

Trade in Services: A Holistic Solution to New-Found Issues in Trade Law?

FOREWORD

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SITUATING INDIA'S MODE 4 COMMITMENTS IN GEOPOLITICS AND POLITICAL ECONOMY: THE CASE OF GATS 2000 PROPOSAL, INDIA-SINGAPORE CECA AND INDIA-ASEAN TIS

SUNANDA TEWARI* AND PRAKHAR BHARDWAJ†

India has always sought to exploit its export potential in 'Mode 4' of delivery of services involving the movement of natural persons. However, it has not been able to realise its offensive interest in Mode 4 services exports due to legal, economic, political, and geopolitical factors. This Article seeks to contextualise pivotal moments in the formulation of India's Mode 4 strategy by situating these negotiating stances against larger political and geopolitical phenomena. It focuses on India's ambitious proposal tabled in November 2000 which suggested comprehensive amendments to GATS and demanded significant changes in immigration and labour laws. Rather than viewing this proposal as a result of the growth in IT exports in 1995-2000, this Article argues that the proposal should be understood as a continuation of a process that started in the mid-1980s which involved the Indian state playing a more open and proactive role in the growth of the IT sector. The Article then shifts its focus to the chapter on Mode 4 in the India-Singapore Comprehensive Economic Cooperation Agreement. This chapter is contextualized by India's Look East Policy. It traces the economic and geopolitical factors that led to the negotiation of the free trade agreement and the overwhelming anti-immigration sentiment which ultimately led to its undoing. Lastly, the India-ASEAN Trade in Services Agreement is evaluated. While this agreement fulfilled the geopolitical ambitions of the Look East Policy, it failed to improve the level of services liberalisation set out in the GATS. We argue that the India-ASEAN

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Trade in Services Agreement demonstrates the costs of an excessive focus on geopolitics during the negotiation of free trade agreements.

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I. INTRODUCTION

The General Agreement on Trade in Services (GATS) provides for four modes of delivery of services.¹ Mode 1 refers to cross-border supply of service through digital medium or physical medium like courier;² Mode 2 represents consumption abroad, i.e., international tourists or students going to abroad to study; Mode 3 deals with commercial presence stipulating the conditions of establishment of an affiliate abroad, and lastly, Mode 4 involves supply of service 'through presence of natural persons' in the territory of the service-importing Member. This Article will focus on India's Mode 4 commitments. Mode 4 requires the movement of natural persons (MoNP) across borders – a classic example being engineers deputed by information technology (IT) consultancy companies to service clients at their offices overseas. India, with its abundance of skilled workers and its services-dominated economy,³ has always sought to exploit the export potential in Mode 4. India's focus on export of services is intrinsically linked to the performance of its IT sector. Computer services exports account for almost 70% of total services exports, while finance, travel, sea transport (freight), and business services account for the remaining percentage of exports.⁴ In 2017, India's services exports in the IT sector alone accounted for USD 52 billion, out of a total of USD 438 billion globally.⁵ Mode 4 exports accounted for 13% of all services exported in the IT sector.⁶ Naturally, India has always pushed for market access in Mode 4 to bolster the export potential of the IT sector in multilateral and bilateral trade fora.

India has, however, not been able to realise its offensive interest in Mode 4 services exports due to a variety of legal, economic, political, and geopolitical factors. Legalistic reasons include the design flaws in the GATS and the shallow nature of the commitments made in the GATS schedules by World Trade Organization (WTO) Members. As will be discussed below, the GATS only provides for the movement of senior or mid-management personnel, rather than regulating blue-collar workers. Further, it does not distinguish strictly between the temporary MoNP (which is within the purview of the GATS), and permanent migration, which is supposed to be the exclusive prerogative of the WTO Member.

¹ General Agreement on Trade in Services art. I.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 [hereinafter GATS].

² Distance learning or education services supplied through books and study material sent through courier or post.

³ DEP'T OF COM., MINISTRY OF COM. & INDUS., GOV'T OF INDIA, ANNUAL REPORT 2018-19 3 (2019).

⁴ Rahul Anand et al., *Make in India: Which Exports Can Drive the Next Wave of Growth?* 9 (IMF Working Paper, WP/15/119, May, 2015), <https://www.imf.org/external/pubs/ft/wp/2015/wp15119.pdf>.

⁵ WORLD TRADE ORG., WORLD TRADE REPORT 2019: THE FUTURE OF SERVICES TRADE 28 (2019).

⁶ *Id.*

Visa regulations and protectionist labour regulations, which are some of the most significant ‘stumbling blocks’ to Mode 4 liberalisation, do not form part of GATS disciplines. India’s trading partners also apprehend that its services exports will not meet their regulatory standards as India’s regulatory bodies governing key professions, such as chartered accountancy, nursing, and legal services have not entered into mutual recognition agreements with the professional bodies of other Members.⁷

Geopolitical factors and the political economy of trade policy in India have held back MoNP liberalisation, and have also influenced it in significant ways. Countries negotiating Mode 4 commitments with India have to account for the sharp reaction of dislocated labour due to the influx of Indian workers. Backlash from the ‘losers’ of globalisation is commonplace for all trade liberalising initiatives,⁸ however, such a reaction is sharper in the context of Mode 4 services because the ones ‘stealing’ the jobs,⁹ are not located in a foreign country, but rather working in the country importing services. In other words, the anxieties caused by influx of foreign workers go beyond the loss of employment. Communities in importing nations may also worry about the loss of cultural identity, spike in real estate prices, and crowded public utilities as a result of a large foreign population.¹⁰ The apprehension of such a pushback makes MoNP offers a ‘non-starter’ for many trading nations. It is these dynamics, perhaps much more than the economic impact of Mode 4 commitments that Indian negotiators have to contend with while pushing an offensive agenda for Mode 4.

The beneficiaries of Mode 4 liberalisation are also bound to be a few individuals, as Mode 4 covers classes of personnel in upper or mid-levels of management.¹¹ For India, these would be IT industry professionals who hold prestigious designations after having graduated from selective educational institutions. Mode 4’s explicit bias towards senior personnel favours the mobility of executives, managers and

⁷ See Simonetta Zarrilli, *Moving Professionals Beyond National Borders: Mutual Recognition Agreements and the GATS*, U.N. Conf. Trade & Dev., UNCTAD/DITC/TNCD/2005/2, 6 (Feb. 21, 2005), https://unctad.org/en/docs/ditctncd20052_en.pdf.

⁸ See generally Nicholas Lamp, *How Should We Think about the Winners and Losers from Globalization? Three Narratives and Their Implications for the Redesign of International Economic Agreements* (Queens Univ. Res. Paper Series, Research Paper No. 2018-02, Nov., 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3290590.

⁹ *Id.* at 9-10.

¹⁰ Kate Hodal, *Singapore Protest: ‘Unfamiliar Faces are Crowding Our Land’*, *GUARDIAN* (Feb. 15, 2013), <https://www.theguardian.com/world/2013/feb/15/singapore-crisis-immigration-financial-crisis>; AADITYA MATTOO ET AL., *A HANDBOOK OF INTERNATIONAL TRADE IN SERVICES* 480 (2007) [hereinafter Mattoo et al.].

¹¹ See Laura Ritchie Dawson, *Labour Mobility and the WTO: The Limits of GATS Mode 4*, 51(1) *INT’L MIGRATION* 12, 14 (2013).

specialists over blue-collar workers.¹² This makes Mode 4 liberalisation difficult to sell as a ‘victory’ to domestic stakeholders whenever trade agreements are subject to public debate. In the Indian context, projecting such liberalisation, which benefits well-qualified individuals may be perceived as ‘elitist’, or even antithetical to the working masses. This political dynamic can be further exacerbated if the MoNP commitments are traded for concessions in goods trade, such as agriculture, which can impact many resource-poor consumers in one sweep.¹³

Accordingly, Indian negotiators and policymakers navigate a complex terrain when they formulate strategies to negotiate Mode 4 commitments. The literature of Indian services trade is dominated by economists and has not attempted to delve into the geopolitical and political barriers to meaningful Mode 4 liberalisation.¹⁴ This article seeks to add to this formidable body of analysis by contextualising pivotal moments in the formulation of India’s Mode 4 strategy and situating these negotiating stances against larger political and geopolitical phenomena. The attempt here is not to ascribe motives to individuals in the policy process, but to explore factors external to the negotiation process that have influenced the shape and content of our Mode 4 negotiating stances. To do so, we have chosen three significant moments for different reasons.

In Part II, we focus on a comprehensive and ambitious proposal tabled by India in November 2000,¹⁵ which called for an overhaul of the GATS regime on MoNP and demanded significant changes in immigration and labour laws (GATS 2000 Proposal). The GATS 2000 Proposal served as the document defining India’s ‘wish list’ for Mode 4 commitments for many years to come. More significantly, it

¹² Mattoo et al., *supra* note 10, at 488 (“Of the 400 scheduled concessions recorded, 287 pertain to managers, executives, and specialists and only 69 refer to lower-skilled occupations ‘business seller’ or ‘other.’”).

¹³ Kritika Suneja, *India Awaits Offers on Easy Access to Professionals Across Borders*, ECON. TIMES (July 15, 2019), <https://economictimes.indiatimes.com/news/economy/foreign-trade/india-awaits-offers-on-easy-access-to-professionals-across-borders/articleshow/70220894.cms> (“India is likely to gain only USD 2-10 billion by exporting services to the pact and will not compensate for the higher amount of goods imports, one of the three government-appointed think tanks to study the pact, said.”).

¹⁴ See generally Pralok Gupta, *India’s Economic Integration in Services with ASEAN: From Bilateral FTAs to RCEP*, 1(2) J. ASIAN ECON. INTEGRATION 207, 216 (2019) [hereinafter Gupta]; Arpita Mukherjee, *Developing Countries and GATS Negotiations: The Case of India*, 5(2) GLOBAL ECON. J. 1, 2 (2005) [hereinafter Mukherjee]; Aaditya Mattoo, *Developing Countries in the New Round of GATS Negotiations: Towards a Pro-Active Role*, 23(4) WORLD ECON. 471, 477 (2000) [hereinafter Mattoo].

¹⁵ Council for Trade in Services, *Communication from India: Proposed Liberalization of Movement of Professionals under General Agreement on Trade in Services (GATS)*, WTO Doc. S/CSS/W/12 (Nov. 24, 2000) [hereinafter GATS 2000 Proposal].

was also emblematic of a tectonic shift in India's outlook on services trade. From being a staunch opposer to services liberalisation during the Uruguay Round of negotiations, India was now demanding services liberalisation through the strategy articulated in the GATS 2000 Proposal. Part III explores the explanations for the sea-change in India's outlook. Current literature suggests that this transformation should be attributed to India's impressive growth in IT exports from 1995-2000. We argue that the industry-orientation of the GATS 2000 Proposal should be viewed as a continuation of the Indian state playing a more open and proactive role in the growth of the IT sector, a process that started in the mid-1980s. To make this argument, we use the framework of 'embedded autonomy' developed by Peter Evans to evaluate the capabilities of the State, which in turn, determine the impact of the intervention by the State in the economy.

In Part IV, we analyse the MoNP chapter of the India-Singapore Comprehensive Economic Cooperation Agreement (India-Singapore CECA), in the backdrop of India's Look East Policy. The India-Singapore CECA is the gold standard for liberalisation of Mode 4 services and contains an impressive list of commitments which have yet to be surpassed by any other free trade agreement (FTA) negotiated by India. We argue, here, that economic factors and geopolitical imperatives motivated both countries to negotiate and formulate the India-Singapore CECA MoNP chapter. In this sense, it represented a 'win-win' scenario for the two countries at the time of signing. However, by 2011, the overwhelming anti-immigration sentiment and the Singapore government's populist response negated the Mode 4 commitments contained in the India-Singapore CECA. This experience represents the dominant influence of political reactions to Mode 4 in service-importing nations to the extent that populist politics can drown out legally articulated commitments to services liberalisation.

In Part V, we turn to the Trade in Services Agreement between the Association of Southeast Asian Nations (ASEAN) and India (India-ASEAN TiS), which failed to liberalise its Mode 4 export potential. The India-ASEAN TiS was principally motivated by India's Look East Policy, but its MoNP chapter fails to substantially improve upon GATS levels of commitments. This failure was exacerbated by the refusal of influential ASEAN members to even ratify the agreement. India's decision to sign the India-ASEAN TiS and the corresponding goods agreement due to geopolitical reasons led to vast levels of import surges. The India-ASEAN TiS demonstrates that viewing FTAs exclusively through the lens of geopolitics comes at a cost, especially when India fails to achieve Mode 4 liberalisation and simultaneously agrees to concessions in merchandise trade. Part VI concludes and draws parallels between the two FTAs discussed above and India's experience negotiating the Regional Comprehensive Economic Partnership (RCEP), the mega-FTA which was to be entered into by the ASEAN and its six trading

partners, namely, Japan, South Korea, the People's Republic of China, Australia, New Zealand, and India.

II. FROM THE URUGUAY ROUND TO GATS 2000: ARTICULATING INDIA'S OFFENSIVE INTERESTS IN SERVICES TRADE

A. *A brief overview of the Uruguay Round Negotiations on Mode 4 of the GATS*

India's opposition to the inclusion of services in the run-up to the Uruguay Round of negotiations is well-documented. For instance, in 1985, when twenty-five members of the Organisation for Economic Co-operation and Development (OECD) declared their willingness to launch negotiations in trade in services, it was opposed by a coalition of twenty-three developing countries, led by Brazil and India.¹⁶ Despite the consternations of developing countries that services disciplines would lead to loss of policy space, they were included in the agenda of negotiations in the Uruguay Round in September, 1986.¹⁷ More than the general apprehension about loss of autonomy in regulating services, India was concerned about the controls it could place on inward foreign investment, as services trade was dominated by multinational corporations headquartered in the European Union (EU) and the United States (US).¹⁸ These concerns also led developing countries to push for a 'positive list' approach to scheduling services commitments, rather than a 'negative list' approach, pushed by the US and the European Council (EC).¹⁹ It is important to note that India was the top recipient of workers' remittances in the world from 1990 to 1996.²⁰ Accordingly, it led a coalition of developing countries which supported broader coverage of the disciplines on MoNP. Developing countries have been reported to have transformed from 'reluctant participants' to

¹⁶ WTO: TRADE IN SERVICES, MAX PLANCK COMMENTARIES ON WORLD TRADE LAW 3 (Rudiger Wolfrum et al. eds., 2008) [hereinafter Wolfrum et al.].

¹⁷ *Id.* at 4, 5.

¹⁸ *Id.* at 7; ARVIND PANAGARIYA, INDIA: THE EMERGING GIANT 278 (2008) [hereinafter Panagariya].

¹⁹ Positive list of scheduling services commitments involves listing out the sectors where the WTO Member is accepting commitments. Sectors not listed are not subject to any services commitments whatsoever. On the other hand, the negative listing approach works on the understanding that only scheduled sectors are not subject to commitments – all other sectors which have not been listed are subject to all commitments. Generally, countries which are apprehensive of liberalising trade commitments prefer a positive listing approach, since it provides clear visibility on the commitments undertaken. *See* Wolfrum et al., *supra* note 16, at 7.

²⁰ Council for Trade in Services, *Presence of Natural Persons (Mode 4): Background Note by the Secretariat*, ¶ 20, WTO Doc. S/C/W/75 (Dec. 8, 1998) [hereinafter Secretariat Background Note].

'enthusiastic supporters' of a multilateral regime for services due to the structure of the GATS, which allowed them to autonomously decide their levels of commitment in different sectors.²¹

A few years after the entry into force of the Uruguay Round Agreements, it became clear that the GATS had failed to meaningfully liberalise the MoNP. This inadequacy had two aspects: *first*, the design flaws and definitional ambiguities built into the GATS and *second*, the commitments negotiated for Mode 4 which did not substantially improve market access for natural persons. The most glaring deficiency in the GATS architecture was its failure to distinguish between temporary and permanent migration. The GATS' Annex on MoNP states that the GATS shall not "apply to measures regarding citizenship, residence or *employment on a permanent basis*".²² However, the GATS does not define when employment in a foreign market should be considered to be 'permanent'. Rather than including a definition in the Annex, the negotiators of the GATS decided to leave the exact duration of stay to the discretion of the Members. Accordingly, each Member was entitled to prescribe the duration in their respective schedules of commitments.²³ These schedules also contained broad limitations on MoNP, such as general immigration legislation and labour market regulations, which were typically instituted to regulate labour with long-term contracts.²⁴ Consequently, stringent restrictions on immigration originally meant to regulate the permanent labour market – such as quotas and other visa conditionalities – also acted as trade barriers to temporary movement of labour. Another issue, perhaps less significant, was how Article I.2(d), GATS created an artificial distinction between services supplied as a contractor and as an employee. Article I.2(d) defines Mode 4 as 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".²⁵ The limited sectoral coverage of Mode 4 commitments and the horizontal limitations applicable to these commitments, however, were the most crucial shortcomings of the GATS.

²¹ Richard Self & B. K. Zutshi, *Temporary Entry to Natural Persons as Service Providers: Issues and Challenges in Further liberalization under the Current GATS Negotiations*, Presentation at the Joint WTO-World Bank Symposium on Movement of Natural Persons under the GATS 2 (Apr. 11-12, 2002) [hereinafter Self & Zutshi].

²² GATS, *supra* note 1, Annex on Movement on Natural Persons Supplying Services Under the Agreement.

²³ Self & Zutshi, *supra* note 21, at 8.

²⁴ Rupa Chanda, *Movement of Natural Persons and Trade in Services: Liberalising Temporary Movement of Labour under the GATS* 33 (Indian Council for Res. on Int'l Econ. Rel., Working Paper No. 51, 1999) [hereinafter Rupa Chanda ICRIER].

²⁵ GATS, *supra* note 1, art. I.2(d).

The WTO Secretariat, in its study on Mode 4 commitments, noted that they were generally unbound, and then qualified by liberalisation commitments applied to specific types of persons, movements, and stays.²⁶ Further, most of Mode 4 commitments were impliedly linked to Mode 3 (commercial presence). This link was established since one-third of the Mode 4 entries were dedicated to intra-corporate transferees (ICTs), which required the service-exporting countries to have a commercial presence in the service-importing nations.²⁷ No major trading nation has scheduled sector-specific commitments in Mode 4.²⁸ Rupa Chanda notes that the sectors which offered the most potential for Mode 4 exports, such as health, legal, and accountancy services, had not been scheduled by most Members. Wherever commitments had been scheduled, Members' obligations were subject to vague limitations such as length of stay, labour markets, and economic needs tests (ENTs).²⁹ ENTs permit entry to temporary workers only if there is an 'identified need' for them.³⁰ As Alan Winters has remarked, the 'ENT' loosely translates to the absence of a "domestic worker who would do the job".³¹ On its own, ENTs are vague and are subject to the discretion of different immigration authorities. For instance, Members have inserted ENTs such as labour market tests, needs tests, and "authorisation...subject to evidence of economic need" without any further specification as to what these tests entail. At a broader level, the lack of definition of jobs and skills also muddies the waters on facilitating the movement of natural persons.

B. India's Proposal for Liberalising Mode 4: The GATS 2000 Proposal

Article XIX of the GATS required successive negotiations for specific commitments to be launched no later than five years from the date of entry into force of the WTO Agreement.³² The legal mandate, coupled with the myriad issues plaguing the GATS, laid the perfect setting for proposals for reform, and India

²⁶ Secretariat Background Note, *supra* note 20, ¶ 6.

²⁷ *Id.* ¶ 7.

²⁸ Kasturi Das, *GATS 2000 Negotiations and India: Evolution and State of Play*, 41(6) J. WORLD TRADE 1185, 1190 [hereinafter Das].

²⁹ Rupa Chanda ICRIER, *supra* note 24, at 28.

³⁰ Mattoo, *supra* note 14, at 480 ("[R]equirements that employers take timely and significant steps to recruit and retain sufficient national workers in the specialty occupation and that no worker has been laid off for a certain period preceding and following the filing of any work permit or visa application."); For a deep dive into the scope of ENTs and how they are scheduled, see Org. Econ. Cooperation & Dev. [OECD], Working Party of the Trade Committee, *Assessing Barriers to Trade in Services the Scheduling of Economic Needs Test in the GATS: An Overview*, TD/TC/WP(2000)11/FINAL (Nov. 10, 2000).

³¹ Mattoo et al., *supra* note 10, at 523.

³² GATS, *supra* note 1, art. XIX.

presented a comprehensive and ambitious proposal in November, 2000.³³ In a rare instance of highly visible collaboration between the bureaucracy and external experts, the need for reform and the intent behind the proposal were elaborately explained in detailed academic papers in the preceding year.³⁴

At the outset, it must be noted that the GATS 2000 Proposal explicitly pitched the issue of Mode 4 liberalisation as an issue which was of ‘export interest to developing countries’.³⁵ This signified continuity from the Uruguay Round, where India positioned itself as a leader of developing country coalitions. It noted that horizontal commitments in Mode 4 were subject to more limitations than any other Mode and the bulk of commitments were for ICTs, with only three commitments being made for independent contract suppliers.³⁶ Mode 4 commitments were therefore linked to commercial presence rather than providing a separate avenue to export services. The GATS 2000 Proposal went on to make the familiar point that Mode 4 commitments did not cover most sectors and where they did, such commitments were subject to limitations.³⁷

The GATS 2000 Proposal also recognised three other limitations that went beyond the extent of scheduled commitments at the GATS:

- (i) Administrative Procedures: Issues related to visa conditionalities and administration, such as lack of separation between temporary and permanent movement of labour, wage parity requirements, quantitative limits on applicants, and lack of transferability of work permits were included.³⁸ Further, vague and undefined ENTs, local market tests, and management needs tests were also cited as barriers preventing free movement of labour.³⁹
- (ii) Recognition of Qualifications and Licensing Requirements: Developing countries had been kept outside the scope of mutual recognition agreements which provided a regime for recognition of professional qualifications.⁴⁰

³³ GATS 2000 Proposal, *supra* note 15.

³⁴ Rupa Chanda ICRIER, *supra* note 24, at 28; Rupa Chanda, *Movement of Natural Persons and the GATS*, 24(5) WORLD ECON. 631, (2001).

³⁵ GATS 2000 Proposal, *supra* note 15, ¶ 1.

³⁶ *Id.* ¶ 2.

³⁷ *Id.* ¶ 5.

³⁸ *Id.* ¶ 7-10.

³⁹ *Id.* ¶ 11.

⁴⁰ *Id.* ¶ 12-14.

- (iii) Payment of Social Security Taxes without Corresponding Benefits: Professionals from developing countries were required to pay for social security benefits even though the period of residence allowed by immigration rules restricted them from receiving those benefits.⁴¹

Therefore, the critique offered by the GATS 2000 Proposal provided a holistic perspective of the various trade barriers affecting trade in services. The strategies proposed to address these concerns were also multi-faceted and can broadly be divided into two buckets: (i) improving the structure of commitments; and (ii) removing existing limitations. Reforms for improving the structure of commitments included the following:

- (i) Horizontal Commitments: Specific inclusion of the category of ‘Individual Professionals’ to de-link Mode 3 from Mode 4 commitments. Further, relevant criteria for particular categories to be defined and definitions to be standardised across all commitments.⁴²
- (ii) Sectoral Commitments: Additional sectors where MoNP is important to be added to horizontal commitments with limitations and conditions clearly prescribed.⁴³
- (iii) Finer Classification of Categories: Each category of service providers to be disaggregated at a sectoral or sub-sectoral level by super-imposition of the International Standard Classification of Occupation (ISCO-88) on the WTO Services Sectoral Classification. For instance, the professionals in ‘engineering services’ and ‘integrated engineering services’ as per the WTO Services Sectoral Classification would be further disaggregated into civil engineers, electrical engineers, electronics and telecommunication engineers, mechanical engineers, etc. This would provide a level of detail which would allow service exporters certain degree of predictability with respect to services exports in the future.⁴⁴

Reforms aimed towards removal of existing limitations included the following:

- (i) Economic Needs Test: Rules to be instituted to reduce the scope of discriminatory practices in the use of ENTs and clear criteria to be prescribed for when such tests can be applied, specifying how the results of such tests would restrict the entry of foreign service providers.⁴⁵ It also proposed a Reference Paper which would form part of the GATS and

⁴¹ *Id.* ¶ 15-16.

⁴² *Id.* ¶ 17.

⁴³ *Id.*

⁴⁴ *Id.* ¶ 4.

⁴⁵ *Id.* ¶ 5.

address various aspects of ENTs such as its definition, criteria, procedure for application and contain guidelines for administration.⁴⁶

- (ii) Administrative Procedures Relating to Visas, Work Permits: Multilateral guidelines on transparent implementation of visa and work permit regime, and separation between temporary and permanent workers. This could be implemented through a 'GATS Visa'. The GATS 2000 Proposal also went a step ahead and suggested that the Schedules include strict timeframes for granting of visa, flexibility in visa on shorter notice, easier renewal and transfer procedures, etc.⁴⁷
- (iii) Norms to address Social Security Issues: Bilateral totalisation agreements to be entered into between Members to avoid excessive taxation of income.⁴⁸
- (iv) Strengthening GATS Norms and Disciplines: Strengthening the recognition of qualifications by implementing obligations and ensuring compliance under Article VII, GATS.⁴⁹

C. *Assessing the Significance of the GATS 2000 Proposal*

Even a brief perusal of the GATS 2000 Proposal reveals its ambition to address the difficulties faced by the Indian industry in accessing foreign markets. The GATS 2000 Proposal demanded fundamental changes to the way Mode 4 services were scheduled and proposed concrete solutions so that each step of the process could be cleared for professionals to work abroad. To separate permanent and temporary movement of labour, a 'GATS Visa' was proposed, and to add predictability for the use of ENTs, a reference paper was pitched. The GATS 2000 Proposal also sought to encroach upon the administration of immigration and taxation rules, both of which are areas prone to being politicised by lawmakers. Lastly, it sought to de-link Mode 3 and Mode 4 commitments in the most comprehensive manner possible, by emphasising the need to expand commitments to the categories of 'Independent Professionals' and 'Independent Contract Suppliers.'

To evaluate the importance of the GATS 2000 Proposal, we must look beyond what was proposed, and analyse what the proposal signified at two levels: *first*, in terms of the geopolitics of India's stances; and *second*, its impact on India's future

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 6.

⁴⁸ *Id.* ¶ 6.

⁴⁹ *Id.*

proposals in services liberalisation and Mode 4. For Das, it represented a “sea-change in the negotiating stance of India,” as India had transformed from a prime opponent of the inclusion of services in the Uruguay Round negotiations, to a proponent of services trade liberalisation.⁵⁰ This observation, while true, barely scratches the surface. The comprehensive nature of the GATS 2000 Proposal and its (justified) characterisation of Mode 4 as a developing country issue also signalled India’s intention to position itself as a leader of developing countries in the future. On some issues like the push for mutual recognition agreements, closely integrated developing countries such as the ASEAN Members potentially stood to gain more from India.⁵¹ However, the holistic framing of the GATS 2000 Proposal ensured that it served the interests of all countries with an export interest in Mode 4. In retrospect, the GATS 2000 Proposal was a sign of what was to follow – India’s leadership during the Doha Development Round, which was launched a few months after the GATS 2000 Proposal was tabled.

The GATS 2000 Proposal also had a lasting impact on India’s vision and strategy for liberalising Mode 4 services. Finalisation of a proposal requires many levels of approval within the Indian government. Within the Department of Commerce, which falls under the Ministry of Commerce and Industry (MoCI), any proposal is first vetted by officers till the imprimatur of the senior-most official, i.e., the Commerce Secretary, is received. This department predominantly focuses on the economic need and impact of an approval and its compliance with WTO rules. After this process, the Permanent Mission of India to the WTO evaluates the feasibility of the proposal from the perspective of geopolitics within the WTO, and the possibility of garnering support and forming coalitions. Naturally, then, any ambitious proposal like the GATS 2000 Proposal legitimised the demand for deep regulatory changes to realise offensive interests in export. It also served as an indication of the Indian government’s belief that its proposals would gain more traction if they were couched as ‘developing country issues’, rather than being simply premised on welfare gains made from liberalisation.⁵² This belief stood

⁵⁰ Das, *supra* note 28, at 1201.

⁵¹ The close integration of ASEAN countries is evidenced by six mutual recognition agreements concluded by the ASEAN from 2005-2014 in tourism and six regulated occupations: accounting, architecture, dentistry, engineering, medicine, and nursing. See DOVELYN RANNVEIG MENDOZA ET AL., ASIAN DEVELOPMENT BANK, REINVENTING MUTUAL RECOGNITION ARRANGEMENTS: LESSONS FROM INTERNATIONAL EXPERIENCES AND INSIGHTS FOR THE ASEAN REGION 1 (2017), <https://www.adb.org/sites/default/files/publication/224071/reinventing-mras-asean.pdf>.

⁵² For an example of a services proposal that focuses on economic gains from liberalisation, see Council for Trade in Services, *Communication from the United States: An Assessment of Services Trade and Liberalisation in the United States and Developing Economies*, WTO Doc. TN/S/W/12 (Mar. 31, 2003).

vindicated when almost all the elements of the proposal were reiterated by India,⁵³ and twelve other developing countries three years later.⁵⁴

The GATS 2000 Proposal also had a significant impact on India's approach to services chapters in FTAs. Multilaterally negotiating the principles set out in the proposal would have made Indian negotiators adept at handling common pitfalls and counter-arguments from trade partners. Further, multiple rounds of request-offer would have allowed them to scope out the extent of possible market access and familiarise themselves with trade complementarities between trading partners. The MoNP chapter of the India-Singapore CECA, which came into effect in 2005, was one instance of an FTA which operationalised many elements of the GATS 2000 Proposal. It contained an explicit prohibition on imposing ENTs or similar conditionalities on the entry of temporary workers.⁵⁵ Further, temporary workers were not required to make contributions to social security funds.⁵⁶ The chapter on Services contained an obligation for parties to negotiate and enter into mutual recognition agreements in the accounting and auditing, medical (doctors), dental, and nursing sectors within twelve months of the entry into force of the India-Singapore CECA.⁵⁷ In conclusion, the GATS 2000 Proposal had a lasting impact on India's strategy to garner support during multilateral negotiations and greatly influenced its wish list for negotiations at both bilateral and multilateral levels. In the next part, we seek to develop a context-driven understanding of this tectonic shift in India's negotiating stance.

III. SITUATING THE GATS 2000 PROPOSAL WITHIN BROADER POLITICAL AND ECONOMIC PHENOMENON IN NINETIES

The existing literature on the GATS 2000 Proposal discusses its causes and rationale only in passing. Such scholarship is predominantly authored by economists and focuses on the welfare gains to be realised from liberalising Mode 4 commitments. This part will seek to build on this pre-existing analysis. The

⁵³ Superimposition of International Labour Organization classification seemed to be missing and was not included in the Joint Communication on Mode 4.

⁵⁴ Council for Trade in Services, *Communication from Argentina, Bolivia, Chile, the People's Republic of China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Pakistan, Peru, Philippines and Thailand: Proposed Liberalisation of Mode 4 under GATS Negotiations*, WTO Doc. TN/S/W/14 (July 3, 2003) [hereinafter Joint Communication on Mode 4].

⁵⁵ Comprehensive Economic Cooperation Agreement, India-Sing., ch. 9, art. 9.3, ¶ 3, June 29, 2005, ENTERPRISE SING. (Singapore), https://www.enterprisesg.gov.sg/-/media/esg/files/non-financial-assistance/for-companies/free-trade-agreements/CECA_India/Legal_Text/Chapter9_Movement_of_Natural_Persons [hereinafter India-Singapore CECA].

⁵⁶ *Id.* ¶ 4.

⁵⁷ *Id.* ¶ 2.

outreach by the Ministry of Commerce to the industry also provides a window into the reasoning behind crafting an offensive strategy on Mode 4, i.e., the potential to trade off autonomous liberalisation in foreign investment in exchange for substantial liberalisation in Mode 4. After briefly covering the aforementioned rationales, we will situate the GATS 2000 Proposal within two broader changes in the political economy of India in the decade preceding the millennium. Specifically, we will explore how the industry-facing nature of the GATS 2000 Proposal must be viewed as a continuation of the increasing openness of the Indian state towards collaborating with the IT industry as a result of the building up of legal capacity in trade law issues after the Uruguay Round of negotiations.

A. The Economic Rationale for an Aggressive Stance on Mode 4

The economic explanation suggests that the GATS 2000 Proposal is a natural consequence of India's interest in the export of services and, specifically, the export of IT and IT-enabled services. In 1995, India ranked thirty-fourth and twenty-eighth among the WTO member countries in exports and imports of commercial services respectively, which improved to twenty-first for both exports and imports by 2003.⁵⁸ Software exports grew at a compounded annual growth rate of 50% from 1992-1993 to 1997-1998.⁵⁹ By 2000, India, along with Israel, was the largest software exporter among non-OECD countries, with exports increasing from negligible levels in 1985 to USD 4 billion in 2000.⁶⁰ In fact, in 1998-1999, 1999-2000, and 2000-2001, exports from software rose from 7.8% to 10.8% to peak at 14% of all merchandise and software exports. Further, services delivered through the movement of natural persons formed a significant chunk of these exports, with about 60% of exports occurring at the client's site overseas.⁶¹ The increase in services exports also coincided with a convergence of interest between the needs of developed countries for local availability of personnel, partially caused by an increasingly aging population.⁶² This was recognised by the US when its Senate cleared the way for an expansion of the number of visas for highly skilled foreigners by more than three thousand in the period between 1999 and 2001.⁶³ Therefore, as per such accounts, all these factors combined to form the perfect environment for an aggressive stance by India on Mode 4 liberalisation.

⁵⁸ Mukherjee, *supra* note 14, at 2.

⁵⁹ Mattoo, *supra* note 14, at 477.

⁶⁰ Balaji Parthasarathy, *India's Silicon Valley or Silicon Valley's India? Socially Embedding the Computer Software Industry in India*, 28(3) INT'L J. URB. REGIONAL RES. 664, 665 (2004) [hereinafter Parthasarathy].

⁶¹ Mattoo, *supra* note 14, at 478.

⁶² Joint Communication on Mode 4, *supra* note 54, ¶ 3.

⁶³ Secretariat Background Note, *supra* note 20, ¶ 8.

B. *The Possibility of Trading Away Autonomous Liberalisation for Mode 4 Commitments*

Referring to the change in Indian economic policy after the Uruguay Round, the Commerce & Industry Minister, stated in July, 2000 that “We have subsequently autonomously liberalised many sectors in tune with our own development needs and priorities. *We shall be seeking due credit for such autonomous liberalisation and in fact, we are permitted to do so*”.⁶⁴ While the boom in software exports provided an incentive to negotiate for the liberalisation of Mode 4 commitments, the autonomous relaxation of barriers to foreign direct investment (FDI) during the 1990s gave Indian negotiators plenty of negotiating chips to trade away for scheduled commitments in Mode 4. This aspect gains salience in light of the conservative nature of India’s Uruguay Round commitments (in terms of sectoral coverage and modes of delivery), even when these were compared to the liberalised regime prevalent in 1995.⁶⁵ This provided negotiators considerable leeway to negotiate Mode 3 commitments as agreeing to any scheduling commitments did not involve any change in Indian law, but only required the Indian government to be bound by conditions which would be more liberal than, or similar to, the conditions already prevailing in Indian law.

C. *Situating the GATS 2000 Proposal Within the Processes of Increasing Embeddedness and Liberalisation of the Indian State*

The GATS 2000 Proposal, which aimed at resolving the difficulties faced by Indian professionals, should be viewed in the backdrop of an increase in openness of the Indian state to collaborate with private enterprises in the IT sector in matters of policymaking. We single out the IT industry here because it was the only Indian industry in 2000 which was significantly engaged in Mode 4 services exports. While it is common now for reform proposals at the WTO to push for interests of exporters, this was unprecedented in India at that time. It was also preceded by a series of remarkable economic decisions taken by the Indian state from the mid-eighties to the 2000s, during which time the government played a proactive role in providing incentives, inducing investments, and consulting on policies with industry stalwarts. By 2000, India had departed from its approach of governing the IT sector in the early eighties, characterised by pervasive state

⁶⁴ *WTO Negotiations on Trade in Services: The Indian Perspective*, 12(4) INDIA & WTO: MONTHLY NEWSL., MINISTRY COM. & INDUS. (July-Aug., 2002), https://commerce.gov.in/publications/newsletter_jul_aug2002.htm#b1.

⁶⁵ Das, *supra* note 28, at 1191 (“On the whole, the UR commitments did not reflect the autonomous liberali[s]ation process, which started in India since the early 1990s. The wedge between the actual degree of openness in different sectors in India during that time and the corresponding GATS commitments clearly reflects the cautious approach adopted by the country during the UR.”).

control and hostility to transnational capital. Accordingly, the story of the GATS 2000 Proposal is inextricably linked to the success story of the IT sector in India, which involved state intervention and patronage.

The nineties also witnessed a gradual liberalisation and de-regulation of many sectors of the economy. Significant among them was India's recognition that exports could be used effectively to address balance of payment difficulties. This focus on exports encouraged the Indian state to utilise new tools to encourage particular service sectors, such as WTO reform proposals, which were simply not available in the pre-WTO era. Both these factors combined to ensure that the Indian state, which was now open to foreign trade and was willing to play a proactive role in the growth of the IT industry, could use the GATS 2000 Proposal as a means to encourage the development and expansion of the sector that would be the main benefactor of Mode 4 liberalisation. In this part, we will explore these themes further and show how they provide a strong contextual explanation for the GATS 2000 Proposal.

(i) 'Embedded Autonomy' and the Role of the State in Economic Development: An Overview

Before exploring a change in the nature of the role played by the Indian State in the economy throughout the nineties, it is important to revisit certain prominent conceptions of the role of States in the economy. Classical neoliberal economists believed in minimum state intervention in the economy due to a variety of reasons: the inefficiency of over-extended public sector companies, excessive focus on capital formation, and the incentivisation of inefficient production.⁶⁶ However, the developmental experiences of the Asian miracles of Taiwan, South Korea, Singapore, and Hong Kong and the active state interventions in these economies empirically refuted the argument for a modest role of the State.⁶⁷ This rejection of a neoliberal conception of State paved the way for an acknowledgement that states had a more substantive role to play in the development process.⁶⁸

One of the foremost thinkers in this line of inquiry, Peter Evans, argues that rather than focusing on *how much* states should intervene, it would be better to evaluate different *kinds* of state intervention and their effects on the economy.⁶⁹ The kind of state involvement is determined by the internal structure of the state, which is

⁶⁶ JAMES M. CYPHER & JAMES L. DIETZ, *THE PROCESS OF ECONOMIC DEVELOPMENT* 210–211 (3d ed. 2009) [hereinafter Cypher & Dietz].

⁶⁷ *Id.* at 219.

⁶⁸ *Id.*

⁶⁹ PETER EVANS, *EMBEDDED AUTONOMY: STATES & INDUSTRIAL TRANSFORMATION* 10 (1995) [hereinafter Evans].

further defined by the relationship between the industry and the state, the characteristics of bureaucracy, and the class composition of the particular state.⁷⁰ Peter Evans's robust theory on the role of the state in the economic development of nations is relevant here because of his focus on the IT industry as a case study to evaluate the developmental impacts of varying degrees of state intervention.⁷¹ Further, Evans's focus on the IT sector in India informs us of the approach of the Indian State towards the IT sector till the late-eighties.⁷² The use of Evans's framework by scholars like Parthasarathy to highlight the change in the approach towards regulation of the IT Industry from the 1990s to the early 2000s has also ensured the continuing relevance of this approach.⁷³

To illustrate the relationship between development impact and structural characteristics of a state, Evans constructs two extreme ideal-types of states: the 'predatory state', and the 'developmental state.' Predatory states extract resources at the expense of society and cannot prevent individual incumbents from using state resources to accumulate personal wealth. Political power is concentrated around the leader and a small clique of officials surrounding the leader, rather than being divided amongst different constituents and private actors. The defining characteristic of predatory states, for Evans, is the dearth of a well-functioning bureaucracy.⁷⁴

At the other end of the spectrum, 'developmental states' have a highly selective meritocratic recruitment and a career trajectory which creates a sense of commitment and coherence within the bureaucratic community.⁷⁵ The defining characteristic of this type of state is 'embedded autonomy.' Embeddedness implies a set of institutionalised channels through which the state apparatus and the private sector can continually interact in a constructive manner via a 'joint project' of fostering economic development.⁷⁶ However, continuous interaction with the industry poses the danger of policy capture by vested interests. Accordingly, embeddedness needs to be counterbalanced with 'autonomy,' i.e., a sense of

⁷⁰ *Id.*

⁷¹ *Id.* at 94-89 (Evans' rationale for choosing the IT sector as the main focus of his study).

⁷² *Id.* at 105-109.

⁷³ Parthasarathy, *supra* note 60, at 670.

⁷⁴ *Id.* at 248 ("Once Joseph Mobutu Sese Seko gained control over Zaire in 1965, he and his coterie within the Zairian state apparatus systematically looted Zaire's vast deposits of copper, cobalt, and diamonds, extracting vast personal fortunes visibly manifested not only in luxuriant life-styles at home but also in multiple European mansions and Swiss bank accounts of undetermined magnitudes. In return for their taxes, Zairians could not even count on their government to provide minimal infrastructure. After fifteen years of Mobutu's rule, the road net, for example, had 'simply disintegrated'.")

⁷⁵ *Id.* at 10.

⁷⁶ Cypher and Dietz, *supra* note 66, at 223.

loyalty, integrity, and cohesiveness within the state apparatus.⁷⁷ An autonomous state should be able to chart out its own vision for economic development through a highly competent group of state managers. Evans cites the example of Japan in the World War II period as an archetype of the developmental state.⁷⁸ The role of the Japanese state in inducing investments through credit guarantees, concessional financing, industrial licenses, and import licenses for foreign technology was central to the industrialisation of Japan during that period. These processes were ably executed by a powerful, talented, and prestige-laden economic bureaucracy, which consistently attracted top graduates from the top universities. Accounts of the success of the Japanese state also emphasised the informal ties that bound the bureaucracy together. One such binding force was the *gakubatsu*, i.e., the network amongst classmates at elite universities from where these officers were recruited.⁷⁹ This well-knit bureaucracy was also connected to industry representatives through ‘deliberation councils’ which served as forums for bureaucrats and businessmen to gather data and exchange policy ideas. These ties were solidified through the appointment of bureaucrats to influential positions in industry associations and corporations.⁸⁰

States that do not fall within the ideal-type categories of predatory and developmental states are classified by Evans as ‘intermediate states,’ and he cites Brazil and India as examples.⁸¹ While the intermediate state has ‘pockets of efficiency’ where the State is able to demonstrate competence in policy design and implementation jointly with the private sector,⁸² it does not exhibit the embedded autonomy of a developmental state. He considers India to be an intermediate state despite its venerable bureaucratic tradition in small part,⁸³ because the generalist education rewarded by the entrance examination does not prepare officers for their technical roles.⁸⁴ The greatest obstacles holding India back from being a developmental State, according to Evans, are the complex state-society relations and the insulation of the bureaucracy from private enterprise. He points to how the survival of different political coalitions depends on the manner in which they cater to two distinct and often antagonistic interest groups: the powerful rural land-owning class, and a highly concentrated set of industrial capitalists.⁸⁵ This leads to a

⁷⁷ *Id.* at 224.

⁷⁸ Evans, *supra* note 69, at 48.

⁷⁹ *Id.* at 49.

⁸⁰ *Id.* at 50.

⁸¹ *Id.* at 60.

⁸² Cypher and Dietz, *supra* note 66, at 224.

⁸³ Evans, *supra* note 69, at 66.

⁸⁴ *Id.* at 67.

⁸⁵ *Id.* at 68 (‘The shared interests of larger landowners and the millions of ‘bullock capitalists’ in the countryside give agrarian elites daunting political weight...At the same time, the large business houses like the Tatas and Birlas must be kept on board. They are

lack of coherence in policy and bureaucracy, as both cater to different interests simultaneously. Further, the Indian bureaucracy has no direct contact with entrepreneurs, either generally or in a specific sector, as is the case in developmental states.⁸⁶ The absence of a 'policy network' further exacerbates the problems created by generalist backgrounds of bureaucrats as it robs them of a crucial source of feedback and information.⁸⁷

Some of the key features of the Indian State summarised by Cypher and Dietz, when seen through the prism of being an intermediate state are as follows: "state authority is fragmented: intra-elite and elite-mass conflicts are pervasive...; relations between state and *capital are volatile – close at some moments, distant or confrontational* at others; and the state demonstrates moderate levels of professionalism among its bureau." With this theoretical outlook in mind, we can now trace the changing character of state intervention in the IT sector in the decades preceding the year 2000.

(ii) The Intermediate State and IT Industry till 1984: Autonomous, Ineffective with Low Levels of Embeddedness

Interventions in the fledgling IT sector were exclusively formulated and implemented by the State with little success till the mid-eighties. India first expressed interest in the development of the informatics industry in the 1960s, with the objective of achieving self-sufficiency in hardware and software products.⁸⁸ The need to indigenise software was primarily fuelled by a desire to be militarily-independent. In a move emblematic of the Indian State's opposition to transnational capital, it demanded that International Business Machines Corporation (IBM) and International Computers Limited (ICL), the only two multinational IT companies, reduce their foreign shareholding so that Indian citizens could take control.⁸⁹ After protracted negotiations, IBM shut its operations in the country. ICL, however, agreed to dilute its shareholding from being wholly foreign-owned to 40% and committed to assembling computers in India.⁹⁰

dependent on the state in many ways, but they are also the largest contributors to both the Congress party and the opposition. Since business houses and landowners share no 'encompassing' developmental project, the divided elite comes to the state in search of particularistic advantage. They comprise, in Bardhan's terms, a flabby and heterogeneous dominant coalition preoccupied in a spree of anarchical grabbing of public resources.".

⁸⁶ *Id.* at 69.

⁸⁷ *Id.*

⁸⁸ Joseph M. Grieco, *Between Dependency and Autonomy: India's Experience with the International Computer Industry*, 36(3) INT'L ORG. 609, 613 (1982).

⁸⁹ Jyoti Saraswati, *The Indian IT Industry and Neoliberalism: The Irony of a Mythology*, 29(6) THIRD WORLD Q. 1139, 1143 (2008) [hereinafter Saraswati].

⁹⁰ *Id.* at 1147.

In an attempt to harness mini-computer technology in the early 1970s, the Electronics Computers of India Limited (ECIL), an Indian public sector undertaking, was given the monopoly to manufacture mini-computers. However, ECIL failed to successfully manufacture these products due to the absence of an indigenous base in IT products, and its failure in accessing the knowledge gained by other public sector enterprises which were involved in defence contracts. Accordingly, the lack of cohesion amongst different public sector undertakings reduced the developmental impact of this policy. In 1972, the Government of India also launched a scheme to subsidise software exports which underperformed due to the logistical problem of export of software, as such export required developers to shift abroad temporarily. Therefore, this period witnessed policies which did not involve the private sector in its formulation and which could not ultimately be implemented by industrialists. The limited industrialisation that occurred in this period was by public sector undertakings. For instance, the Computer Maintenance Corporation was established in 1975 and serviced and maintained non-indigenous systems, such as IBM computers, with some success.⁹¹

(iii) The Intermediate State and the IT Industry Post-1984: Autonomous with Higher Levels of Embeddedness

The multiplicity of hardware manufacturers led to a rising demand for specific software products, which was met by Indian firms. Soon, the manufacturers of hardware started developing their own software, leading to a gradual concentration in software services.⁹² The 'New Computer Policy' launched by the Rajiv Gandhi government drastically reduced custom duties on software and hardware imports.⁹³ Further, IT was officially recognised as an industry, which led to increased investment into Indian companies. This marked a shift away from the earlier hostility to transnational capital and marked a phase, beginning before 1984, which saw a continuous increase in software exports.

Balaji Parthasarathy views the policy developments during this phase as the Indian state embedding itself in private capital by drawing on industry feedback and seeking to promote the IT industry more proactively.⁹⁴ The State frequently received inputs from the National Association for Software and Service Companies (NASSCOM) in formulating sectoral policies. The 1990s also saw the establishment of Software Technology Parks (STPs), which provided data

⁹¹ *Id.* at 1144.

⁹² Murali Patibandla et al., *Import Substitution with Free Trade: Case of India's Software Industry*, 35(15) *ECON. & POL. WKLY.* 1263, 1264 (Apr. 8-14, 2000) [hereinafter Patibandla et al.].

⁹³ Saraswati, *supra* note 89, at 1147.

⁹⁴ Parthasarathy, *supra* note 60, at 670.

communication facilities and standard operating procedures (SOPs) for export of services.⁹⁵

The decade of the 1990s saw an increase in outreach from the State to private capital in IT. Members of the NASSCOM were invited to many influential government committees constituted in the Department of Electronics, the Department of Telecommunication, the Ministry of Commerce, and the Ministry of Finance, leading to much-needed interaction between policy-makers and industry experts. Such forums also resulted in more benefits being extended to the IT sector, such as income tax exemptions on software exports.⁹⁶ In 1998, the Prime Minister established a National Task Force on IT and Software Development, with representatives from the government and the industry, to make recommendations to transform India into an 'IT superpower'.⁹⁷ The proclivity to collaborate with the industry was even more pronounced in the state of Karnataka, due to the concentration of IT majors in its capital, Bengaluru. In fact, the 'Bangalore Agenda Task Force,' instituted by the Karnataka government in November, 1999, was headed by the director of a leading IT blue-chip company to set the priorities for reforming the city.⁹⁸

As has been explained above, the IT industry was scaling new heights of success as an export powerhouse in the years preceding 2000. Accordingly, the Indian State transformed from a model of state-centric interventions that viewed private capital with suspicion, to a more open policy process that was proactive and took industry concerns into consideration. This increase in embeddedness of the Indian State in private capital normalised state-industry relations in a manner which was unheard of prior to the mid-eighties. Such a transformation in policy speaks to the Indian State's willingness to facilitate an exports powerhouse, even if it meant moving away from a state-centric economic development model which avoided interaction with private enterprises. In this context, the GATS 2000 Proposal can also be viewed as a product of the Indian State's patronage of the IT industry, and a result of India's embeddedness with private capital.

(iv) Liberalisation reforms and fledgling legal capacity as context for the GATS 2000 Proposal

The economic reforms that lasted from 1988 to 2006 saw drastic changes in the structure of the Indian economy. Successive ruling political coalitions revised

⁹⁵ Patibandla et al., *supra* note 92, at 1265.

⁹⁶ Parthasarathy, *supra* note 60, at 670.

⁹⁷ *Id.*

⁹⁸ Janaki Nair, *Singapore is Not Bangalore's Destiny*, 35(18) ECON. & POL. WKLY. 1512, 1512 (2000).

industrial policy to rationalise industrial licensing, import licensing, entry restrictions under the Monopoly and Restrictive Trade Practices Act of 1969, and reduced monopolies of the public sector.⁹⁹ Tariff rates for non-agricultural industrial goods decreased substantially, with top rates falling from 85% (1993-1994) to 50% (1995-1996) to 25% (2003-2004).¹⁰⁰ The foreign investment regime witnessed a complete overhaul. From a regulatory environment characterised by substantial government presence and pervasive conditionalities on investment, India switched to a 'negative list' approach whereby foreign investment was allowed unless there were specific restrictions or terms and conditions spelt out.¹⁰¹ These reforms successfully navigated India out of a balance of payments crisis and propelled the economy onto years of sustained high growth.¹⁰² What was remarkable about this phase from a political-economy perspective was that these incremental changes were brought about by different political parties with varying political ideologies. As Panagariya observes:

A remarkable feature of Phase IV (1988–2006), however, is that despite eight different prime ministers, from Rajiv Gandhi to Manmohan Singh, leading coalitions consisting of parties from far Left to far Right, the reform process kept moving forward. Differences among the prime ministers and parties were at best in terms of speed and emphasis...The reason for this steady progress lay in the consensus that had been building below the surface in the second half of the 1980s. While no politician wanted to overtly announce the failure of the inward-looking, anti-market policies, everyone now saw it, and some who were bold enough to at least quietly try a change of direction encountered relatively little resistance.¹⁰³

A compelling account of how these reforms were carried out despite political differences has recently been provided by Mr. Montek Singh Ahluwalia, who played a key role in his positions as Commerce Secretary, Finance Secretary and member of the Planning Commission.¹⁰⁴ The new policy outlook resulted in openness to utilising exports to meet the twin objectives of economic growth and foreign exchange liberalisation. The conclusion of the Uruguay Round meant that state interventions to liberalise the economy would have to operate within the

⁹⁹ Panagariya, *supra* note 18, at 103-105.

¹⁰⁰ *Id.* at 106.

¹⁰¹ *Id.* at 107.

¹⁰² MONTEK SINGH AHLUWALIA, BACKSTAGE: THE STORY BEHIND INDIA'S HIGH GROWTH YEARS 173 (2020) [hereinafter M. S. Ahluwalia].

¹⁰³ Panagariya, *supra* note 18, at 98.

¹⁰⁴ M. S. Ahluwalia, *supra* note 102, at 140-42.

framework of WTO rules. The WTO Agreements, therefore, demanded that the Indian State develop legal capacity to understand the implications of trading rules and exploit avenues to boost trade. The period preceding 2000 saw initial and formative steps in this direction. The Trade Policy Division was constituted in 1996 as a vertical dedicated to trade matters within the Department of Commerce and its staff strength was increased from nine to forty in a few years.¹⁰⁵ Simultaneously, the staff size of India's Permanent Mission to the WTO was also increased with the intention of having specialists on trade in both the capital and Geneva. In 1999, the MoCI also established the Centre for WTO Studies to conduct research on trade issues; act as a liaison between the MoCI, industry, and civil society; and assist in capacity building.¹⁰⁶ Collaboration between private lawyers and the government accelerated during the Doha Round, with different industry associations such as the Federation of Indian Chambers of Commerce and Industry (FICCI) and Confederation of Indian Industry (CII) providing regular inputs on negotiating dynamics in the round.¹⁰⁷ The Indian Council for Research on International Economic Relations (ICRIER), which was established in 1981, also provided inputs on issues relating to the global competitiveness of the Indian economy.¹⁰⁸ In this light, the specific collaboration between the Trade Policy Division and Dr. Rupa Chanda of the ICRIER on the GATS 2000 Proposal can be situated within the larger process of building India's legal capacity at the WTO, which was in turn a product of the post 1991 liberalisation reforms.

In sum, this part demonstrated how viewing the GATS 2000 Proposal against the larger economic processes informs us that its orientation towards the industry resulted from the culmination of increased embeddedness of the Indian state from the mid-eighties. Moreover, the utilisation of exports as a policy prescription gained widespread acceptance after the 1992 reforms, which led to collaboration between private individuals and the government after 1995, leading further to the formulation of the GATS 2000 Proposal.

IV. THE LOOK-EAST POLICY, ANTI-IMMIGRATION POPULISM AND THE INDIA-SINGAPORE CECA

In Part IV, we will evaluate the geopolitical factors affecting the architecture of Mode 4 commitments in the India-Singapore CECA and the populist reactions in

¹⁰⁵ Gregory Shaffer et al., *Equalizing Access to the WTO: How Indian Trade Lawyers Build State Capacity*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION 631, 641 (David B. Wilkins et al. eds., 2017).

¹⁰⁶ *Id.* at 643.

¹⁰⁷ *Id.* at 644.

¹⁰⁸ See *About ICRIER*, INDIAN COUNCIL RES. INT'L ECON. REL., <http://icrier.org/abouticrier/about-icrier/>.

Singapore, which impeded the eventual implementation of the India-Singapore MoNP chapter. In 2005, Indian Prime Minister Vajpayee indicated that signing an FTA with Singapore was a natural extension of India's 'Look East Policy' and a momentous step towards deeper economic integration with the ASEAN region.¹⁰⁹ This statement indicates the strategic importance of regionally integrating with the ASEAN region for India. While it is difficult to ascertain whether geopolitical or economic considerations take precedence in the decision to conclude an FTA, FTAs are usually considered to be 'a political decision with a varnish of economic rationale'.¹¹⁰ The EU and the US have both acknowledged the centrality of political considerations in their decision to negotiate FTAs.¹¹¹

In India, determining the influence of geopolitics in trade negotiations is a much more complex task. FTA negotiations are conducted in absolute secrecy. Further, unlike the EU, India is yet to release a statement which authoritatively states the factors guiding its decision to enter into an FTA. In this context, the only option available to commentators is to retrospectively evaluate the motivations influencing India during negotiations. This is admittedly sub-optimal because it takes negotiating outcomes to be an indication of initial negotiating objectives. With no visibility on the requests and offers made during negotiations, nor any knowledge of text-based negotiations, commentators are left with no other option. Further, even if it is assumed that an FTA is pursued for (mostly) geopolitical aims, the 'success' of an FTA becomes impossible to determine because such an exercise could potentially involve an assessment of whether unfavourable indicators of trade liberalisation (such as an import surge) could be counter-balanced against gains made in other areas, such as security pacts and cooperation agreements to combat terrorism. The uneasy relationship between geopolitics and economics has also influenced MoNP chapters in India's FTAs. Before exploring this impact, we first trace the evolution of the Look East Policy, which was an influential doctrine in relation to the India-Singapore CECA and the India-ASEAN TiS.

A. *The 'Look East Policy': A Brief Overview*

The eastward orientation of India's foreign policy, which eventually led to the Look East Policy, was a prominent feature of India's geopolitical outlook under the leadership of Prime Minister Rajiv Gandhi. Mr. Gandhi undertook various initiatives to facilitate Indian trade and commerce with East Asian economies. Policies such as 'one window clearance' were introduced with the twin objectives

¹⁰⁹ Chak Mun, *The Comprehensive Economic Cooperation Agreement - The Strategic Imperatives*, 10 SING. Y.B. INT'L L. & CONTRIBUTORS 233, 236 (2006).

¹¹⁰ Olivier Cattaneo, *The Political Economy of FTAs*, in BILATERAL AND REGIONAL TRADE AGREEMENTS 28, 37 (Simon Lester & Bryan Mercurio eds., 2009).

¹¹¹ *Id.* at 30.

of attracting investments into India and promoting economic engagement with eastern countries. India encouraged agreements for economic cooperation, avoidance of double taxation, investment, and promotion of research in the fields of energy, science, and IT.¹¹² Accordingly, before the explicit formulation of the Look East Policy, there existed a general alignment towards Southeast Asian countries that aimed at increasing FDI and exploiting the strategic advantages of maintaining close ties within the sub-continent.

The end of the Cold War in 1991 had dramatically changed geopolitics and brought a sense of urgency to India's eastward orientation. India had to grapple with the collapse of the Soviet Union, a major ally,¹¹³ and the dominance of a China-born alliance in South-Asia under the leadership of Deng Xiaoping.¹¹⁴ The first five years of that decade were marked by China's aggressive pursuit of regional economic alliances and the rise of 'East Asian Tiger Economies',¹¹⁵ leading to apprehensions of India being side-lined in the region.¹¹⁶ The severe balance of payment crisis brewing from the late eighties pushed the Indian economy towards liberalisation. These factors led Prime Minister P.V. Narsimha Rao to explicitly formulate India's 'Look East Policy' in 1994,¹¹⁷ which required India to focus its economic and political strategy towards the rapidly-growing economies of Southeast Asia. In doing so, India sought to correct its historic mistake of aligning its foreign policy with the Great Powers. In furtherance of this policy, in 1996, India became a dialogue partner with the ASEAN and joined the ASEAN Regional Forum.¹¹⁸

For much of the decade since becoming a dialogue partner with the ASEAN, there were no concrete results on the economic front.¹¹⁹ This could be attributed to the 1997 ASEAN economic crisis and India's decision to prioritise socio-political and security issues like maritime security, terrorism, and the enhancement of its nuclear

¹¹² S. D. Muni, *India's Look East Policy: The Strategic Dimension* 9 (Inst. of South-Asian Stud., Working Paper No. 121, 2011) [hereinafter Muni].

¹¹³ Thongkhohal Haokip, *India's Look East Policy: Its Evolution and Approach*, 18(2) S. ASIAN SURV. 239, 245 (2011) [hereinafter Haokip].

¹¹⁴ K. V. Kesavan, *India's 'Act East' Policy and Regional Cooperation*, OBSERVER RES. FOUND. (Feb. 14, 2020), <https://www.orfonline.org/expert-speak/indias-act-east-policy-and-regional-cooperation-61375/>.

¹¹⁵ Haokip, *supra* note 113, at 240.

¹¹⁶ Muni, *supra* note 112, at 8.

¹¹⁷ Commonly referred to as the fourth wave of Look East Policy adopted by India. See Muni, *supra* note 112, at 8.

¹¹⁸ Rajiv Sikri, *India's "Look East" Policy*, 16(1) ASIA-PAC. REV. 131, 133 (2009) [hereinafter Sikri].

¹¹⁹ Sultan Shahin, *India's 'Look East' Policy Pays Off*, GLOB. POL'Y F. (Oct. 11, 2003), <https://www.globalpolicy.org/component/content/article/162/27908.html>.

power in the region.¹²⁰ In 2003, India expanded its vision of the Look East Policy to include larger economies of Southeast Asia like China, Singapore, Korea and Japan.¹²¹ The impasse at the Doha Development Round and the explosion of regional trade agreements,¹²² made FTAs a natural means to implement the Look East Policy. India aggressively started courting FTAs with Southeast Asian countries. It also strengthened its bilateral links with Sri Lanka and the India-Sri Lanka FTA came into force in 2000. By 2003, India had secured a Comprehensive Economic Cooperation Framework Agreement with the ASEAN,¹²³ on the basis of which trade agreements in goods, services, and investment were to materialise. Additionally, India signed the South Asian FTA with the least developed nations in South Asia (Nepal, Bhutan, Bangladesh, Maldives) in 2004,¹²⁴ followed by the framework agreement of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) in the same year.¹²⁵

Therefore, the Look East Policy was the geopolitical imperative behind India entering into negotiations with the ASEAN, Singapore, and other Southeast Asian nations. While the Look East Policy served as a normative framework to guide the Indian State in choosing the States it wished to start negotiations with, it is not clear how the doctrine interacted with redlines and must-haves during negotiations. For instance, let us assume that IT sector exports in Mode 1 and Mode 4 are India's must-haves. Further, suppose that Thailand is resisting granting market access to India's IT service exports. In such a scenario, could India walk away from negotiations with Thailand, which would otherwise fulfil elements of the Look East Policy? In other words, if geopolitics required an FTA to be signed, was the negation of a trade interest a fair price to pay for the fulfilment of larger geopolitical goals?

The perplexing relationship between geopolitical and trade interests also manifests in different ways through which strategic scholars and trade policymakers look at

¹²⁰ *Id.*

¹²¹ Haokip, *supra* note 113, at 250.

¹²² Sikri, *supra* note 118, at 132.

¹²³ Ministry of Comm. & Indus., Gov't of India, *ASEAN-India: Trade in Goods Agreement*, PRESS INFO. BUREAU (Jan. 19, 2010), <https://pib.gov.in/newsite/erelcontent.aspx?relid=57077> (During the 9th ASEAN Summit and 7th ASEAN + 3 Summit in Bali, "India and ASEAN [Countries] signed a Framework Agreement or Comprehensive Economic Cooperation Agreement on October 8, 2003").

¹²⁴ Afghanistan became a member of South Asian Association for Regional Cooperation (SAARC) in 2011.

¹²⁵ Muni, *supra* note 112, at 16; See Kshetrimayum Ranjan Singh & Ch. Ghanajit Singh, *Look East Policy: India's Motive and Opportunities & Threats Ahead*, 11(4) ASIAN J. RES. BUS. ECON. & MGMT. 165, 166 (2014).

increased trade between nations. Hailing the success of the Look East Policy, S. D. Muni notes that “India’s trade with ASEAN has *grown impressively* since the pursuance of the [Look East Policy] – from US\$ 2.3 billion in 1991-92 to US\$ 45.34 billion in 2008-09”.¹²⁶ The same trade flows, when analysed by the NITI Aayog (the Indian government’s primer policy think-tank), led to the conclusion that the trade agreement with the ASEAN had resulted in trade deficits and a rapid increase in imports.¹²⁷ Resolving this difference of opinion will require a much more detailed discussion on the correct benchmarks to assess the success of an FTA. However, what is clear is that a doctrine such as the Look East Policy (or perhaps any doctrine prescribing a geopolitical alignment) cannot possess the analytical rigor required to guide negotiators during the process of finalising an FTA.

If geopolitics demands that an FTA be entered into, and Indian negotiators cannot walk away from the deliberations, then geopolitical doctrines functionally push negotiators to accept outcomes that they otherwise would not have in a depoliticised negotiating environment. Within such a framework, even large overarching doctrines such as the Look East Policy can impact the specifics of an MoNP chapter. Whether geopolitics actually has a constraining impact will depend on whether the negotiators are able to achieve a fair bargain without the threat to abandon negotiations. In the next sub-part, we explore the impact of the Look East Policy on the India-Singapore CECA. We argue that due to a general alignment of interests in services trade, India and Singapore were able to agree on textual provisions which represented a ‘win-win’ for both parties. Therefore, the Look East Policy does not seem to have had a negative impact on India’s negotiating capacity, but it may have influenced how India evaluated its response to alleged violations by Singapore of the MoNP chapter. As we will see in Part V, India’s experience with the India-ASEAN TiS and the impact of the Look East Policy on that trade agreement were markedly different.

B. *The India-Singapore CECA: Alignment of India and Singapore’s Interest as Context*

With the India-Singapore CECA, India took a momentous step towards capitalising on its growing trade in services and assumed obligations relating to investment protection, harmonisation, and mutual recognition of standards and certifications. In effect, the India-Singapore CECA symbolised the first ‘New Age FTA’ entered into by India. This is also sometimes referred to as the first step towards India’s Look East Policy, and an eventual gateway for better integration

¹²⁶ Muni, *supra* note 112, at 18.

¹²⁷ See V. K. Saraswat et al., *A Note on Free Trade Agreements and Their Costs*, NITI AAYOG: NAT’L INST. TRANSFORMING INDIA 9, https://niti.gov.in/writereaddata/files/document_publication/FTA-NITI-FINAL.pdf.

with the ASEAN region. The India-Singapore CECA was incentivised by the continuous growth of India's service sector in the two decades preceding it as a result of post-reform initiatives.¹²⁸

Till the early 2000s, India had focused on merchandise trade under its FTAs. However, it could not do so with Singapore. India's tariffs were bound at levels much higher than those of Singapore, thus minimising the scope of any meaningful negotiation and liberalisation in trade in goods. However, this provided an opportunity to capitalise on trade in services as the service sector formed a significant portion of Gross Domestic Product (GDP) in both countries.¹²⁹ Singapore, as a country, had an open market dependent on trade and FDI, and was looking for opportunities to enter a protected economy like India.¹³⁰ On the other hand, Indian companies, especially belonging to the IT sector, the banking sector, and the health sector were looking to invest in the Singaporean market to enhance their global footprint.

C. *The India-Singapore CECA: India's Gold Standard for MoNP Liberalisation*

Both countries were able to achieve substantial liberalisation compared to the GATS. Singapore offered India commitments in nine out of twelve service sectors under the Central Product Classification (CPC).¹³¹ In terms of movement of skilled labour, the Singaporean market's need for skilled professionals benefited India.¹³² Thus, under this CECA, India was able to fully capitalise its comparative advantage in providing competitive, cheap, and skilled labour. Indian negotiators stressed on reciprocity and mutual economic benefits. They traded reduced tariffs in goods

¹²⁸ Amitendu Palit, *India-Singapore Trade Relations 3* (Inst. of South Asian Stud., Working Paper No. 46, June, 2008), https://www.isas.nus.edu.sg/wp-content/uploads/media/isas_papers/46.pdf (Trade in Services between India and Singapore grew manifold after India's liberalisation of its economy in 1990s. In the early nineties, the trade between the two countries stood at around USD 977.5 million and increase by 13.7%, in mid-nineties, where the trade stood around USD 1.9 billion. In the early 2000s, the trade saw substantial increase by 38.7% and stood at around close to USD 2.3 billion).

¹²⁹ Arpita Mukherjee et al., *India - Singapore Trade in Services: Enhancing Co-operation 3-4* (Indian Council for Res. on Int'l Econ. Rel., Working Paper No. 98, Mar., 2003), <https://icrier.org/pdf/WP98.pdf>.

¹³⁰ V. S. Seshadri, *India - Singapore CECA: An Appraisal*, RES. & INFO. SYS. DEVELOPING COUNTRIES 61 (2017), https://www.ris.org.in/sites/default/files/INDIA_SINGAPORE_CECA.pdf [hereinafter Seshadri].

¹³¹ *Id.* at 62 (Singapore undertook major commitments in almost all service sectors, except educational services and environment services).

¹³² *Id.*

with flow of Indian professionals in Singaporean market based on mutual recognition of professional qualifications.¹³³

The India-Singapore CECA made considerable headway towards liberalisation of Mode 4 services. Around 127 professionals belonging to the IT sector, the health industry, dentists, botanists, zoologists, accountants, university teachers, etc. have been covered.¹³⁴ As a result, visa restrictions and entry barriers to access the Singaporean market have significantly reduced. Professionals under the CECA are only required to produce a 'work contract' or 'letter of contract' from the party engaging their services, which has significantly eased the process of gaining access to the temporary employment market.

The biggest achievement of the India-Singapore CECA was the abolition of any kind of ENT or labour market test as a condition for entry of professionals. The agreement addressed one of the biggest restrictions to MoNP by prescribing that Indian service providers were not required to have salary packages in accordance with the prevailing payment package for that particular service sector.¹³⁵ Further, temporary service providers were not required to make any contributions towards the social security funds of the host country.¹³⁶ The India-Singapore CECA also implied inter-firm mobility. The commitments were silent on whether a professional under the CECA was to mandatorily return to India after the expiry of his/her one-year contract. It was possible for professionals to negotiate another contract before expiry and there was no cap on the renewability of such contracts.

Further, the India-Singapore CECA provided market access for Indian companies to set up a commercial presence (Mode 3) in areas like IT, banking etc.¹³⁷ This resulted in further liberalisation of Mode 4, as border restrictions were considerably reduced for the categories of natural persons that were linked to Mode 3, i.e., Business Visitors (BVs) and Indian managers (ICTs). The agreement provided for very liberal commitments concerning entry and stay of ICTs from India to Singapore and prohibited the application of ENTs or labour market tests for this category of professionals as well.¹³⁸ Further, the CECA eliminated any quota requirements imposed on these transferees, meaning that an Indian

¹³³ *Id.* at 237.

¹³⁴ India-Singapore CECA, *supra* note 55, at annex 9A; *See* Muni *supra* note 112, at 64; *See also* P. K. Sudarsan, *Movement of Natural Persons and Free Trade Agreements: India's Prospects*, 4(1) J. INT'L ECON. 63, 69 (2013).

¹³⁵ *Id.* at 69; *See also* Seshadri, *supra* note 130, at 64.

¹³⁶ Seshadri, *supra* note 130, at 64.

¹³⁷ India-Singapore CECA, *supra* note 55, at annex 7B, Singapore's Schedule of Specific Commitments (For example, see Computer-Related services, wherein under Mode 3, Singapore has taken "none" as commitment).

¹³⁸ India-Singapore CECA, *supra* note 55, at art. 9.2.

company based in Singapore would not be required to give preference to Singaporean citizens for employment. Such Indian companies could hire Indian managers, executives, and professionals for their effective operations in Singapore. Lastly, the CECA allowed such ICTs to bring their spouses or dependents along with them and contained provisions which enabled such spouses or dependents to work in Singapore.¹³⁹ Set out below is a table comparing the level of liberalisation achieved in the GATS and the India-Singapore CECA with respect to different categories of professionals:

Table 1: The levels of liberalisation achieved in the GATS and the India-Singapore CECA with respect to different categories of professionals

#	Category of Natural Persons	GATS	India-Singapore CECA
1.	ICTs	Entry is limited to a three-year period that may be extended for up to two additional years, for a total term not exceeding five years.	Initial period of up to two years or the period of the contract, whichever is less. The period of stay may be extended for a period of up to three years at a time, for a total term not exceeding eight years.
(a)	Managers		
(b)	Executives		
(c)	Specialists		
2.	BVs	X	Those who are holders of five-year multiple journey visas will be permitted to enter and engage in business activities.
3.	Short-term Service Suppliers	X	Temporary entry to service their contracts for an initial period of up to ninety days
4.	Professionals	X	Those engaged in the 127 specified occupations will be allowed entry and stay for up to one year or the duration of contract, whichever is

¹³⁹ *Id.* at art. 9.6.

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Source: Authors

Therefore, the Look East Policy motivated India to negotiate an FTA with Singapore. Due to complimentary service trade interests between India and Singapore, and the unfeasibility of negotiating goods liberalisation, both parties were able to negotiate Mode 1 and Mode 4 commitments, which were ambitious and comprehensive.

D. Populist Backlash to MoNP Liberalisation and India's Response

Before both parties could fulfil their obligations under the MoNP chapter, a growing resentment against foreign workers took centre-stage in Singapore's electoral politics. The political opposition and the protesters believed that the Singaporean Prime Minister Lee had betrayed Singapore.¹⁴⁰ Chapter 9 (Temporary MoNP) of the India-Singapore CECA was at the heart of this Singaporean backlash.¹⁴¹ The influx of Indian professionals was blamed for the increase in Singapore's unemployment rate. Consequently, Singapore gradually started implementing measures to restrict the entry of Indian service providers.¹⁴² In 2014, Indian IT companies were placed on a watchlist under the 'Fair Consideration Framework', which was introduced by Singapore's Ministry of Manpower to ensure that Singaporean citizens were given preference in employment. This also led to detailed scrutinization of 'employment passes' required by professionals, managers, and executives to work in Singapore, eventually leading to a majority of them being denied or rejected.¹⁴³ The number of Indian service providers given

¹⁴⁰ See Jewel Stolarчук, *CECA Thrust Back into Spotlight in the Wake of Viral Incident Involving Indian J.P. Morgan Employee*, THE INDEPENDENT (Oct. 30, 2019), <http://theindependent.sg/ceca-thrust-back-into-the-spotlight-in-the-wake-of-viral-incident-involving-indian-j-p-morgan-employee/> (The controversy became more pronounced when Prime Minister Lee's predecessor Goh Chok Tang issued a statement crediting himself for starting the "India - Fever" and pushing for bilateral free - trade agreement during his prime ministership).

¹⁴¹ Sunanda K. Datta-Ray, *CECA-based Influx of Indians in Singapore Piques Locals*, FREEPRESS J. (Dec. 14, 2019), <https://www.freepressjournal.in/analysis/ceca-based-influx-of-indians-in-singapore-piques-locals>; See also Sunanda K. Datta-Ray, *Burden of the Other*, TELEGRAPH (Dec. 14, 2019), <https://www.telegraphindia.com/opinion/burden-of-the-other/cid/1726558>.

¹⁴² Seshadri, *supra* note 130, at 66.

¹⁴³ Kenneth Cheng, *On MOM Watch List: 350 Companies which Unfairly Hire Foreigners Over Singaporeans*, TODAY SINGAPORE (Mar. 5, 2019),

employment passes dwindled to 13.54% in 2015 from 14.6% in 2011.¹⁴⁴ Singapore's Ministry of Manpower also increased the minimum salary threshold as an eligibility to apply for a work permit in Singapore.¹⁴⁵ MoNP for the IT and banking sectors were the worst affected.

India has been in continuous dialogue with Singapore to address their Fair Consideration Framework, as it effectively acts as an ENT, which is explicitly prohibited under the CECA. Singapore has not been receptive to such dialogue and maintains that such measures are compliant with their obligations under the India-Singapore CECA. A cynical but accurate conclusion of the India-Singapore CECA can be that given the political sensitivity of Mode 4, even an FTA with meaningful commitments cannot ensure its continued liberalisation.¹⁴⁶ On the other hand, Indian IT companies exploiting the relaxed terms of the India-Singapore CECA cannot be ruled out as well.

The India-Singapore CECA was a sobering experience for Indian trade policymakers. After achieving remarkable liberalisation in cross-border movement of Indian service suppliers, it had to combat increasingly protectionist measures. At home, Indian industries showed their displeasure against the Singaporean actions. The NASSCOM also officially stated that the measures adopted by Singapore were against the spirit of India-Singapore CECA.¹⁴⁷ The Government of India has since engaged in meaningful dialogues with its Singaporean counterparts to resolve this issue amicably. India wants to achieve a permanent solution and has included this as a priority under the third review of India-Singapore CECA.¹⁴⁸

India seems to be placing its hope on an amicable resolution of the differences with Singapore during consultation. It has refrained from filing a dispute under the India-Singapore CECA, even though India has a strong case, given the

<https://www.todayonline.com/singapore/On-mom-watch-list-350-companies-unfairly-hire-foreigners-over-Singaporeans>.

¹⁴⁴ Seshadri, *supra* note 130, at 67.

¹⁴⁵ Neha Alawadhi, *Singapore Adds to Indian IT Sector's Woes by Keeping Work Permits on Hold*, ECON. TIMES (Apr. 4, 2017), <https://tech.economictimes.indiatimes.com/news/corporate/singapore-adds-to-indian-it-sectors-woes-by-keeping-work-permits-on-hold/58001691>.

¹⁴⁶ The Online Citizen Correspondent, *Chan Didn't Disclose that There is No Economic Needs Test or Quotas on Agreed Services under CECA*, ONLINE CITIZEN (Nov. 11, 2019), <https://www.theonlinecitizen.com/2019/11/11/chan-didnt-disclose-that-there-is-no-economic-needs-test-or-quotas-on-agreed-services-under-ceca/>.

¹⁴⁷ Asit Ranjan Mishra, *India, Singapore Conclude Second Review of Trade Pact*, LIVEMINT (June 27, 2018), <https://www.livemint.com/Politics/nLYauYcmQzG4JIXFY1UNjK/India-Singapore-conclude-second-review-of-trade-pact.html> [hereinafter Mishra].

¹⁴⁸ *Id.*

unequivocal prohibition on ENTs. From the viewpoint of geopolitics, one can argue that resorting to dispute settlement with an influential nation in Southeast Asia does not bode well for the Look East Policy. Perhaps, if the India-Singapore CECA was framed as a 'trade deal' between two nations seeking to exploit their comparative advantage, it would have been easier to initiate disputes on alleged violations. While it is difficult to ascribe motives to the choice of relying on negotiations over third-party adjudication, there are a variety of reasons that can provide possible explanations other than a focus on the Look East Policy. The number of disputes filed under FTAs is still miniscule compared to the number of FTAs entered into between different nations, pointing to a preference between nations to avoid inter-se disputes. Further, given the lack of detailed rules regarding panel procedures, it is doubtful whether dispute settlement under the India-Singapore CECA is even possible. India may fear retaliatory disputes over Indian policies that may be non-compliant with the terms of the FTA, or worse, Indian trade policymakers may be apprehending increased barriers to the movement of Indian professionals. In this regard, in 2014, Prime Minister Modi, at the India - ASEAN summit in Myanmar unveiled the new version of Look East Policy which was dubbed as the 'Act Asia Policy'.¹⁴⁹ The modified policy emphasised an action-oriented outlook towards the ASEAN countries and a wider integration with East Asia.¹⁵⁰ Consequently, India has enhanced its bilateral ties with Singapore and has actively been engaging in talks to resolve the issues surrounding movement of Indian professionals to Singapore,¹⁵¹ and deepen cooperation in areas such as technology, maritime logistics, and joint naval exercises.¹⁵²

At a broader level, the experience with the India-Singapore CECA certainly changes the range of negotiating outcomes that can be considered realistic and achievable by India. If a nation such as Singapore, which is highly open to investment, trade, and professionals, could not sustain the inflow of Indian

¹⁴⁹ *Opening Statement by Prime Minister at the 12th India-ASEAN Summit, Nay Pyi Taw, Myanmar*, MINISTRY EXTERNAL AFF. (Nov. 12, 2014), <http://mea.gov.in/aseanindia/SpeechStatementASEM.htm?dtl/22566/Opening+Statement+by+Prime+Minister+at+the+12th+IndiaASEAN+Summit+Nay+Pyi+Taw+Myanmar>.

¹⁵⁰ *Id.*

¹⁵¹ See Press Trust of India, *India, Singapore Ink Protocol to Amend CECA; to Boost Bilateral Ties*, TIMES OF INDIA (Aug. 24, 2018), <https://timesofindia.indiatimes.com/india/india-singapore-ink-protocol-to-amend-ceca-to-boost-bilateral-trade/articleshow/65533647.cms>; See also Mishra, *supra* note 147.

¹⁵² Press Trust of India, *India - Singapore to Upgrade Comprehensive Economic Cooperation Agreement*, ECON. TIMES (June 1, 2018), <https://economictimes.indiatimes.com/news/economy/foreign-trade/india-singapore-to-upgrade-trade-cooperation-pact/articleshow/64411799.cms>.

workers, what can smaller economies be expected to do? While no country has explicitly adopted this phrasing of the issue, the fact that no other Indian FTA has been able to match or surpass the amount of liberalisation achieved under the India-Singapore CECA affirms this view.¹⁵³ Further, even if skilful negotiators are able to achieve such an outcome, it is foolish to think that any political leader will uphold the obligations to trade agreements at the risk of suffering the wrath of anti-immigrant populist movements. The inevitability of domestic political considerations dominating the fate of Mode 4 liberalisation is also reinforced by the experience of the India-ASEAN TiS, which will be discussed in the next part.

V. THE INDIA-ASEAN TiS AND THE CONSEQUENCES OF THE DOMINANCE OF GEOPOLITICAL CONSIDERATIONS.¹⁵⁴

The ASEAN-India Framework Agreement on Comprehensive Economic Cooperation was signed during the second ASEAN-India summit in the year 2003. While the India-Singapore CECA was signed in 2005, the cornerstone of India's 'Look East Policy' was economic integration with the entire ASEAN bloc. The Framework Agreement formed the backbone of subsequent trade agreements between the ASEAN and India. In 2009, India signed the Trade in Goods Agreement with the ASEAN, followed by the Agreement on Trade in Services in

¹⁵³ India's FTAs have not been very encouraging. See Jyoti Mukul, *India - Korea CEPA: Harvest Deal by 2019 Even as Two Nations Stick to Guns*, BUS. STANDARD (July 10, 2018), https://www.business-standard.com/article/economy-policy/india-korea-cepa-harvest-deal-by-2019-even-as-two-nations-stick-to-guns-118071001401_1.html (Under India - Korea CEPA, "India has a \$12-billion trade deficit with Korea"); See also Nisha Taneja et al., *India - Korea CEPA: Harnessing the Potential in Services 6* (Indian Council for Res. on Int'l Econ. Rel., Working Paper 280, July, 2014) (Only 163 professionals were covered. India provided more liberal commitments than Korea under Mode 4. India has agreed to grant a visa for a temporary stay for an initial period of up to one year as against Korea which has agreed for a visa of up to two years. For BVs, India has agreed to grant a temporary stay for a period of not more than 180 days while Korea has agreed for a period of only ninety days); See also Asit Ranjan Mishra, *India's Exports to Japan Halve to 3.85 Billion in Four Years*, LIVEMINT (Sep. 14, 2017), <https://www.livemint.com/Politics/S7iA23p9KRrKMiWiy7YbqI/Indias-exports-to-Japan-halve-to-385-billion-in-four-year.html> ("Bilateral trade in services between India and Japan also remains subdued. India's exports of IT and IT enabled services to Japan account for less than 1% of Japan's IT services market and India also has an overall trade deficit in services with Japan unlike the surplus position it has with many developed countries ... India's trade deficit with Japan has now widened to \$5.9 billion against \$2.7 billion in 2013-14. In 2016-17, India's exports to Japan contracted 17.5%, and its imports fell by 1%.").

¹⁵⁴ It should be noted that the commitments made in the India-ASEAN TiS are not available in the public domain. All the information regarding commitments in this section has been sourced from secondary sources.

2014.¹⁵⁵ India already had concluded stand-alone FTAs with Singapore and Malaysia, its major trading partners within the ASEAN region. Accordingly, the ASEAN Services Agreement was signed much after a whole host of India's FTAs. The fact that the ASEAN Trade in Goods Agreement was signed earlier in 2009, also meant that no trade-offs between the merchandise and services trade were possible while negotiating with the ASEAN. Lastly, as observed above, the experience of Singapore relating to liberalisation of Mode 4 could have possibly served to be a cautionary tale for all ASEAN nations.

The negotiating context for the India-ASEAN TiS was markedly different from the India-Singapore CECA. Far from an alignment of economic interests, the Indian negotiators may have entered into the negotiations for this agreement in a weaker position. The imperatives of the Look East Policy, which had been pursued for almost two decades without a trade in services agreement with the ASEAN bloc, would have led to pressures of concluding an agreement, at all costs. Not only was the ability of the Indian negotiators to walk away from negotiations curtailed due to geopolitical imperatives, but they were also bereft of any negotiating capital with respect to merchandise trade. Surely, an integrated agreement with different chapters for goods, services and investment could have prevented such an outcome. These limitations could have possibly reduced the ambition of Mode 4 disciplines under the India-ASEAN TiS.

A. Limited Liberalisation Achieved under the ASEAN TiS

When India entered into negotiations for the Trade in Services Agreement with ASEAN countries, it was already a leading exporter in the software and IT sectors.¹⁵⁶ Additionally, transport services were recognised as an important service to be imported.¹⁵⁷ Much like its other forays into Mode 4 liberalisation, the IT sector was at the front and centre of our Mode 4 strategy.¹⁵⁸ This culminated into the Annex on MoNP under the India-ASEAN TiS. The Annex defined the categories of natural persons like BVs, ICTs and Contractual Services Suppliers (CSSs).

¹⁵⁵ Ministry of Comm. & Indus., Gov't of India, *India Formally Signs Trade in Services & Trade in Investments Agreement with ASEAN*, PRESS INFO. BUREAU (Sept. 9, 2014), <https://pib.gov.in/newsite/printrelease.aspx?relid=109489>.

¹⁵⁶ See Prabir De, *Assessing Barriers in Trade in Services in India* 6 (Res. & Info. Sys. for Developing Countries, Discussion Paper No. 173, May, 2011), http://www.ris.org.in/images/RIS_images/pdf/dp173_pap.pdf.

¹⁵⁷ *Id.*

¹⁵⁸ See Mary Grace L. Riguer, *Negotiating Framework for MNP: Implications of the ASEAN-INDIA Services Agreement*, INST. OF LABOR STUD.: DISCUSSION PAPER SERIES 8 (2011), <https://ils.dole.gov.ph/negotiating-framework-for-mnp-implications-of-the-asean-india-services-agreement/>.

Computer-related services were considerably liberalised by all ASEAN countries except Indonesia and Philippines. While Indonesia did not provide coverage under sub-sectors like Data Processing Services (CPC 843), Data Base Services (CPC 844) and Others (CPC 845 and 849),¹⁵⁹ the Philippines provided no coverage at all under computer-related services.¹⁶⁰ This was because the Philippines was an emerging market for Business Process Outsourcing (BPOs). A majority of the call centres relocated from India to the Philippines.¹⁶¹ India also failed to secure commitments under education services, recreational and cultural services, and sporting services. Under financial services, India's partial commitments under GATS were reproduced here.¹⁶²

Most ASEAN countries remained highly protective of their domestic market for professional services and were resistant to India's demands for Mode 4 liberalisation. India also negotiated for Mode 4 by proposing market access under Mode 3 in sectors like IT, BPOs, education, health, and tourism. The rationale for this strategy was that establishing commercial presence also requires MoNP, i.e., key personnel like managers and executives for the execution of the projects. However, these were the sectors protected through domestic regulations in ASEAN countries, which served as trade barriers.¹⁶³ Resultantly, the mobility of skilled labour still remains a crucial bottleneck for ASEAN-India Trade in Services.¹⁶⁴ Another reason for resistance towards liberalising Mode 4 by ASEAN countries is the apprehension of being flooded with unskilled labour, resulting in increased unemployment rates within their countries. Consequently, ASEAN countries have imposed considerable restrictions on work permits and visa access.¹⁶⁵

¹⁵⁹ Gupta, *supra* note 14, at 210.

¹⁶⁰ *Id.* at 211.

¹⁶¹ BHARAT VAGADIA, STRATEGIC OUTSOURCING: THE ALCHEMY TO BUSINESS TRANSFORMATION IN A GLOBALLY CONVERGED WORLD 183 (2012).

¹⁶² Committee on Regional Trade Agreement, *Factual Representation: Agreement on Trade in Services between India and The Association of Southeast Asian Nations (Services)*, WTO Doc. WT/REG372/1 (Aug. 22, 2016).

¹⁶³ Suparna Karmakar, *India - ASEAN Cooperation in Services - An Overview* 6 (Indian Council for Res. on Int'l Econ. Rel., Working Paper No. 176, Nov., 2005), <https://icrier.org/pdf/WP176.pdf>.

¹⁶⁴ ASEAN-INDIA TRADE CTR., RES. & INFO. SYS. FOR DEVELOPING COUNTRIES, ASEAN - INDIA DEVELOPMENT AND COOPERATION REPORT 2015 38 (2015).

¹⁶⁵ Vinay Ahuja, *India - ASEAN FTA in Services and Investments: Countdown to Implementation*, INTER-PAC. BAR ASS'N J. 12 (Mar., 2015), https://www.dfdl.com/wp-content/uploads/2015/04/IPBA_Journal_India-ASEAN_FTA_in_services_and_investments_countdown_to_implementation.pdf.

The India-ASEAN TiS failed to achieve the level of ambition in India-Singapore CECA and provided as follows:

- Malaysia agreed to most liberalised commitments: it committed four categories of services providers, namely BVs, ICTs, independent professionals and others.¹⁶⁶
- Indonesia, Myanmar, Philippines and Thailand agreed to moderately liberalising commitments. These countries committed BVs and ICTs.¹⁶⁷
- Lao and Vietnam also committed contractual service suppliers in addition to BVs and ICTs.¹⁶⁸
- Brunei and Singapore only committed ICTs,¹⁶⁹ whereas Cambodia only provided BVs.¹⁷⁰
- India committed the most categories of natural persons. It committed BVs, ICTs, CSSs and independent professionals.¹⁷¹

Therefore, the coverage of Mode 4 liberalisation is a far cry from the free movement guaranteed to 127 professionals under the India-Singapore CECA. In fact, under this Agreement, India could only manage to secure three categories of service suppliers. Even on the sectoral front, the coverage under the India-ASEAN TiS represented a marginal improvement over the GATS level of commitments. The text of the MoNP chapter of the India-ASEAN TiS is merely a reproduction of the GATS. Articles on Transparency and Recognition are only 'best endeavour' clauses and do not impose binding obligations on the Parties. The annex of the MoNP only contains the definition of categories of service providers. The India-ASEAN TiS does not have any provisions addressing prominent barriers under MoNP, such as provisions like streamlining visa access and removal of border measures. In the absence of such MoNP facilitatory provisions, it is difficult to obtain meaningful market access commitments. According to the World Bank's Services Trade Restrictions Database, certain ASEAN countries like Indonesia, Malaysia, the Philippines and Thailand have "completely closed" domestic regimes when concerning Mode 4.¹⁷² However, similar regimes still exist even after the conclusion of India -ASEAN TiS. The problem is further aggravated by lack of

¹⁶⁶ Gupta, *supra* note 14, at 212-214.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* (Committed to all ASEAN members except Philippines. India has only committed BVs and ICTs to Philippines).

¹⁷² ASSOCIATED CHAMBERS OF COM. & INDUS. IN INDIA, INDIA ASEAN TRADE AND INVESTMENT RELATIONS: OPPORTUNITIES AND CHALLENGES 19 (July, 2016), <https://theasiadialogue.com/wp-content/uploads/2018/03/ASEAN-STUDY.pdf>.

Mutual Recognition Agreements between India and ASEAN, recognising each other's professional bodies that could facilitate the movement of Indian professionals across ASEAN service market.¹⁷³

Table 2: Sectoral Coverage of India under the GATS, the India-Singapore CECA, and the India-ASEAN TiS.

SERVICE SECTOR	GATS	INDIA - SINGAPORE CECA	INDIA - ASEAN TiS
Business Services	□	□	Partial
Communication Services	□	□	□
Construction & Related Engineering Services	□	□	□
Distribution Services	-	□	-
Educational Services	-	-	-
Environmental Services	-	-	-
Financial Services	□	□	Partial
Health-Related & Social Services	□	□	□
Tourism & Travel Related Services	□	□	□
Recreational, Cultural & Sporting Services	-	□	-
Transport Services	-	□	□

Source: Prabir De, ASEAN - India Trade in Services, RIS.¹⁷⁴

¹⁷³ *Id.* at 33.

¹⁷⁴ See Prabir De, *ASEAN - India Services Trade*, RES. & INFO. SYS. DEVELOPING COUNTRIES 12 (Nov. 22, 2018), <http://ris.org.in/pdf/Events/2018/nov/22nov%202018/Prabir%20De%20JEF%202018-min.pdf>.

B. *The ASEAN TiS: The Strategic Tail Wagging the Economic Dog*

India could not capitalise on its comparative advantage in services under the India-ASEAN TiS. As a reaction to the unsatisfactory outcome, within three years of coming into effect of the India-ASEAN TiS, a Parliamentary standing committee on commerce advised that the 'Act Asia Policy' should now concentrate on liberalising the MoNP. Invocation of the review clause under the India-ASEAN TiS was recommended to revise the definition of the term 'independent professionals' to facilitate greater MoNP in the ASEAN region.¹⁷⁵ One of the most significant barriers to the MoNP was found to be restrictive domestic regulation maintained by ASEAN member countries. All ASEAN members have individual requirements relating to professional qualification, or for obtaining professional licenses. These regulations require mandatory compliance by Indian service providers seeking access to their markets.¹⁷⁶ The predicament under the India-ASEAN TiS can perhaps be best illustrated by the fact that Indonesia, which is one of the largest growing importers of Indian IT services, has still not ratified the Agreement, citing apprehensions of potential flooding by Indian IT services suppliers in its market upon ratification.¹⁷⁷

While India may have achieved its objective of deeper integration with the ASEAN under the Look East Policy, true economic integration with the bloc still remains a distant dream. Conversely, while the India-ASEAN TiS has been a disappointment to India, the gains made from the ASEAN Trade in Goods Agreement are, at best, marginal.¹⁷⁸ According to the Niti Aayog, the ASEAN deficit increased manifold from USD 10 Billion in 2010 to USD 75 billion in 2011. This is a direct consequence of the low import tariffs maintained by India, the lowest when compared with India's other FTAs. India also provided more tariff lines compared to those offered by other ASEAN countries. Similarly, Indian Trade Minister Piyush Goyal has said that the trade deficit with the ASEAN has increased from USD 5

¹⁷⁵ Kritika Suneja, *House Panel Wants Government to Take Up Barriers to Movement of Professional Issues with ASEAN*, ECON. TIMES (Dec. 19, 2017), <https://economictimes.indiatimes.com/news/economy/policy/house-panel-wants-government-to-take-up-barriers-to-movement-of-professionals-issue-with-asean/articleshow/62137570.cms?from=mdr>.

¹⁷⁶ *Id.*

¹⁷⁷ Nayanima Basu, *Trade Remains Sore Point Between India, ASEAN*, HINDU BUS. LINE (Jan. 24, 2018), <https://www.thehindubusinessline.com/economy/policy/trade-remains-sore-point-between-india-asean/article10049949.ece>; Rajrishi Singhal, *Time We Pushed ASEAN Pact on Services*, HINDU BUS. LINE (Jan. 29, 2014), <https://www.thehindubusinessline.com/opinion/time-we-pushed-asean-pact-on-services/article20718829.ece1?test=1&textsize=large> [hereinafter Singhal].

¹⁷⁸ Singhal, *supra* note 177.

billion in 2010-2011 to USD 21.8 billion in 2018-2019.¹⁷⁹ In an attempt to facilitate the movement of professionals, India proposed signing mutual recognition agreements with ASEAN countries to recognise professional qualifications. However, no progress has been reported thus far. Further, ASEAN countries have maintained that opening their market for Indian professionals would further aggravate their domestic problem of increasing unemployment.¹⁸⁰ The growing consensus against ASEAN trade agreements has led to re-examination of the India-ASEAN TiS. However, a review of the India-ASEAN TiS is nowhere on the horizon.¹⁸¹ Seen in this light, the Look East Policy seems to come at the cost of beneficial trade relations for India. The pitfalls of an FTA strategy dominated by geopolitical considerations are best summed up with the following indictment by Pratap Bhanu Mehta:

The honest truth is that our enthusiasm for FTAs was often driven by strategy more than economics. During the 2000s, that was the flavour of thinking in India. *We somehow thought that the strategic tail could wag the economic dog.* But the idea that you can define strategic ambitions far in excess of your economic clout is deeply misplaced, and all our pretensions in that regard, like Look East, now Indo-Pacific, *always had a ring of exuberant hollowness to them.*¹⁸²

VI. CONCLUSION

The above account seeks to provide a richer and deeper understanding of India's Mode 4 negotiating stances by exploring its political, geopolitical and economic context. In all three instances analysed here, complex political and economic processes played a fundamental role in determining the nature and content of the negotiating stances and outcomes. The GATS 2000 Proposal represents a rare instance where domestic policy momentum in favour of increased public-private

¹⁷⁹ *Id.*; See also Maegan Liew, *What is Behind India and ASEAN's Decision to Review a 2010 FTA Agreement?*, ASEAN TODAY (Oct. 3, 2019), <https://www.aseantoday.com/2019/10/what-is-behind-india-and-aseans-decision-to-review-a-2010-fta-agreement/>.

¹⁸⁰ *Id.*

¹⁸¹ See Dipanjan Roy Chaudhary, *ASEAN May Soon Conclude Review of FTA with India*, ECON. TIMES (Nov. 6, 2019), <https://economictimes.indiatimes.com/news/politics-and-nation/asean-may-soon-conclude-review-of-fta-with-india/articleshow/71932278.cms?from=mdr> (Prime Minister Modi has “welcomed the decision to re-examine the India - ASEAN FTA”).

¹⁸² Pratap Bhanu Mehta, *By Not Joining RCEP, India Sends Signal of Shrinking Possibilities – At Home and Abroad*, INDIAN EXPRESS (Nov. 8, 2019), <https://indianexpress.com/article/opinion/columns/india-rcep-modi-china-trade-6108629/>.

collaboration in policymaking ultimately seeped into the way India framed its reform proposal at an international forum. The GATS 2000 Proposal, which was itself a product of the government tapping on the shoulders of private expertise, can also be situated at the beginning of a process in Indian trade policy-making which was at its fledgling state, i.e., the development of legal capacity specific to trade law. Both these perspectives help us appreciate the unique and unprecedented nature of the year 2000 and what it represented for the Indian economy. The Indian State had transformed in the way it viewed its role in managing the economy. It had realised that policy processes which catered to the growth of exports presented a viable method to meet the macroeconomic goals of balance of payments and sustained growth; to meet these goals, India would have to correct imbalances in the WTO Agreements, including of course, the GATS.

Through an analysis of the India-Singapore CECA, we explored the influential yet indeterminate impact of geopolitical considerations on India's Mode 4 strategy. This agreement originated in an almost ideal scenario. Both economies saw complementary goals which could be achieved through the agreement, and the Indian State was motivated to conclude an agreement due to the geopolitical imperative of the Look East Policy. Since the India-Singapore CECA negotiations led to an ambitious and detailed chapter on the MoNP, that experience does not impart any meaningful lessons relating to the relationship between geopolitical policies and the specifics of trade negotiations. The India-Singapore CECA did, however, deliver a sobering lesson, one which Indian trade negotiators would have to grapple with persistently. That lesson pertained to the indomitable influence of domestic political reactions to MoNP on the success of a Mode 4 liberalisation agenda. Despite shared economic interests and an ambitious legal text, India could not exploit its comparative advantage in professional services.

The India-ASEAN TiS simultaneously represented geopolitical ascendance and India's failure to increase its services exports. We explored how the signing of the ASEAN Trade in Goods Agreement in 2009 significantly weakened the position of Indian negotiators. Further, the Singaporean experience did not portend well for liberalisation of services trade in Southeast Asia. The India-ASEAN TiS failed to substantially improve upon the commitments made under the GATS. This represented the brute force of protectionist tendencies in services markets and the incomparable anxieties that will always be invoked by Mode 4 liberalisation. With the rise of populist politics around the world and the rejection of a world order based on free trade, the prospects of Mode 4 liberalisation do not appear bright.

In fact, much of the setbacks recounted above in relation to the India-Singapore CECA and the India-ASEAN TiS were also present in the negotiation of the RCEP. Once again, India entered into a trade negotiation aiming to exploit its services exports in Mode 1 and Mode 4, only to realise that its trading partners had

a rigid aversion to opening markets to Indian professionals.¹⁸³ While India faced similar challenges in the RCEP and the India-ASEAN TiS, their responses were poles apart. India's rejection of the RCEP pact represented an approach diametrically opposed to the India's capitulation to the India-ASEAN TiS. India walking away from the RCEP, the largest FTA ever, represented its willingness to sacrifice stature in exchange for avoiding trade imbalances and deficits. This represented a change in the way the Indian State viewed the relationship between geopolitical advantages and the economic costs of entering into FTAs.

The discouraging experience of negotiating FTAs for the liberalisation of Mode 4 makes preferential trade agreements an unlikely vehicle to achieve our goals. In this light, if the Indian government truly wishes to boost its services exports, it will need to carry out a comprehensive reform in the domestic regulation of services so the qualifications of India's professionals can be recognised world-over. Certain formative steps in this direction have already been taken, with the Cabinet approving the 'Action Plan for Champion Sectors in Services.'¹⁸⁴ The action plan recognises twelve champion sectors in which the government will implement action plans to boost exports, GDP contribution, and employment. Our experience with working on liberalisation of legal services, which is one of the champion sectors, suggest that any reform would require substantial political will to deal with vested interests.¹⁸⁵ Even a phased liberalisation plan, which primarily focuses on non-litigious services faces staunch and insurmountable opposition from the Bar Council of India.¹⁸⁶ Dealing with such challenges will require a healthy combination of 'embeddedness' with industry to understand what they need to boost exports, as well as 'autonomy', so that the Indian State can chart out its own course. As we have illustrated in this paper, India has plenty of instances to look back to for inspiration.

¹⁸³ Kartik Nachiappan, *The Art of Walking Away from a Deal*, LIVEMINT (Nov. 7, 2019), <https://www.livemint.com/news/india/the-art-of-walking-away-from-a-deal-11573146047619.html>.

¹⁸⁴ Ministry of Com. & Indus., Gov't of India, *Cabinet Approves Action Plan for Champion Sectors in Services*, PRESS INFO. BUREAU (Feb. 28, 2018), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1522114>.

¹⁸⁵ See generally James J. Nedumpara et al., *Reforms in the Non-Litigious Services Sector: A Roadmap for Growth*, CTR. TRADE & INV. L. (2018), <https://ctil.org.in/cms/docs/Papers/Discussion/publish1.pdf>.

¹⁸⁶ Jatin Gandhi, *Bar Council Complains to PM Against Legal Sector Liberalization*, HINDUSTAN TIMES (Nov. 4, 2016), <https://www.hindustantimes.com/india-news/bar-council-seeks-pm-intervention-in-process-of-legal-sector-liberalisation/story-6Mui6Mbs2G0SpJw5j8qc5M.html>.