

## **ASEAN Integration in Trade in Services: Development, Challenges, and Way Forward**

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### **A. The Beginning of ASEAN Framework Agreement on Services (AFAS)**

The *Association of Southeast Asian Nations (ASEAN)* has been established since August 1967 with the signing of ASEAN Declaration (Bangkok Declaration) in Bangkok, Thailand by the Foreign Ministers of Indonesia, Malaysia, Philippines, Singapore, and Thailand<sup>1</sup>. One of the key objectives of ASEAN, as stated in the Bangkok Declaration, is “*to accelerate the economic growth, social progress and cultural development in the region through joint endeavours.*”

In the area of trade in services, ASEAN formalised its integration commitment through the signing of *ASEAN Framework Agreement on Services (AFAS)* by the *ASEAN Economic Ministers (AEM)* on 15 December 1995 in Bangkok, Thailand. The Forum may wish to note that the signing of this important agreement took place just about one-and-half year after the conclusion of first (and only) multilateral the *General Agreement on Trade in Services (GATS)* in April 1994.

AFAS has the following objectives:

- (a) To enhance cooperation in services amongst Member States in order to improve the efficiency and competitiveness, diversify production capacity, and supply and distribution of services of their service suppliers within and outside ASEAN

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<sup>1</sup> ASEAN now consists of 10 (ten) Member States. In addition to the above-listed five original Member States, Brunei Darussalam joined the Association on 8 January 1984, Viet Nam on 28 July 1995. Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999.

- (b) To eliminate substantially restrictions to trade in services amongst Member States
- (c) To liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the GATS with the aim to realising a free trade area in services

The main text of AFAS (<http://www.asean.org/6628.htm>) provides for the enabling legal framework for setting out the broad parameters that enables Member States to progressively improve market access and provide national treatment to services suppliers of ASEAN Member States.

All AFAS rules are consistent with international rules for trade in services as provided for under the GATS Agreement of the World Trade Organisation (WTO). Article XIV(1) of AFAS provides that *“The terms and definitions and other provisions of the GATS shall be referred to and applied to matters arising under AFAS for which no specific provision has been made under it.”* These include disciplines such as MFN, Domestic Regulations, Progressive Liberalisation, GATS Annexes, etc.

## **B. Institutional Mechanism in Implementing the AFAS**

While the AFAS covers all services sectors, there are different ASEAN bodies taking care of integration in different services sectors. In general, works in the area of trade services are undertaken by the Coordinating Committee on Services (CCS) who reports to the *ASEAN Economic Ministers (AEM)* through the *Senior Economic Officials Meeting (SEOM)*, as provided in the AFAS. Subsequent Ministerial decisions ruled that the following services sectors would be overseen by other Ministerial bodies and/or mechanism:

- (a) Since June 1999, liberalisation of financial services would be overseen by *ASEAN Finance Ministers Meeting (AFMM)* while air transport services would be overseen by *ASEAN Transport Ministers (ATM)*.
- (b) Since September 2001, liberalisation of services incidental to manufacturing, agriculture, fishery, forestry, and mining and quarrying were subjected to

ASEAN Investment Area (AIA) Framework Agreement instead of AFAS<sup>2</sup>, and undertaken by *Coordinating Committee on Investment (CCI)* who also reports to *ASEAN Economic Ministers (AEM)* through the *Senior Economic Officials Meeting (SEOM)*,

### **C. Liberalisation Approach under the AFAS**

Since the beginning of AFAS, ASEAN has been putting tremendous effort to liberalise trade in services among its Member States. Article 3 of AFAS requires ASEAN Member States to enter into negotiations on measures affecting trade in specific service sectors, and the results shall be set out in schedules of commitments. Prior to the adoption of the *ASEAN Economic Community (AEC) Blueprint* in 2007 (See [Section D](#) for details), the negotiations were undertaken in rounds of negotiations and resulted in packages of commitments.

It shall be noted that the liberalisation of air transport and financial services, as well as the services incidental to manufacturing, agriculture, fishery, forestry, and mining and quarrying are not subjected to the liberalisation approach explained below, except only during the time when they were under the purview of the AEM (see [section B](#) above).

#### ***C.1 First Round (1996–1998)***

During this round, ASEAN adopted the GATS-style of *Request and Offer Approach* for its services liberalisation. The process was initiated with an exchange of information among ASEAN Member States on each other's GATS commitments and services trade regime. This resulted in the First and Second Packages of AFAS Commitments, with emphasis on business services, construction, financial services, maritime transport, air transport, tourism, and telecommunications.

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<sup>2</sup> In February 2009, the AIA Framework Agreement was updated and merged with the 1996 Agreement for the Promotion and Protection of Investments, resulting in ASEAN Comprehensive Investment Agreement (ACIA).

## **C.2    *Second Round (1999– 2001)***

ASEAN adopted a *Common Sub-Sector Approach* in this round. A common sub-sector is defined as a sub-sector where four (4) or more Member States had made commitments in that sub-sector under the GATS and/or under previous AFAS packages. Under this approach, Member States were requested to schedule commitments in the identified common sub-sectors, which will then be extended to all other ASEAN Member States. This round of negotiations resulted in the Third Package of AFAS Commitments.

## **C.3    *Third Round (2002–2004)***

ASEAN adopted the *Modified Common Sub-Sector Approach* in this round. The approach is basically the same as the Common Sub-Sector Approach except that the threshold was made more rigorous to include sub-sectors where three (3) or more Member States had made commitments under the GATS and/or previous AFAS packages; hence increasing the number of sub-sectors requested to be liberalised. The third round resulted in the Fourth Package of AFAS Commitments.

## **C.4    *Fourth Round (2005–2007)***

The fourth round of AFAS negotiations was launched at the 36<sup>th</sup> AEM Meeting held on 3 September 2004. Unlike previous rounds, a more stringent set of criteria was set to complete the fourth round, requiring Member States to schedule a number of subsectors from an agreed list of subsectors which meet certain thresholds of level of commitment, mainly related to the required liberalisation level for Modes 1 and 2, and minimum foreign equity participation level for Mode 3.

The fourth round of negotiations concluded with the Fifth and Sixth Packages of AFAS Commitments.

## **C.5    *Liberalisation under the AEC Blueprint (2007 – 2015)***

Following the adoption of the *ASEAN Economic Community (AEC) Blueprint* in 2007 (see [Section D](#) for more details), ASEAN Member States shall progressively liberalise their services commitments based on the targets and timelines (up until 2015) as outlined in the, as well as any additional parameters approved by the ASEAN Economic Ministers (AEM):

- (a) The Blueprint lists out, for the area of trade in services, all liberalisation parameters for every 2 year-period until 2015, which needs to be complied by all ASEAN Member States.
- (b) The additional parameters were set by the AEM in light of the mandate of the Blueprint to set parameters for modes of supply not concluded at the time of completion of the Blueprint. To-date there had been AEM decisions for Mode 3 Market Access, Mode 3 National Treatment, and their-related Horizontal limitations, as well as on overall flexibility. Negotiation on Agreement on Movement of Natural Persons (MNP) is currently on-going, which may or may not include parameter to liberalise Mode 4.

AFAS liberalisation under this process has resulted in completion of the 7<sup>th</sup> Package of AFAS commitments, while completion of the 8<sup>th</sup> Package remains on-going.

#### D. ASEAN Economic Community (AEC) Blueprint and Other Major ASEAN Policies Related to Trade in Services

The concept of “ASEAN Community” comprising three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation, was officially declared at the 9<sup>th</sup> ASEAN Summit held in Bali, Indonesia in October 2003; of which declaration known as “Bali Concord II” (<http://www.asean.org/15159.htm>). The declaration stated that:

*“The ASEAN Economic Community (AEC) is the realisation of the end-goal of economic integration as outlined in the ASEAN Vision 2020, to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020.”*

As a first step towards the realisation of the AEC, the Bali Concord II annexed the *Recommendations of the High Level Task Force on ASEAN Economic Integration* that ASEAN shall implement.

The 12<sup>th</sup> ASEAN Summit held in Cebu, the Philippines on 13 January 2007, agreed to accelerate the establishment of ASEAN Community by 2015 for all the three pillars of ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC).

Subsequently, the following 13<sup>th</sup> ASEAN Summit held in Singapore on 20 November 2007 adopted the AEC Blueprint to implement the AEC by 2015 (<http://www.asean.org/5187-10.pdf>) in order to have a strengthened institutional framework and a unified legal identity by putting in place rules-based systems to realise the establishment of the AEC by 2015. The Blueprint contains various actions and their strategic schedules in various economic areas (including trade in services), which have to be implemented by all ASEAN Member States in order to realise the AEC by 2015.

In the area of trade in services, the Blueprint listed parameters including number of subsectors to be scheduled in each round, thresholds for Modes 1 and 2 and Mode 3 foreign equity participation, overall flexibility, Mutual Recognition Arrangement (MRA), as well as the task to set the parameters to liberalise national treatment limitations, Mode 4 and limitations in the horizontal commitments.

An important related aspect of ASEAN economic integration is the Priority Integration Sectors (PIS). The AEM in July 2003 identified 11 sectors for which liberalisation shall be accelerated and completed by 2010. 4 out of these 11 sectors have services element, which are: air travel, e-ASEAN<sup>3</sup>, healthcare, and tourism. The 12<sup>th</sup> priority sector, logistics services, was identified in 2006, for which liberalisation shall be accelerated and completed by 2013. There were roadmaps to integrate these sectors, which were subsequently incorporated into the AEC Blueprint.

#### **E. Concluded AFAS Packages of Commitments**

Numerous packages of AFAS liberalisation commitments have been concluded and signed by ASEAN Member States since the signing of AFAS in 1995.

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<sup>3</sup> e-ASEAN in services refers to telecommunication and computer-related services.

### ***AFAS Packages Signed by ASEAN Economic Ministers (AEM)***

The ASEAN Economic Ministers (AEM) had signed 8 Protocols to Implement 8 Packages of Commitments under AFAS which cover a wide range of services sectors. These 7 packages are as follows:

- 1<sup>st</sup> Package, signed on 15 December 1997 in Kuala Lumpur, Malaysia
- 2<sup>nd</sup> Package, signed on 16 December 1998 in Ha Noi, Viet Nam
- 3<sup>rd</sup> Package, signed by 31 December 2001 (Ad-Referendum Signing)
- 4<sup>th</sup> Package, signed on 3 September 2004 in Jakarta, Indonesia
- 5<sup>th</sup> Package, signed on 8 December 2006 in Cebu, the Philippines
- 6<sup>th</sup> Package, signed on 19 November 2007 in Singapore
- 7<sup>th</sup> Package, signed on 26 February 2009 in Cha-am, Thailand
- 8<sup>th</sup> Package, signed on 28 October 2010 in Ha Noi, Viet Nam

The compilation of these AFAS packages for each ASEAN Member State is available at <http://www.asean.org/19087.htm>. At present, ASEAN Member States are working towards full completion of their commitments for the 8<sup>th</sup> Package as per mandate of the AEC Blueprint. It shall be noted that beginning from the 5<sup>th</sup> Package, all the previous AFAS and GATS commitments were consolidated into a single comprehensive schedule<sup>4</sup> along with new/improved commitments made under the subsequent packages.

### ***AFAS Packages Signed by ASEAN Finance Ministers***

The initial financial services commitments of ASEAN Member States under AFAS appear in the 2<sup>nd</sup> AFAS Package signed by the ASEAN Economic Ministers in 1998. Following the decision to move financial services liberalisation to the ASEAN Finance Ministers' track (see [section B](#) above), subsequent commitments in financial services are signed by ASEAN Finance Ministers. Since 2002, four (4) Protocols had been signed by the ASEAN Finance Ministers:

- 2<sup>nd</sup> Package, signed on 6 April 2002 in Yangon, Myanmar

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<sup>4</sup> Excluding commitments made in financial services, air transport, and services incidental to manufacturing, agriculture, fishery, forestry, and mining and quarrying. Please cross-refer to [section B](#) above on the institutional mechanism.

- 3<sup>rd</sup> Package, signed on 6 April 2005 in Vientiane, Lao PDR
- 4<sup>th</sup> Package, signed on 4 April 2008 in Da Nang, Viet Nam
- 5<sup>th</sup> Package, signed on 4 May 2011 in Ha Noi, Viet Nam

and can be downloaded from <http://www.asean.org/6321.htm>.

### ***AFAS Packages Signed by ASEAN Transport Ministers***

There are two additional packages of commitments in air transport signed by the ASEAN Transport Ministers:

- 4<sup>th</sup> Package, signed on 23 November 2004 in Phnom Penh, Cambodia
- 5<sup>th</sup> Package, signed on 8 February 2007 in Bangkok, Thailand

and these can be downloaded from <http://www.asean.org/7365.htm>. It shall be noted that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> packages of AFAS commitments signed by the AEM contain ASEAN Member States' commitments in air transport services. Following the re-assignment of responsibilities (see [section B](#) above), the AFAS transport packages signed by the ASEAN Transport Ministers began from the 4<sup>th</sup> package.

## **F. Mutual Recognition Arrangement (MRA)**

*Mutual Recognition Arrangements (MRAs)* is another important initiative in ASEAN integration on trade in services. MRAs can facilitate trade in services by mutual recognition of authorisation, licensing, or certification of professional service suppliers. The goal of the MRA is to facilitate the flow of foreign professionals, taking into account relevant domestic regulations and market demand conditions.

At the 7<sup>th</sup> ASEAN Summit held on 5 November 2001 in Bandar Seri Begawan, Brunei Darussalam, ASEAN Heads of States/Governments mandated the start of negotiations on MRAs to facilitate the flow of professional services under AFAS. The ASEAN *Coordinating Committee on Services (CCS)* established an *Ad-hoc Expert Group on MRAs* under its *Business Services Sectoral Working Group* in July 2003 to begin negotiations on MRAs in services. Subsequently, the CCS established the *Healthcare Sectoral Working Group* in



March 2004, which undertook negotiations on MRAs in the healthcare sector as one of its regular agenda.

At present, CCS has concluded 7 (seven) MRAs signed by *the ASEAN Economic Ministers (AEM)*:

<b>MRA</b>	<b>Download</b>	<b>Signing Date &amp; Venue</b>
Engineering Services	<a href="http://www.asean.org/18009.htm">http://www.asean.org/18009.htm</a>	9 December 2005 Kuala Lumpur, Malaysia
Nursing Services	<a href="http://www.asean.org/19210.htm">http://www.asean.org/19210.htm</a>	8 December 2006 Cebu, the Philippines
Architectural Services	<a href="http://www.asean.org/21137.pdf">http://www.asean.org/21137.pdf</a>	19 November 2007 Singapore
Framework Arrangement for the Mutual Recognition of Surveying Qualifications	<a href="http://www.asean.org/21139.pdf">http://www.asean.org/21139.pdf</a>	
MRA Framework on Accountancy Services	<a href="http://www.asean.org/22225.htm">http://www.asean.org/22225.htm</a>	26 February 2009 Cha-am, Thailand
Medical Practitioners	<a href="http://www.asean.org/22231.htm">http://www.asean.org/22231.htm</a>	
Dental Practitioners	<a href="http://www.asean.org/22228.htm">http://www.asean.org/22228.htm</a>	

These MRAs enable the professional services suppliers certified or registered by the relevant authorities in their home country to be mutually recognised by other signatory Member States. They are currently in various stages of implementation, with mechanisms being established to administer the implementation of the MRAs.

## **G. Services Elements in ASEAN's FTA/CEP with Dialogue Partners**

In the past decade, ASEAN has been actively engaged in negotiations on *Free Trade Area (FTA)* and *Comprehensive Economic Partnership (CEP)* agreements with an increasing number of its Dialogue Partners. The liberalisation of the services sector is an important element of these negotiations.

The first concluded services agreement under an FTA between ASEAN and a Dialogue Partner is the *Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China* (<http://www.asean.org/19346.htm>), signed on 17 January 2007 in Cebu, the Philippines. The First Package of Commitments annexed to this Agreement is available at <http://www.asean.org/19330.htm>. Negotiations for the Second Package have been concluded and the Package is targeted for signing within this year.

This was then followed by the conclusion and signing of the *Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of ASEAN and the Republic of Korea* (<http://www.asean.org/21111.pdf>) on 21 November 2007 in Singapore, which include an additional annex on financial services.

The latest completed FTA is the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (<http://www.asean.org/22258.htm>) signed on 27 February 2009 in Cha-am, Thailand. This Agreement contains an additional chapter on *Movement of Natural Persons (MNP)* and annexes on financial services and telecommunications. There are 2 separate schedules of commitments: one on specific services commitments and one on the Movement of Natural Persons (MNP).

Negotiations with India and Japan in trade in services are currently on-going.

## **H. Challenges in Integration of Services in ASEAN**

The liberalisation of the services sector is ---to a significant extent--- an important driver of regional integration in trade in services, and it is apparently not a simple task. Liberalisation of trade in services a relatively recent development compared with trade in goods, and

services trade is inherently very different from goods trade. Services trade is intangible and governed by myriad rules and regulations, and can be undertaken through different modes of supply. Services cover a very diverse and large number of sectors and sub-sectors, and they are regulated by numerous government agencies and ministries. Some of these sectors may be heavily regulated, but some others may be unregulated or may not even require regulation.

The situation in ASEAN is not very different from many parts of the world. Apart from the factors mentioned above, the liberalisation process in many ASEAN Member States (if not most) also encounter certain degree of domestic opposition due to fear of displacement in the job market or market share (which also happens likewise in the liberalisation of trade in goods). Furthermore, existing rules and regulations in various sectors (even the constitution) in various ASEAN Member States may have prevented these sectors in these countries from further liberalisation.

As for the challenges of services liberalisation specific for ASEAN/AFAS, they include the following factors:

### ***H.1. A Diverse Grouping of 10 Member States***

ASEAN comprises 10 Member States which are diverse in many respects. According to latest ASEAN Secretariat statistics, it comprises countries with population as large as Indonesia (231 million) or as small as Brunei Darussalam (406 thousand), income per capita as high as Singapore (US\$ 36,631) or as low as Myanmar (US\$ 419), annual services trade volume as high as Singapore (US\$ 169 billion) or as low as Lao PDR (US\$ 675 thousand)<sup>5</sup>. Apparently, integrating the economy in general, and services trade in particular, would pose a significant challenge.

### ***H.2 Short Time Frame for all Services Sectors***

The AEC Blueprint envisages removal of restrictions to trade in all services sectors by 2015, with accelerated target for the priority sectors by 2010 and logistics services sector by 2013.

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<sup>5</sup> Services trade is taken from WTO statistics. Latest figures are not available for a number of ASEAN Member States. Trade figure for Lao PDR is as of 2008 statistics.

There is no *a priori* exclusion of any sector or subsector, but there is be a provision of 15% overall flexibility which shall be allowed starting from the 8<sup>th</sup> AFAS package.

### ***H.3 Ambitious Compulsory Liberalisation Targets***

Starting from the 4<sup>th</sup> round of AFAS negotiation, a Package can only be considered as completed until all 10 ASEAN Member States meet the agreed thresholds. In general, for each of the Round/Package, there shall be a minimum number of subsectors that comply with all the required levels of commitments for each applicable Mode of Supply.

Various thresholds as well as technical understandings have been negotiated in the CCS process since the 4<sup>th</sup> Round, and applied immediately to the prevailing AFAS package once approved by the AEM. As of now, there has been parameters set up for all Modes of Supply, except for Mode 4 (please cross-refer to [section C.5](#) above).

Among the various thresholds agreed, the most challenging one so far as experienced by most (if not all) ASEAN Member States is the foreign equity participation target. The AEC Blueprint requires all ASEAN Member States to:

*Allow for foreign (ASEAN) equity participation of not less than 51% by 2008, and 70% by 2010 for the 4 priority services sectors; not less than 49% by 2008, 51% by 2010, and 70% by 2013 for logistics services; and not less than 49% by 2008, 51% by 2010, and 70% by 2015 for other services sectors*

The 8<sup>th</sup> AFAS Package was targeted for completion by 2010. Nonetheless, due to difficulties in meeting the various thresholds (including this foreign equity participation target), the Ministers had agreed to extend the timeline to 2011.

### ***H.4 Interplay between AFAS Liberalisation and FTA/CEP Negotiations***

The rapid proliferation of FTA/CEP negotiations in the recent years, including those pursued by ASEAN as a grouping as well as by individual ASEAN Member States with their major trading partners, has directly or indirectly contributed to the accelerated liberalisation pressures across the region.

On one hand, liberalisation pressures demanded by ASEAN's FTA/CEP partners have resulted in liberal commitments of ASEAN Member States in various sectors and subsectors, which need not necessarily be exactly the same with prevailing AFAS commitments. Such result could contribute ---indirectly--- to deeper commitment to be made under subsequent AFAS packages, although again they need not be exactly of the same content.

On the other hand, the increasingly more liberal AFAS packages (after all the thresholds set within the ASEAN process) have also influenced ASEAN's FTA/CEP negotiations. These FTA/CEP partners may not request for the exact content of the prevailing AFAS packages either, as each of them has different areas of interest. However, at least, the increasingly liberal AFAS packages have become important benchmark for these trading partners to set their negotiation strategy.

## I. Moving Forward

The ASEAN Economic Community (AEC) is the realisation of the end goal of economic integration as espoused in the 2003 Declaration of Bali Concord II and the 2009 Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community. The free flow of services is one of the five core elements to achieve this goal. The AEC Blueprint (2007) has outlined a number of actions with specific targets and timelines to realise the AEC by 2015.

ASEAN Member States have expressed their commitment to continue to work towards achieving the free flow of trade in services by 2015 as outlined in the AEC Blueprint. Given the rapid pace of integration of ASEAN economies into the global trading system and the intensifying pace of FTA/CEP negotiations, it may be critical for ASEAN economies that ASEAN Member States continues to work towards a higher degree of integration and liberalisation in the area of trade in services.

In achieving this goal, cooperation between all stakeholders (business communities, governments, academia, and civil society) will play a critical role in the endeavour to assist in the way forward and to ensure the realisation of ASEAN integration in services. Within the AFAS process itself, ASEAN may need to enhance its effort on services facilitation and cooperation activities, to complement the liberalisation efforts that still need to be undertaken as guided by the AEC Blueprint towards 2015.

