

印度與東南亞國家協會自由貿易協定下服務貿易協定之發展與爭議

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印度與東南亞國家協會(The Association of Southeast Asian Nations, ASEAN, 以下簡稱東協)於今(2014)年9月簽署服務貿易協定(Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India)與投資協定(Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India)¹,兩協定將於2015年7月1日正式生效²。

在東協與印度之服務貿易協定中,主要議題包括透明化³、國內規章⁴、相互承認⁵、市場進入⁶、國民待遇⁷以及爭端解決⁸等。因服務貿易協定在談判過程中面臨較大爭議⁹,故本文擬針對該協定進行探討。

東協與印度已於2009年簽署貨品貿易協定,但因調降貨品關稅並未使印度獲得更多利益,故近年來印度期盼盡快與東協簽署服務貿易協定。對印度而言,服務貿易協定有助於緩解印度對東協長期以來的貿易逆差¹⁰。本次協定之簽署也將加速印度「東進政策」(Look East Policy)的進展,強化與東南亞各國間之經貿與戰略關係,得以與近來經貿、戰略地位影響力皆與日俱增之中國相抗衡¹¹,

¹ *India Signs Free Trade Agreement in services, investments with Asean*, THE TIMES OF INDIA, Sept. 8, 2014, available at

<http://timesofindia.indiatimes.com/business/india-business/India-signs-free-trade-agreement-in-service-s-investments-with-Asean/articleshow/42050364.cms> (last visited Nov. 27, 2014).

² 關於協定中生效條款之具體內容詳見下述。

³ Framework Agreement on Comprehensive Economic Cooperation Between India and the Association of Southeast Asian Nations, art. 3.

⁴ *Id.* art. 5.

⁵ *Id.* art. 6.

⁶ *Id.* art. 17.

⁷ *Id.* art. 18.

⁸ *Id.* art. 30.

⁹ 關於談判過程中爭議之具體內容詳見下述。

¹⁰ 葉俊廷, 東協與印度正式簽署服務貿易協定及投資協定, 台灣 WTO 及 RTA 中心, 2014 年 9 月 18 日, 網址: <http://web.wtocommerce.org.tw/Page.aspx?pid=254218&nid=83> (最後瀏覽日: 2014 年 11 月 27 日)。

¹¹ Rahul Mishra, *From Look East to Act East: Transitions in India's Eastward Engagement*, THE ASAN FORUM, Dec. 1, 2014, available at

<http://www.theasanforum.org/from-look-east-to-act-east-transitions-in-indias-eastward-engagement/> (last visited Jan. 27, 2015).

同時亦為印度政府在東南亞區域全面經濟夥伴協定 (Regional Comprehensive Economic Partnership, RCEP) 的談判鋪下基礎¹²。另一方面，東協為世界第三大經濟共同體，其簽署之自由貿易協定¹³ (Free Trade Agreement, FTA) 相當值得關注。

本文以下擬先介紹印度、東協 FTA；復簡述服務貿易協定對雙方之重要性，以及概述談判歷程；接著闡述服務貿易協定涉及的相關爭議及最終協定條文規範；最後做一結論。

印度東協 FTA 介紹

2003 年印度與東協簽署東協－印度全面經濟合作架構協定 (Framework Agreement on Comprehensive Economic Cooperation Between India and the Association of Southeast Asian Nations, 以下簡稱雙邊架構協定)，依據該協定第 8 條第 3 項規定¹⁴，雙方應自 2005 年開啟服務貿易協定與投資協定之談判、2007 年完成談判，並在服務部門之項目與自由化等事項完成之後，就敏感服務項目談判與東協新成員 (柬埔寨、寮國、緬甸、越南) 的優惠性待遇與彈性，應於雙邊同意下安排時程。

印度與東協之雙邊架構協定原定於 2005 年 6 月完成東協－印度貨品貿易協定 (Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India) 之簽署¹⁵，但在預定完成時間的一年後，談判不僅未能完成，甚至陷入僵局，因為 2006 年 6 月印度提出之不調降關稅之項目 (所謂的負面清單 (negative list)) 仍高達 900 項 (儘管其原列於負面清單項目為 1400 餘項)，2 個月後 (2006 年 8 月)，印度設法將清單項目刪減至 560 項，惟擔心此協定衝擊印度農業，農民的恐慌持續干擾著談判，而使貨品貿易談判一直延宕至 2008 年 8 月才完成¹⁶。

印度與東協服務貿易協定之重要性

¹² *Id.*

¹³ 東協目前簽署的 FTA 包含貨品貿易協定及服務與貿易投資協定。

¹⁴ Framework Agreement on Comprehensive Economic Cooperation Between India and the Association of Southeast Asian Nations, art. 8.3: “For trade in services and investments, the negotiations on the respective agreements shall commence in 2005 and be concluded by 2007. The identification, liberalisation, etc., of the sectors of services and investment shall be finalised for implementation subsequently in accordance with the timeframes to be mutually agreed: (a) taking into account the sensitive sectors of the Parties; and (b) with special and differential treatment and flexibility for the New ASEAN Member States.”

¹⁵ *Id.* art. 8.

¹⁶ *India-ASEAN*, BILATERAL.ORG, May 2012, available at <http://www.bilaterals.org/?-India-ASEAN-&lang=en> (last visited Nov. 27, 2014).

根據調查顯示，印度之關稅結構在九大產業部門(包括鋁、化學原料、電子、紙張、鋼鐵、橡膠等)對原物料課徵之稅額遠高於利用該原物料而製造之成品，但印度東協貨品貿易協定卻僅給予最終成品免關稅之待遇，這使得需要進口原物料以生產之印度廠商難以具有競爭優勢¹⁷。事實上，比較 2010 至 2011 年和 2013 至 2014 年之貿易統計可知，印度對東協之出口雖上升 29.3%，但東協對印度之出口卻增加 34.9%¹⁸。

由上述貨品貿易協定之實質影響顯示，印度所獲得之利益相對有限。另一方面，由於印度服務業部門對國內生產毛額 (Gross Domestic Product, GDP) 及出口收入 (export revenues) 之貢獻超過 55%¹⁹，故印度對服務貿易協定寄予厚望，希望藉該協定使更多印度專業人士能在東協獲得工作機會，以緩解長期以來之貿易逆差²⁰。

就東協而言，由於受到全球金融風暴的影響，印度國內的保護主義興起，而使得當時貨品協定降稅協商受到諸多限制，以致印度東協之貨品貿易協定是東協對外簽署的 FTA 當中，自由化程度較低的²¹，故東協方面亦期待藉由服務貿易協定獲取更多之利益，進而建立其於東亞區域經濟整合中心之重要地位。

印度與東協服務貿易協定談判歷程

2009 年印度與東協開始進行服務業貿易協定與投資協定的談判，於 2012 年 12 月在東協—印度紀念峰會 (ASEAN-India Commemorative Summit) 上宣佈談判完成²²，但因為協商內容在東協國內引發相當多的反彈²³，以致將談判成果轉

¹⁷ *Commerce Ministry assessing impact of free trade pacts on local manufacturing*, THE HINDU BUSINESS LINE, June 9, 2014, available at <http://www.thehindubusinessline.com/news/commerce-ministry-assessing-impact-of-free-trade-pacts-on-local-manufacturing/article6098162.ece> (last visited Dec. 28, 2014).

¹⁸ Subrata Majumder, *India-Asean FTA in services is a major step*, THE ECHO OF INDIA, Sept. 25, 2014, available at <http://echoofindia.com/ipa-india-asean-fta-services-major-step-68048> (last visited Oct. 29, 2014).

¹⁹ 黃苡嵐，印度—東協 12 月將簽署服務貿易及投資協定，台灣 WTO 及 RTA 中心，2013 年 11 月 7 日，http://www.aseancenter.org.tw/ASEANnewsDetail.aspx?id_news=185 (最後瀏覽日: 2014 年 11 月 27 日)。

²⁰ 吳泰毅，東協—印度服務貿易自由化因自然人移動議題遭遇瓶頸，台灣 WTO 及 RTA 中心，2013 年 7 月 19 日，http://www.aseancenter.org.tw/ASEANnewsDetail.aspx?id_news=166 (最後瀏覽日: 2014 年 11 月 27 日)。

²¹ 葉華容，東協對外發展 FTA 的戰略與進程，國際經濟情勢雙週報，第 1760 期，頁 8-9，2007 年。

²² *Overview of ASEAN-India Dialogue Relations*, ASSOCIATION OF SOUTHEAST ASIAN UNION, available at <http://www.asean.org/asean/external-relations/india/item/overview-of-asean-india-dialogue-relations> (last visited Nov. 27, 2014).

²³ *ASEAN-India Services and Investment FTA Inches Closer to Implementation*, INDIA BRIEFING, Aug. 7, 2014, available at <http://www.india-briefing.com/news/aseanindia-services-investment-fta-inches-closer-implementation-8870.html/#sthash.quml6U9c.mSh8RPTz.dpuf> (last visited Nov. 27, 2014).

換為最終協定文本的過程中遭遇瓶頸，導致簽署時程延後²⁴。

幾經協商後，雙方原訂於今(2014)年8月底於緬甸舉辦之東協經貿部長會議(ASEAN Economic Ministers Meeting)中簽署服務貿易協定與投資協定，然印度商工部長希達拉曼(Nirmala Sitharaman)卻臨時取消東協經貿部長會議的行程，再度延後兩協定之簽署，雖然印度對外宣稱是商工部長行程安排之故，但外界分析其真正原因不外乎有二²⁵：一係今年新上任之總理莫迪(Narendra Modi)就當時是否簽訂服務貿易及投資協定仍有疑慮；二係由於印度政府部門間缺乏良好的跨部門整合及溝通程序。

雖經波折，兩項協定最終於今年9月簽署，根據服務貿易協定第32條第1項規定，當各簽署方完成其國內程序後²⁶，須以書面通知其他簽署國；若印度和至少四個東協國家於2015年7月1日前完成書面通知程序，則協定對於已完成通知程序之締約國於2015年7月1日生效²⁷。馬來西亞國際貿易與產業部(Ministry of International Trade and Industry)部長慕斯達法莫哈末(Mustapa Mohamed)於2015年1月14日至新德里拜會印度商工部長希達拉曼時，公開宣布服務貿易協定將於2015年7月1日正式生效²⁸。另外，根據服務貿易協定第32條第3項規定，協定生效後才以書面通知其他締約國表示完成國內程序者，協定對其之生效時間為其書面通知後60天²⁹。

印度與東協服務貿易協定簽署過程所涉及之相關爭議及最終協定條文規範

承前所述，雙方當事國在簽署貨品貿易協定時，面臨印度國內農業部門龐大之反彈聲浪，而服務貿易協定在談判過程中亦涉及許多爭議，如服務貿易模式四(mode 4)自然人移動之談判，菲律賓、泰國等東協國家即擔憂開放印度專業人

²⁴ 吳泰毅，前揭註20。

²⁵ Aparupa Bhattacharjee, *India-ASEAN FTA: Gap Between Expectation and Reality*, INSTITUTE OF PEACE AND CONFLICT STUDIES, Sept. 5, 2014, available at <http://www.ipcs.org/article/india/india-asean-fta-gap-between-expectation-and-reality-4644.html> (last visited Nov. 27, 2014).

²⁶ 包含依據國內法取得行政許可或立法通過。

²⁷ Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India, art. 32.1: "Each Party shall notify the other Parties in writing upon completion of its internal requirements necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2015 for any Party that has made such notifications provided that India and at least four (4) ASEAN Member States have made such notifications by that date."

²⁸ *India-Asean free trade pact to be operational by July*, LIVE MINT, Jan. 15, 2015, available at http://www.livemint.com/Politics/hTYHbMG7yVMeGQWJ47rzKI/IndiaAsean-free-trade-pact-to-be-operational-by-July.html?utm_source=copy (last visited Jan. 27, 2015).

²⁹ Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India, art. 32.3: "After the entry into force of this Agreement pursuant to paragraph 1 or 2 of this Article, this Agreement shall enter into force for any Party sixty (60) days after the date of its notification referred to in paragraph 1 of the Article."

士進入後，會衝擊本國勞動市場³⁰。

然而從最終協定條文看來，影響上述專業人士進入最大之資格認證問題，並未真正有利於印度。該服務貿易協定有關資格承認之規定是在第6條，其中第1及第2項僅是沿用世界貿易組織（World Trade Organization, WTO）之服務貿易總協定（The General Agreement on Trade in Services，以下簡稱GATS）第7條第1項³¹及第2項³²之文字，即規定對於外國服務提供者於境外取得之資格經歷的承認，可以透過哪些途徑達成，以及當是透過相互承認協定方式達成時，應給予有興趣的締約國適當之協商機會，若是採取主動承認之方式，則也應給予其他締約國證明資格經歷等同性之機會³³。至於東協與印度服務貿易協定第6條第3項雖規定基於對手國之書面請求，應鼓勵雙方的專業服務組織或專業服務主管機關，就雙方皆有利益的服務部門，於12個月或雙方同意的合理期間內完成相互承認協議之協商³⁴；看起來較GATS更進一步，但因為該項規定僅是「鼓勵」性質，此由同項後段規定未能達成協議或遲延協議，並不構成本服務貿易協定之義務違反，更可見其並無強制力。何況同條第4項也規定若無相互承認協議，是否相互承認則由專業服務組織及主管機關依地主國法令定之³⁵。

³⁰ 吳泰毅，前揭註 20；Rajrishi Singhal, *India's mixed trade signals*, GATEWAY HOUSE, 2013, available at http://www.gatewayhouse.in/wp-content/uploads/2014/09/Indias-mixed-trade-signals_Rajrishi-Singhal.pdf (last visited Nov. 27, 2014).

³¹ The General Agreement on Trade in Services, art. 7.1: "For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously."

³² *Id.* art. 7.2: "A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized."

³³ Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India, art. 6.1 & 6.2.

³⁴ *Id.* art. 6.3: "Upon request being made in writing by a Party to the other Party, the Parties shall encourage their respective professional bodies or professional regulatory authorities, in any regulated services sector of mutual interest to negotiate and conclude within 12 months or a reasonable timeframe to be mutually agreed between the professional bodies of both Parties, any arrangement for mutual recognition of education, or experience obtained, requirements met, or licenses or certifications granted in that service sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreements or arrangements shall not be regarded as a breach of a Party's obligations under this paragraph..."

³⁵ *Id.* art. 6.4: "Where harmonization, agreement or arrangement as provided in paragraphs 1,2 and 3 of this Article does not exist, each Party shall leave any consideration on mutual recognition or licensing to relevant professional bodies or professional regulatory authorities in its territory in accordance with

結論

印度近年逐漸加強與東協之間的經貿合作，印度與東協間的貨品貿易協定已於 2010 年 1 月生效，但對印度而言，所獲得利益相對有限，因此印度期待能藉由服務貿易協定受惠。然而，在雙方服務貿易協定談判協商過程，卻面臨各種困境與瓶頸，例如：爭議頗大的人員資格相互承認之問題，因部分東協國家擔憂將造成國內衝擊，最後達成共識之服務貿易協定條文似乎也未能為印度取得更有利的地位，具體成效如何有待後續觀察。

