



ETI - Think Global Act Local: The MRA Factor

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INTRODUCTION

Many local engineers and other entrepreneurs involved in Engineering, Technology, Innovation (ETI) businesses have not been paying much attention to issues associated with the various MRA's that Malaysia is a party to. Perhaps they imagine that they are not into exporting; hence MRA's are of no concern to those involved in domestic businesses. That is a mistake. Think again.

MRA

MRA stands for "Mutual Recognition Agreement", or for "Mutual Recognition Arrangement." An MRA for a specific sector (or sub-sector) is to facilitate free trade in that specific sector (or specific sub-sector), be it for goods or services; with the least of limitations and the absence of any technical barriers to trade (TBT).

Before negotiating an MRA, nations desiring to be trading-partners must first enter into a binding Free Trade Agreement (FTA); for example, the ASEAN Free Trade Agreement signed amongst the 10 Asean Countries; viz. Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. FTA's provide the means to achieve quicker and higher levels of liberalisation that would create effective market access.

An MRA is either bilateral, plural-lateral or multi-lateral in nature.

THE STARTLINE; THE WTO

The Marrakech Agreement gave rise to the WTO (i.e. World Trade Organisation), replacing the 50 year old post-WWII Ad-hoc GATT (i.e. General Agreement in Trade and Tariff).

The WTO deals with liberalisation of both trade in goods (as in GATT - 1994) and trade in services as covered by the General Agreement in Trade of Services (GATS). The WTO further extends to trade related intellectual properties (TRIPS), investments, trade facilitation, public procurement, trade and the environment, and it also includes the agreement on Technical Barriers to Trade (i.e. the TBT Agreement) and others.

Agreements made at WTO are subjected to periodic review and negotiations, and the on-going round of negotiations, the Doha Development Agenda (DDA) Round, started in 2001 is due to conclude this year - one way or the other. Among the issues being negotiated is Trade in Services. There is a demand for opening up of market for services in developing countries in exchange for reciprocal market opening of goods and merchandise in industrialised countries such as USA and those in EU and others. Is this a case of give and take?

WTO-RULES+ FTA'S

The WTO Agreement is a legal and binding multi-lateral agreement with rules-based peer group governance and disputes resolution mechanisms.

The ASEAN Free Trade Agreement (AFTA) defines a regional free trade area among ASEAN member-states; currently being propelled by an urgent agenda to achieve the end goal of ASEAN Vision 2020 - the establishment of the ASEAN Economic Community (AEC), expedited by an ongoing programme of ASEAN Economic Integration (AEI). AFTA is based on WTO-rules plus, especially the AEC which will be both a common market and a non-barrier production base. In short, AEC will be similar to EU; yet not quite!

One must, however, not confuse AFTA/AEC with WTO. They occupy the opposing ends of the spectrum of value and opportunities.

There are on-going FTA negotiations for ASEAN+3 (i.e. ASEAN with China, Korea and Japan), ASEAN with India, ASEAN with CER (i.e. Common Economic Region of Australia and New Zealand), etc. Also, Malaysia on our own, is in negotiations for bilateral FTA's with Japan, Australia, New Zealand, Pakistan, etc. All these FTA's are to be WTO-rules plus. The question is: how much of the "PLUS"? With AFTA, the "PLUS" equates to MFN (i.e. Most Favoured Nation) status; and in due course with AEC, we will have the highest degree of "PLUS" and therefore with no limitations, thus it translates to NT (i.e. National Treatment) status!

AFTA

When ASEAN, by way of the AEI programme, develops into the AEC in about a decade from now, AFTA will then have the meaning befitting that of the **ASEAN Free Trade Area** - a common market of some 550 million people, mostly young. And what a market!

AFTA, guided by ASEAN Summit decisions, ASEAN Economic Ministers (AEM's), supported by frequent Senior Economic Officers Meetings (SEOM's), will work out the necessary framework agreements such as trade in goods; the over-view supervision is the ACCSQ (i.e. ASEAN Coordinating Committee on Standards and Quality), whilst the ASEAN Framework Agreement on Services (AFAS) deals with trade in services; with the CCS (i.e. Coordinating Committee on Services) providing the overview supervision.

Guided by the respective framework agreement, products specific and services specific MRA's are being negotiated. Some are being implemented and more will be operationalised by the respective MRA-created ASEAN specialist coordinating committees consisting of all the relevant national regulators, except for a 10 - X (i.e. ten minus X) situation.

TBT PRINCIPLES

The framing of an MRA is based on TBT Agreement principles which are transparency of rules and standards centered i.e. international standards and international best practices. The AFTA's MRA on Electrical and Electronic (EE) products (i.e. the EEMRA) for example, is based on IEC Standards. The coordinating committee operationalising the EEMRA is the EEJSC (i.e. the Electrical and Electronic Joint Sectoral Committee); and the EEJSC, working in accordance to an ACCSQ/SEOM sanctioned roadmap programme, is in the process of harmonising a potential ASEAN-wide regulatory regime for EE products.

TRADE IN SERVICES

Under the WTO's GATS classification, there are 12 services sectors, and they are:-

1. Business Services
2. Communication Services
3. Construction and related Engineering Services
4. Distribution Services
5. Education Services
6. Environment Services
7. Finance and Insurance Services
8. Health and Social Services
9. Tourism Services
10. Recreational, Cultural and Sporting Services
11. Transport Services
12. Other Services

Each of these sectors has various sub-sectors. For example: Under the Construction and related Engineering Services (Code CPC 867), we have sub-sectors such as CPC 8671 - Architectural Services, **CPC 8672 - Engineering Services**, **CPC 8673 - Integrated Engineering Services**, CPC 8674 - Urban Planning Services, etc.

Whilst trade in goods and merchandise is well understood by many, trade in services takes on a different dimension.

There are 4 modes of supply in the case of trade in services, viz.:-

- Mode 1 – Cross-border supply;
- Mode 2 – Consumption abroad;
- Mode 3 – Commercial presence; and
- Mode 4 – Presence of natural persons.

The 4 modes of supply have a bearing on the issues of limitations on Market Access and National Treatment. With AEC, when the degree of GATS Plus is at the highest level of liberalisation, limitations on National Treatment for Market Access is the least; if not NONE.

When drawing up the MRA for engineering services or for integrated engineering services, the 4 modes of supply have to be addressed. Modes 1 and 2 proved to be easily appreciated. But Mode 3, relating to commercial presence vis-a-vis equity participation by natural and/or legal persons, and Mode 4, relating to presence of natural persons; equating to mobility of professionals, para-professionals, skilled labour, talents, etc. which in turn means benchmarking of qualifications, experience, etc. are experiencing difficulties finding common ground.

HARMONISATION OF REGULATORY REGIMES

When an AFTA MRA is successfully concluded for a sector specific goods or services, the agreement has to be operationalised by an ASEAN-organised specialist coordinating committee consisting of the respective ASEAN member-states' regulators. These regulators are duty bound to ensure that stakeholders benefit from the MRA and all other subsequent MRA-based decisions. For the bigger picture, they should realign; better still, harmonise the respective national regulatory regimes which are to be international standards based and trade friendly. The goal: one set of realigned or harmonised ASEAN regulations, one suit of ASEAN standards, and a common process of approval in all the 10 ASEAN member-states.

All ASEAN member-states should embark upon an indepth review of their respective regulatory regime relating to the approval of engineering and technology projects such that the applicable domestic Acts and Regulations be updated to be international standards based and be relevant for the time. More importantly, GRP (i.e. Good Regulatory Practice) principles should be in place to ensure good governance.

It is the hope, one day, that there will be a common set of regulatory ASEAN Directives in place of ten (10) different sets of national regulations. The aim: to be pro-business and pro-FDI's.

INTEGRATE OR VEGETATE

AFTA, with a market size of some 550 million people, will have to compete with China and India, and these two countries are the flavours of the day. These two economic power-houses attract much of the FDI's (i.e. Foreign Direct Investments). The only way out for ASEAN, in keeping pace with China and India, is to expedite the programme of AEI. ASEAN has to arrive at the end goal of AEC as soon as possible such that ASEAN will be the location of choice for FDI's and hence, stimulate economic excitement. Therefore, all AFTA-MRA's must facilitate expeditious AEI.

It is sad to note that the MRA on Engineering Services signed by the AEM in December 2005 during the last ASEAN Summit in Kuala Lumpur, is a big disappointment to discerning stakeholders.

It is not GATS plus; in fact, more barriers have been erected. It is also faulty in its scope of coverage when it deals with only CPC Code 8672 (i.e. Engineering Services) and does not cover 8673 (i.e. Integrated Engineering Services) – the more tradeable and better value-adding of the two services, be it for intra or extra ASEAN trade in services. Instead of economic integration and hence benefits, the MRA will result in ETI and construction related businesses to vegetate.

CONCLUSION

The end result of an MRA is free trade. It is supposed to benefit the respective sector-specific stakeholders. Therefore, should there be an active pan-ASEAN-wide grassroots sector-specific stakeholders' federation of trade associations or federation of discipline specific professionals, e.g. the ASEAN Federation of Engineering Organisations (AFEO) for ASEAN Engineers, then it is advantageous to have AFEO-ASEAN Engineers' Guidelines on engineering professional practice adopted as ASEAN's Directives as a breakthrough process in operationalising of the MRA for Engineering Services. In this way, the MRA can then be modified to be truly reflective of the ASEAN engineering stakeholders' aspiration.

(Please refer to AFEO's Yangon Declaration of CAFEO 22 – Dec 2004 available at www.aseanengineers.com and the Vientiane Declaration of CAFEO 23 – Dec 2005, which is published in this issue of JURUTERA on page 30 - 31.)

ASEAN must begin with the negotiation for an MRA on Integrated Engineering Services as soon as possible and should not leave it unattended. We need that MRA more than the one on Engineering Services. Integrated Engineering Services generate Brand Malaysia and Brand ASEAN Projects; marketable broad based value-adding services and assets.

Globalisation with companion liberalisation and transparency of regulatory regimes leading to good corporate governance are real. It is at the MRA level that stakeholders' interests are addressed. Whether you export or not, an MRA affects everyone. Hence, think global to act local! Take an interest in the MRA; it affects your ETI and construction related business and everyone's economic well being. ■