with these areas. The discussion on improving rail connections with Pakistan is currently in progress, and may be fuelled by the increased trade opportunity SAFTA provides.¹³⁶

The agreement to form the 140,000 km Asian Highway Network, connecting capitals, major ports, commercial centers, and the tourist sites of Asian nations, was signed in April 2004 in Beijing and it may significantly contribute to this process. The success of the initiative is uncertain, however, as Bangladesh has decided to opt out of it, thereby blocking India's road access to ASEAN through Myanmar.¹³⁷ The future of this project perhaps depends on the success of SAFTA.

The connectivity between the Asian countries has increased significantly in recent times. Studies show, however, that the region is yet to derive benefits from transport integration, as the trade costs due to logistical bottlenecks are still high.¹³⁸ In Asia, the growth of exports is mainly due to the rise in productivity. The multimodal transport system linking maritime and surface transport has been identified as a major strategy to integrate these economies. Improving connectivity would, apart from enhancing trade in existing commodities, create demand for more variety on the market and widen the trade basket of the region. For instance, steady growth in air cargo services has already created increased trade in niche items like flowers, fresh vegetables, and parts and components for the international production networks (particularly ICT equipment). Because of few seaports and

133. See Prabir De, *Transaction Costs as Barriers to Economic Integration in Asia: An Empirical Exploration* 21 (Res. & Info. Sys. for the Non-Aligned & Other Developing Countries, Discussion Paper RIS-DP # 77/2004).

134. See Sanjib Pohit & Nisha Taneja, *India's Informal Trade with Bangladesh and Nepal: A Qualitative Assessment* 29-30 (Indian Council for Research on Int'l Econ. Relations, Working Paper No. 58, 2000); Nisha Taneja, *India's Informal Trade with Sri Lanka* 32-33 (Indian Council for Res. on Int'l Econ. Relations, Working Paper No. 82, 2002).

135. See Trade Agreement Between India and Bangladesh, India-Bangl., Mar. 22, 2006, available at http://www.commerce.nic.in/trade/India_Bangladesh_Trade_Agreement.pdf (both sides agreed to make mutually beneficial arrangements for the use of their waterways, roadways and railways for commerce); Taragana, Dhaka, *Delhi to Renew Transit, Trade Deal in March*, BREAKING NEWS BLOG 24/7, (Mar. 5, 2009), <http://blog.taragana.com/n/dhaka-delhi-to-renew-transit-trade-deal-in-march-14952/>.

136. See Biswajit Nag & Debashis Chakraborty, *India's Approach to Asian Economic Integration*, 5 TAIWANESE J. OF WTO STUD. 67 (2006).

137. See Raja M., *Asian Highway Network Gathers Speed*, ASIA TIMES, June 14, 2006, www.atimes.com/atimes/Asian_Economy/HF14Dk01.html

138. See Biswa N. Bhattacharyay & Prabir De, *Restoring the Asian Silk Route: Toward an Integrated Asia* 21-22 (Asian Dev. Bank Inst., Working Paper No. 140, 2009), available at <http://www.adbi.org/files/2009.06.17.wp140.restoring.asian.silk.route.pdf>.

airports, the issue of logistic efficiency in most parts of Asia requires more serious attention.

India also needs to pay more attention to resolving transportation issues, and push for a holistic transport agreement in the region. India has recently shown an increased inclination towards trading with the ASEAN countries. Infrastructure development in Myanmar has become a major issue on the agenda in this respect as it is the gateway to Southeast Asia. Among the notable initiatives is the 160 km India-Myanmar Friendship Road, along with major upgrades of infrastructure at Sittwe port. Currently, the possibility of building up the New Delhi-Hanoi rail link, joining Singapore, Myanmar, Thailand, Cambodia, and Vietnam with India is being discussed.¹³⁹ All these initiatives would be instrumental in boosting trade in the long run.

The expanding economy, growing population, rising standards of living, and limited availability of indigenous energy sources collectively threaten India's long-term energy security. China and India are two giants on the move towards securing a greater share of energy assets overseas. Their strategy for controlling oil and natural gas reserves has led to rising FDI outflows. The regional integration process offers India, a net energy importer, scope for tackling environmental issues and, through them, energy security.¹⁴⁰ Table 9 shows that several of India's Asian and non-Asian PTA partners are net exporters of energy. Clearly the compulsion to ensure energy security has been a driving force in selection of partners. In particular, one could mention the Trade and Economic Framework Agreement (TEF) signed with Australia, in which energy was included as an important sub-sector. For instance, the sixth meeting of the Joint Working Group for establishing the PTA between the two countries held in New Delhi from March 16-17, 2009 focused on coal, new and renewable energy, mines, petroleum and natural gas, and power.¹⁴¹ The decision to pursue an FTA with GCC is also worth mentioning in this regard. Closer to home, India is already importing power from Bhutan, and further investing in developing mega-hydropower projects there.¹⁴² If India's energy demand increases further, the country may attempt to collaborate with several Central Asian countries, which are also net exporters of energy products. ASEAN is already attaching significant importance to energy cooperation among members (e.g., the ASEAN Power grid and the Trans-ASEAN gas pipeline), and its association with them may turn out to be beneficial for India. India, however, needs

139. See Debashis Chakraborty & Dipankar Sengupta, *Integration Experience and Trade Performance of the Indo-ASEAN FTA: Learning by Doing to Live up Great Expectations*, in *COMPETITIVENESS OF ASEAN COUNTRIES: CORPORATE AND REGULATORY DRIVERS* (Peter Buckley & Edward Elgar eds., 2010).

140. See Sachin Chaturvedi, *Environment Issues in Free Trade Agreements in Asia and the Post-Cancun Challenges: Issues and Policy Options* 18-23 (Res. & Info. Sys. for the Non-Aligned & Other Developing Countries, Discussion Paper RIS-DP # 67/2003).

141. *Bilateral Minerals and Energy Cooperation with India*, AUSTL. DEP'T OF RES., ENERGY AND TOURISM, <http://www.ret.gov.au/resources/enhancing/bmec/Pages/India.aspx>.

142. *India, Bhutan to Fast-Track Power Projects*, EXPRESS NEWS SERVICE, July 3, 2009, www.indianexpress.com/news/india-bhutan-to-fasttrack-power-projects/484431 ("India and Bhutan have agreed to go for enhanced collaboration on hydro-power generation by setting a target of 10,000 MW by 2020").

to develop negotiating skills to address these issues in the forum of ASEAN, BIMSTEC, and SAARC, as well as in GCC, given its limited success with Bangladesh.¹⁴³

Table 9: Net energy imports as percentage of energy use

Country	1990 (percentage)	2004 (percentage)	Country	1990 (percentage)	2004 (percentage)
Australia	-80	-126	Oman	-740	-391
India	9	19	Russia	-44	-81
Indonesia	-70	-48	Saudi Arabia	-469	-296
Kuwait	-565	-429	UAE	-514	-274
Malaysia	-117	-56	Vietnam	-2	-30
Myanmar	0	-34			

It should be noted here that negotiations may not be easy, due to the revenue implications of any development on this front. For instance, during the recent Indo-ASEAN PTA negotiations, Brunei and Malaysia insisted on decreasing the tariff on petroleum products to zero level, which was unacceptable to India.¹⁴⁴ A compromise solution was finally reached. The Ministry of Finance (Government of India) commented during the Indo-GCC PTA negotiations that the import of petroleum products should not be covered under the PTA.¹⁴⁵ India's future action on this topic front will depend on the interaction between the domestic players and the PTA collaborators.

D. WTO Compulsion

India's position regarding PTAs with developing countries changed as a result of the slow pace of multilateral liberalization. It currently views them as an efficient instrument for the development of bargaining power: "RTAs [. . .] confer greater bargaining power in multilateral negotiations by tying in partner countries through regional commitments."¹⁴⁶ The continuation of the Doha Round might have played a key role in the formation of this mindset. In addition, the success of the EU in the negotiating process has perhaps prompted India to consider such a

143. See Anand Kumar, *India-Myanmar Gas Pipeline Through Bangladesh-Pipe Dream?*, SOUTH ASIA ANALYSIS GROUP (2005), available at <http://www.saag.org/papers13/paper1216.html>.

144. See Adamrah Mustaqim, *RI Eyes Benefits from India Pact*, THE JAKARTA POST, Sept. 15, 2008, www.thejakartapost.com/news/2008/09/15/ri-eyes-benefits-india-pact.html.

145. See *North Block Against Crude Oil in Gulf Duty-free List*, HINDUSTAN TIMES, July 30, 2007.

146. Press Release, Gov't of India, *India Must Use FTAs to Its Advantage: Kamal Nath Meeting of the Indo-American Chamber of Commerce* (August 13, 2004), available at http://www.commerce.nic.in/Aug04_release.htm#h6.

position. India has been quite vocal at the WTO ministerial forums from the Doha Ministerial (2001) onwards,¹⁴⁷ and subsequently joined a number of developing country groups like ABI, G-20, G-33, G-110 and NAMA-11.¹⁴⁸

The trade blocs are likely to play a crucial role in cementing the collaboration in agriculture, non-agriculture and other negotiations. Table 10 indicates the current level of cooperation between India and select PTA partners at multilateral negotiations, where the number of joint submissions by India and a partner country is reported category-wise.

Table 10: Analysis of current cooperation between India and potential partners at WTO negotiations¹⁴⁹
(Number of joint submissions)

Countries	WTO Disciplines							
	A	B	C	D	E	F	G	H
South Asia								
Bangladesh	–	–	8	–	–	–	1	–
Pakistan	5	2	15	1	2	17	7	1
Sri Lanka	4	2	11	–	–	1	7	1
East And Southeast Asia								
China, PR	3	–	5	1	1	5	1	1
Indonesia	4	1	21	–	6	8	1	–
Japan	1	–	–	–	–	2	–	–
Malaysia	2	3	15	–	1	4	1	–
Philippines	4	–	5	–	5	11	1	–
Thailand	2	–	5	–	–	14	7	–
Africa								
South Africa	2	–	1	–	5	–	1	–
Latin America								
Argentina	3	3	–	–	7	6	1	–
Brazil	3	3	2	–	7	6	10	–
Chile	3	–	–	–	–	16	–	–

147. See generally Debashis Chakraborty & Dipankar Sengupta, *Learning Through Trading? Ten Years of India's Experience in WTO*, 12 S. ASIAN SURVEY 223 (2005).

148. See DEBASHIS CHAKRABORTY & DIPANKAR SENGUPTA, IBSAC (INDIA-BRAZIL-SOUTH AFRICA-CHINA): A POTENTIAL DEVELOPING COUNTRY COALITION IN WTO NEGOTIATIONS (2006), <http://www.esocialscience.com/data/articles/document1254200708.126467E-02.pdf>.

149. A – Agriculture; B – Dispute Resolution; C – General Council (Special and Differential Treatment, Singapore Issues, Anti-Dumping, Trade in Textiles, Modalities, Preparation for Ministerial Conferences etc.); D – Investment; E – Non-Agricultural Market Access; F – Services; G – TRIPS, H – Trade Facilitation. Debashis Chakraborty, *Searching for the Missing Link: India's "Negotiating Strategy" at WTO?*, in INDIA AND THE WTO 58 (A. Barua & R. Stern, eds., 2010).

It is argued that the bargaining coalitions of neighbors with similar interests could serve as a crucial instrument for effective trade diplomacy.¹⁵⁰ As seen from the Table 10, the current level of cooperation with Indonesia, Malaysia, Pakistan, Sri Lanka and Thailand, is quite comprehensive. This is presumably owing to the similar export patterns. The areas characterized by maximum cooperation are agriculture, issues under general council (mainly trade in textiles and garments, and increasing use of contingency measures like anti-dumping) and services. Regional neighbors, like Pakistan and Sri Lanka, have cooperated with India several times on issues related to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which is clearly due to a similarity in export pattern. Given the dominance of labor-intensive products in the export basket of India's proposed PTA partners, and the trends in multilateral negotiations, the current level of cooperation is likely to continue.

There does, however, appear to exist a seeming fallacy between India's multilateral and regional goals. For instance, at the NAMA forum, India is not keen to discuss the sectoral initiatives (*i.e.*, reducing tariffs to zero level for electronics and electrical goods; fish and fish products; footwear; leather goods; motor vehicles – parts and components; stones, gems and precious metals; textile and clothing etc.). If one were to look at the proposed BIMSTEC PTA, however, textile and clothing, gem and jewelry, automotive industry and their parts, and fisheries, come under the areas of cooperation. Similarly, India is currently not willing to negotiate multilateral rules on three Singapore issues: trade and investment, competition policy, and government procurement. Investment is very much part of the Indo-Singapore CECA and Indo-South Korea CEPA. Moreover, though India is currently not in favor of negotiating a multilateral rule on competition policy, the Indo-South Korea CEPA embodies a separate provision for such a rule. The Indo-Japan CEPA also contains a provision on government procurement.

This seeming contradiction could be explained by the fact that while on the negotiating front it is collaborating with other countries with offensive objectives, where the onus of reform is on developed countries, like the EU-US (*e.g.*, agricultural subsidies), making a multilateral commitment to require India to consider the interests of the local stakeholders. In that sense committing reform measures at the multilateral forum, and thereby opening up the market for all 152 WTO member countries could be politically difficult. On the other hand, undertaking reform measures for some select economies (who happen to be RTA partners) can be expected to witness relatively lesser protest at home, while the augmented export opportunity is definitely welcomed. Therefore, India's negotiations at the multilateral forum are extensive, focusing on broader issues and hesitant to offer market access. Meanwhile the uncertainties on potential gains and impending implications on local players remain under consideration. The negotiations under India-centric PTAs are intensive, focusing more on core competencies, and therefore in light of the expected gain, granting of specific access (even in the WTO-plus area) is not uncommon.

150. See AMRITA NARLIKAR, INTERNATIONAL TRADE AND DEVELOPING COUNTRIES 1 (Routledge 2003).

IV. TOWARDS A CATEGORIZATION OF INDIA'S PTAS

Preferential agreements are now a significant feature of Indian trade policy. In this section, an attempt is made to interpret the systemic behavior of India's PTA approach. Such a better understanding of trade policy dynamics helps to anticipate future developments of Indian trade policy and its likely impact on the architecture of global trade.

A. Lessons from Existing PTAs

An analysis of the tariff structure of India and its PTA partners reveals that India is still maintaining higher tariffs than most of its partners. The fact becomes clear from the data provided in Table 11. Because of the high tariff cushion (*i.e.*, gap between bound and applied tariff), most of India's PTA partners are increasing their tariffs in the post-recession period, while India is still in the process of reducing the most favored nation (MFN) applied tariff rate. This underlines the seriousness for India to vigorously pursue the PTA route, since many of its target markets are reforming tariffs within their blocs (*e.g.*, ASEAN, GCC, and SACU) and enhancing MFN rates to some extent. On the other hand, it is clearly seen that in post-PTA situations, India has to reduce applied tariffs much more vis-à-vis its counterparts.

Table 11: Comparison of average MFN applied tariff rates, India and select partner countries

Countries	Total		Agricultural		Non-agricultural	
	2005 / 2006	2008	2005 / 2006	2008	2005 / 2006	2008
Australia	3.5	3.5	1.2	1.3	3.9	3.9
Brazil	12.3	13.6	10.2	10.2	12.6	14.1
Chile	6.0	6.0	6.0	6.1	6.0	6.0
<i>India</i>	<i>19.2</i>	<i>13.0</i>	<i>37.6</i>	<i>32.2</i>	<i>16.4</i>	<i>10.1</i>
Indonesia	6.9	6.9	8.2	8.5	6.8	6.7
Kuwait	4.9	4.7	5.2	5.2	4.8	4.7
Malaysia	8.5	8.8	12.3	14.7	7.9	8.0
Oman	5.3	5.7	8.7	12.4	4.8	4.7
Saudi Arabia	5.2	5.2	7.8	7.1	4.8	4.9
South Africa	8.0	7.8	9.0	9.3	7.9	7.6
South Korea	12.1	12.2	47.8	49.0	6.6	6.6
UAE	5.0	5.0	6.5	7.1	4.8	4.7

The analysis undertaken under the earlier sections has shown that India is likely to gain from the PTA experience, given the IIT and TCI indices and the compatibilities in trade pattern. The RCA values of a wide range of Indian products, both agricultural and non-agricultural ones, however, are much lower as compared to their ASEAN partners.¹⁵¹ It has also been observed that the long negotiating period of the Indo-ASEAN PTA has led to a small negative list, implying that tariff reform would be applied to a greater number of products than what India intended to commit. In addition, as seen from Table 11, India need to undertake a deeper tariff cut *vis-à-vis* the other bloc partners, thanks to the higher initial base rate. It seems that owing to these reasons India cannot expect larger gains in the goods sector from the PTAs, at least in the short run. Given this observation, India's recent strategy to engage its partners through services and investment collaborations could be taken as a means to compensate for the potential loss expected in the goods sector.

In the goods sector India is making an attempt to take a sectoral view by focusing on market access of products of interest while trying to protect some other sectors. The areas of cooperation mentioned under the earlier BIMSTEC PTA are a case-in-point. Similarly, in the intensive PTAs with Chile and MERCOSUR, the focus is to obtain a smaller concession list from the partner, where the core interest lies, but in return provide similarly focused and concise access for the partner to the domestic market. Here gain in core areas of interest compensate for the loss in other sectors in the short run, and lower the potential impediments to the alliance. On the other hand, the goodwill generated by the successful operation of the PTA in the short run, and the size of the Indian market, could be used as a leverage in the long run to persuade the PTA partner to enter into an agreement on trade in services and investment.

Therefore, on the basis of the negotiating experience so far, India's PTA strategy could be placed within three categories:

- Compensate for loss in goods sector by gain in services (or even attracting FDI)
- Within the goods sector, loss in some sectors (due to tariff reduction) is to be compensated through effective market access of other products in which India has potential advantages
- Identification of India's specific interest in the partner country (which may be commercial, regional development, or political) for long term gain

B. India's Perceived Opportunities and Challenges in Select PTA Partners

India's opportunities and challenges in different markets are listed in Table 12. Concern regarding possibilities of high import levels from different markets has

151. Debashis Chakraborty, *Competitiveness of Indian Exports in ASEAN Market: Some Exploratory Results* (Indian Inst. of Foreign Trade 2009) (on file with author).

already been raised within India. Perhaps while discussing the possibilities of entering into a PTA with another country, the existing trade balance with the country plays a vital role in the minds of the Indian policymakers.

For instance, the growing trade deficits with China, Malaysia, Myanmar, and Thailand have perhaps caused the country to move slowly towards the Sino-Indian PTA or the Indo-ASEAN PTA. The idea of sectoral compensation has not been convincing to the domestic constituency, as it is difficult to move factors of production from loss-making sectors to other sectors. More detailed studies are required to understand the net gain in different markets in the post-agreement stage.

Table 12: India's perceived opportunities and challenges in select PTA partners

PTA Partner	Export Opportunities	Potential Import Challenges	Trade Surplus / Deficit (US\$ Million)	
			(2007–08)	(2008–09)
Argentina	Chemicals, vehicles, plastics	Animal or vegetable fats and oils	-616.19	-147.06
Brazil	Mineral fuel products, chemicals and pharmaceuticals, plastics	Animal, vegetable fats and oils, sugar	1,568.96	1465.47
China	Ores and slag, cotton, organic and inorganic chemicals, iron and steel, plastics	Machinery and equipment, chemicals, mineral fuel products, iron and steel, plastics	-16,281.60	-23143.5
Malaysia	Chemicals, meat products, machinery and equipment, iron and steel	Machinery and equipment, wood products, chemicals, animal, vegetable fats and oils	-3,439.00	-3764.81
Myanmar	Iron and steel, pharmaceuticals	Wooden articles, vegetables	-624.51	-707.33
Sri Lanka	Mineral fuel products, auto parts and products, iron and steel, cotton, pharmaceuticals, copper, plastic	Animal, vegetable fats and oils, copper, aluminum, coffee, tea, spices	2,195.12	2069.35
Thailand	Gems and jewelry, copper, iron and steel, chemicals, residues and waste from food industries, machinery	Machinery and equipment, auto parts and products, plastics	-493.34	-765.51

	and equipment, auto parts and products			
Vietnam	Residues and waste from food industries, chemicals and pharmaceuticals, iron and steel, plastics	Coffee, tea, spices	1,429.69	1329.99

Through a cursory look at the pattern of trade with the proposed blocs, it can be argued that India's interests in the BIMSTEC are energy, tourism, and development of the border roads; mainly in the North Eastern States; with Singapore in attracting FDI; with Sri Lanka in export of services such as banking, education and health; and with Thailand in creating a competitive market for its Small and Medium Enterprises' (SME) products and machinery, and cooperation in electronic goods. India will make an attempt to become integrated with East and Southeast Asia through ASEAN by bringing its MFN rates down to the ASEAN level. Moreover, in order to open land borders of surface transport for merchandise products, India's interest lies more in SAARC and BIMSTEC. Sub-regional stability is an important item on the agenda for India, which might lead it to increased market access to SAARC members. Beyond trade, India is now pushing for regional public goods, such as the environment. It is playing an active role in SAARC and BIMSTEC for developing mechanisms of disaster management and protection of marine resources, among others.

India could pay closer attention to the rapid economic growth of countries and regions such as Latin America, ASEAN, or its member countries. Now is the moment to forge strategic commercial and political links with these countries. Another important point is that any new PTA could serve at least to neutralize the potential trade diversion resulting from PTAs between third countries. This is typically the main factor in the race between the U.S. and the EU. Each of them is seeking not to be sidelined in its trade relations with a partner. India undoubtedly has an advantage in services trade over China and other developing countries. Concluding far-reaching PTAs with Brazil, or some of the more developed ASEAN countries, however, could help to secure market access to the benefit of Indian multinational enterprises (MNEs) while ensuring a better competitive environment *vis-à-vis* the Triad MNEs.

C. India-Singapore as a Model for Indian PTAs?

The above analysis brings us to the question of the model India is likely to follow during future PTA negotiations. On one hand, the APTA and the SAFTA model can be quoted, where the trade liberalization was never broad-based in the true sense (though one can blame the political scenario in South Asia partly for the problems in SAFTA). The difference in the stages of development across member countries may also be thought of as one major underlying factor in this regard. On

the other hand, the Indo-Lanka PTA shows one interesting case, where the successful operation of the PTA in goods could not be used as leverage for extending the coalition to a CECA. Moreover, the geographical distance with Chile and MERCOSUR may be responsible for the delay in extending the RTA to a FTA, and subsequently to a CECA.

In this background, the Indo-Singapore CECA has been the most successful model agreement, which the Indian negotiators may refer to from time to time during future negotiations. This PTA is the most modern in nature (*i.e.*, going beyond trade in goods and even WTO negotiations, because since it includes services as well as investment). The agreement provides for investment liberalization commitments on the part of India on a positive list basis (*i.e.*, in sectors India expressly listed). This Indian initiative can be compared to the existing PTAs of the U.S., EU and Japan. It is perhaps not mere coincidence that shortly after conclusion of the Indo-Singapore CECA, the country entered into the CECA negotiations with Indonesia, Malaysia, and South Korea - the conclusion of the CEPA with South Korea is proof of the growing PTA negotiation confidence on India's part. The plea to engage Indonesia, Malaysia, and Singapore through CECA can also be considered as part of a long run Indian initiative to engage entire ASEAN market through CECA.

The recent events also show a tendency of shifting away from the Indian practice of entering into PTAs with only developing countries and LDCs, with increasing recognition of the services and investment part in India's greater vision of trade collaboration. The initiatives to enter into investment and technology related provisions with Australia, EU, and Japan can also be explained in this light.

CONCLUSION: THE WAY AHEAD

India's initial involvement in PTAs was merely a reaction to the slow progress of multilateralism, without any underlying intention to move towards Asian integration. Nonetheless, India's inclination towards PTAs inadvertently helped the integration process, as most of the Asian countries are currently eyeing the Indian market. India was initially interested only in opening trade in merchandise products and enhancing investment inflows, but it is now increasingly focusing on the need to include services as well as part of any integration exercise.¹⁵² In particular, liberalization of mode 4 of services¹⁵³ trade is an integral part of the negotiation exercise in which India is currently involved. Furthermore, India is also bringing

152. See DEBASHIS CHAKRABORTY & AMIR ULLAH KHAN, *THE WTO DEADLOCKED: UNDERSTANDING THE DYNAMICS OF INTERNATIONAL TRADE* 13-14 (Sage 2008).

153. GATS sets out four possible modes, or ways, in which services can be supplied between WTO Members. Mode 4 - the mode with the most direct implications for migration policy makers - is defined in Article I.2 (d) of GATS as being "the supply of a service... by a service supplier of one Member, through presence of natural persons of a Member in the territory of another Member." See Marion Panizzon, *Trade and Labour Migration: Developing Good Practices to Facilitate Labour Mobility*, 11 BRIDGES 3 (2007).

the issues of the environment and energy security to the table while discussing trade in goods and services with its possible PTA partners.¹⁵⁴

This deepening of the scope of regional trade agreements, observed during the last decade, was recently illustrated by the growing recourse to the notion of what is called "WTO Plus" agreements. In addition to the preferential nature of the free-trade agreement in the field of tariffs (as compared to MFN rights) and services (as compared to the proposals made within the WTO by States Parties to liberalize services markets), this type of agreement covers areas that are not, or only partially, regulated by WTO agreements.

It is amply clear that India has embarked on multiple strategies to develop an integrated trade and investment framework with other countries. In future negotiations, India is inclined to take up the CECA model in line with the Indo-Singapore experience wherever possible due to its potential gain in services sector. Though the Indo-Singapore CECA may function as a model agreement for India, a note of caution needs to be mentioned. The average applied tariff in the case of Singapore is close to zero, and as a result, securing market access there has been easy for India. Other countries with a positive tariff rate may not be as willing to reduce tariffs across the board, and may force India to provide additional concessions in return. For instance, the recently signed India-South Korea CEPA has competition policy related provisions, which India is not yet ready to negotiate at the multilateral level. India may be required to make similar concessions to Australia and EU, if a CECA is to be negotiated with these countries.

India's strategy is in strong contrast to that of China, which remains quite accommodating in multilateral forums while being aggressive in PTAs, especially with Asian countries. The major underlying objective behind China's move towards PTAs is to obtain wider acceptance of 'market economy' status given the high volume of anti-dumping actions it faces globally.¹⁵⁵ Also, China acts quite quickly in concluding PTA negotiations with faster times of implementation (such as in the case of the ASEAN-China FTA (ACFTA)). The negotiation of ACFTA began in late 2001, by 2002 it was signed and by 2006 all products under the Early Harvest Scheme (EHS) were expected to have zero tariffs. China is aggressively negotiating FTAs and showing their willingness to cut tariffs in a short span of time; expecting that partner countries will also replicate the strategy. Through this mode, China is willing to secure fast market access in partner countries as their traditional markets in the developed world (such as the U.S.) have gone into recession.

In contrast to China's policy, India has been quite vocal in the WTO forum, and has vigorously negotiated several issues - but in the case of PTAs, half-heartedness is apparent. The diversity of national agendas given the 153 member-strong WTO, has caused the multilateral negotiations to take an unusually long time, and negotiations on certain fronts have slowed down. India's focus on

154. See generally SACHIN CHATURVEDI, ENVIRONMENT ISSUES IN FREE TRADE AGREEMENTS IN ASIA AND THE POST-CANCUN CHALLENGES: ISSUES AND POLICY OPTIONS (2004).

155. See Chakraborty, *supra* note 148, at 78.

regionalism has always remained a second priority *vis-à-vis* multilateralism. It could be argued that India is taking the PTA route to reduce its MFN rate, which may be otherwise difficult politically. This move will place India in a comfortable position in the long run in multilateral negotiations. India cannot afford to abandon multilateralism as the EU and U.S. are still the major importers of its services export, as well as the leading sources of FDI inflow.