



Service Trade and Investment : Tracing of Indian Footprints

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Conclusion !

- India needs investment in services
- But India lacks a clear approach in attracting investment
- It is visible from recent PTAs/CECAs
- Therefore: There is no Indian footprint for tracing



Examples of Inconsistency –From Investment Provisions

- **India-Japan CECA**
- **Preamble**
“to promote trade and investment through the establishment of clear and mutually advantageous rules as well as regulatory co-operation”
- **India- Malaysia CECA**
- **Preamble : No mentioning of Investment**



Examples:

- **India-Japan CECA**

- **Objectives:**

“Increase investment opportunities and strengthen protection for investments and investment activities in the Parties”

- **India- Malaysia CECA**

- **Objectives:**

- “to establish a transparent, predictable and facilitative investment regime”



Example:

- **India-Japan CECA**

- Investment should be made “in compliance with the laws and regulations of other party”
- **Definition** of Investment—in definition section and explains characteristics of investment in Notes

- **India- Malaysia CECA**

- Investment should be “in accordance with the latter Party’s laws, regulations and **national policies**”
- **Definition**—in Investment Chapter and characteristics are included in the main provision.



Example

- **India-Japan CECA**

- When provisions of Services come in conflict with Investment—Provisions of Services will prevail:
- NT, MFN, Prohibition on performance

- **India- Malaysia CECA**

- In conflict between Investment and Services—investment provisions will prevail (will apply for mode 3)
- Minimum standard treatment, compensation, expropriation ,transfers, subrogation regardless of specific commitment



Example

- **India-Japan CECA**
- MFN
- NT
- General Treatment (Fair and Equitable Treatment)
- Explanations in Note

- **India- Malaysia CECA**
- No MFN
- NT
- Minimum Standard of Treatment (Similar to General Treatment = Fair and Equitable Treatment and full protection and security)



Example

- **India-Japan CECA**
- Expropriation-
Compensation in
freely convertible
currency-market
exchange rate
prevailing on “**date of
expropriation**”
- Shared Understanding
in Annex-10
(economic impact)
- **India- Malaysia
CECA**
- Exchange rate
“**prevailing on the
date of payment**”
- **Indirect
Expropriation-
Annex10-1**
- (Government’s prior
binding commitment
to investors in writing



Example

- **India-Japan CECA**
- Security Exceptions
- May be scrutinized objectively (necessity test)

- **India- Malaysia CECA**
- Security Exceptions
- Explained in details in Annex-12-1 (shared understanding)
- Security Exception (Non-Justiciable) – Annex 12-2



What should be done by India?

- Develop own model with Indian characteristics
- At Negotiation stage—evaluate/analyse the impact of provisions of one sector on another (service – investment- IP-dispute resolution)
- Involve lawyers who have knowledge of different laws
- Predictability is the key