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ASEAN Integration in Trade in Services

Development, Challenges,
and Way Forward



ASEAN Framework Agreement on Services (AFAS)

A General Overview

The Beginning of AFAS

- ❑ Cooperation in trade in services in ASEAN was formally institutionalised through the signing of *ASEAN Framework Agreement on Services (AFAS)* during the 5th ASEAN Summit (Bangkok, 15 December 1995) by *ASEAN Economic Ministers (AEM)*
- ❑ AFAS adopts the structure and approach of *General Agreement on Trade in Services (GATS)* of the *World Trade Organisation (WTO)*

The Objectives of AFAS

- ❑ 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
- ❑ To eliminate substantially restrictions to trade in services amongst Member States
- ❑ 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

AFAS Articles

1. Objectives
2. Areas of Cooperation
3. Liberalisation
4. Negotiation of Specific Commitments
5. Mutual Recognition
6. Denial of Benefits
7. Settlement of Disputes
8. Supplementary Agreements or Arrangements
9. Other Agreements
10. Modification of Schedules of Specific Commitments
11. Institutional Arrangements
12. Amendments
13. Accession of New Members
14. Final Provision

AFAS is Subject to GATS Disciplines

Article XIV(1) of AFAS: 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 commitments and disciplines such as:

- Most-Favoured-Nation (MFN)
- Transparency
- Domestic Regulation
- Monopolies
- Business Practices
- Payments and Transfers
- Balance of Payments Safeguard
- General Exceptions and Security Exceptions
- Market Access, National Treatment, and Additional Commitments
- Progressive Liberalisation
- GATS Annexes

Coordinating Committee on Services

- ❑ The official ASEAN Body looking after policies and issues in trade in services is the *Coordinating Committee on Services (CCS)*
- ❑ The CCS was established in January 1996, and is reporting to the *ASEAN Economic Ministers (AEM)* through the *Senior Economic Officials Meeting (SEOM)*
- ❑ The following services are not under the purview of CCS: air transport and financial services (since 1999), and services incidentals to manufacturing, agriculture, fishery, forestry, and mining and quarrying (since 2001).

Other Related ASEAN Bodies

- ❑ Liberalisation of air transport services is now negotiated by *Air Transport Sectoral Negotiations (ATSN)* under the purview of *ASEAN Transport Ministers (ATM)*
- ❑ Liberalisation of financial services is now negotiated by *Working Committee on ASEAN Financial Services Liberalisation (WCFSL)* under the purview of *ASEAN Finance Ministers Meeting (AFMM)*
- ❑ Liberalisation of services incidental to manufacturing, agriculture, fishery, forestry, and mining and quarrying, is subject to *ASEAN Comprehensive Investment Agreement (ACIA)* disciplines instead of AFAS, and is negotiated by *Coordinating Committee on Investment (CCI)*

Approaches of Services Negotiations

Round	Approach	Description
1 (1996 – 1998)	Request and Offer	Similar to GATS Incl. Exchange of information on services regime
2 (1999 – 2001)	Common Sub-Sectors	<ul style="list-style-type: none"> • Common sub-sector = a sub-sector where 4 or more Member State had made commitments under GATS and/or previous AFAS packages. • Member States are requested to make offer for these sub-sectors
3 (2002 – 2004)	Modified Common Sub-Sector	Same as above, but threshold is modified to 3 or more Member States (instead of 4)
4 (2005 – 2006)	2 Tables of Subsectors*	<ul style="list-style-type: none"> • Require a minimum number of subsectors to be submitted that meet certain levels of commitment: • Table 1 = Mandatory subsectors • Table 2 = List of subsectors and ≥ 5 of them shall be scheduled
5 onwards	AEC Blueprint*	Follow requirements listed in the AEC blueprint & any subsequent Ministerial decisions

* No longer formally labelled as "approach"



Services-
Related
Policies

ASEAN Economic Community (AEC) Blueprint

& Other Recent Major ASEAN Policies
Related to Trade in Services

ASEAN Economic Community (AEC)

- ❑ At the 9th ASEAN Summit (Bali, 7 October 2003), ASEAN Leaders declared Bali Concord II which contains ASEAN Economic Community (AEC) as one of its important pillar
 - To achieve AEC, ASEAN Leaders adopted the approach outlined in the Recommendations of the High Level Task Force on ASEAN Economic Integration (HLTF)
- ❑ The 12th ASEAN Summit (Cebu, 13 January 2007) accelerate the establishment of ASEAN Community by 2015
 - For all three pillars of the ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC)
- ❑ The 13th ASEAN Summit (Singapore, 20 November 2007) adopted the AEC Blueprint to implement the AEC by 2015.

ASEAN Economic Community (AEC)

The AEC will establish ASEAN as a single market and production base making ASEAN more dynamic and competitive. It envisages the following inter-related and mutually reinforcing key characteristics:

- ❑ a single market and production base;
 - free flow of goods, free flow of services, free flow of investment, free flow of capital, and free flow of skilled labour.
- ❑ a highly competitive economic region;
- ❑ a region of equitable economic development; and
- ❑ a region fully integrated into the global economy.

Free flow of Services in the AEC

- ❑ Free flow of trade in services is one of the important elements in realising AEC.
- ❑ There will be substantially no restriction to ASEAN services suppliers in providing services and in establishing companies across national borders within the region, subject to domestic regulations.
 - Through rounds of negotiation by relevant ministerial bodies
 - Clear targets and timelines
 - No back-loading of commitments
 - Pre-agreed flexibilities
 - Strategic schedules with key milestones

Services Liberalisation under the AEC Blueprint

- ❑ Through consecutive rounds every two years until 2015
- ❑ Target to schedule minimum 10 new sub-sectors meeting threshold in 2008, 15 in 2010, 20 in 2012, 20 in 2014 and 7 in 2015*
- ❑ Modes 1 and 2:
 - To schedule “None” except for bona fide regulatory reasons e.g. public safety (subject to CCS decision)
- ❑ Targets: Mode 3 (Foreign Equity Participation)
 - Priority Sectors: 2008—51%, 2010—70%, 2013—70% (Logistics)
 - Other Sectors: 2008—49%, 2010—51%, 2015—70%
- ❑ Progressive Removal of Other Mode 3 MA Limitations by 2015
- ❑ Set Parameters of Liberalisation for Mode 3 NT, Mode 4, and Horizontal Limitations

*Counting of number of subsectors is based on GATS' MTN.GNS/W/120 classification

Priority Integration Services Sectors

There are now 12 (twelve) priority integration sectors.

- ❑ Eleven priority sectors were identified by ASEAN Economic Ministers (AEM) in July 2003, including air travel, e-ASEAN, healthcare, and tourism which have services element.
- ❑ At the 10th ASEAN Summit (Vientiane, 29 November 2004), ASEAN Leaders signed the *ASEAN Framework Agreement for the Integration of Priority Sectors* together with the Roadmaps for the Integration of Priority Sectors.
 - These were further refined and amended, signed by the ASEAN Economic Ministers (AEM) on 8 December 2006 in Cebu
- ❑ The twelfth priority sector, logistics services, was identified in 2006 and its Roadmap was endorsed and signed by AEM at their 39th Meeting in August 2007.

Additional Services Liberalisation Parameters

In addition to the AEC Blueprint, the AEM has approved the following additional services liberalisation parameters:

- ❑ Phasing out of non-equity Mode 3 Market Access (MA) limitations (39th AEM, August 2007)
- ❑ Phasing out of Mode 3 National Treatment (NT) limitations (42nd AEM, August 2010)
- ❑ Overall flexibility of 15% in services liberalisation (41st AEM, August 2009)

*Negotiation on ASEAN Agreement on Movement of Natural Persons (MNP) is now taking place, which may affect Mode 4 liberalisation.

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AFAS
Progress

Progress of AFAS Liberalisation

Progress of AFAS

To date, ASEAN Economic Ministers have signed 8 packages of commitments negotiated from 6 rounds of negotiations. All ASEAN Member States have completed their full commitments for 7 AFAS packages.

Round	Package	Venue and Date of Signing
1 (1996 – 1998)	1	Kuala Lumpur, 15 December 1997
	2	Ha Noi, 16 December 1998
2 (1999 – 2001)	3	31 December 2001 (Ad-Referendum)
3 (2002 – 2004)	4	Jakarta, 3 September 2004
4 (2005 – 2006)	5	Cebu, 8 December 2006
	6	Singapore, 19 November 2007
5 (2007 – 2008)	7	Cha-am, 26 February 2009
6 (2009 – 2010)	8	Ha Noi, 28 October 2010

Progress of AFAS (Cont.)

In addition, there have also been 3 packages of commitments in financial services signed by the ASEAN Finance Ministers and 3 packages of commitments in air transport services signed by ASEAN Transport Ministers.

Sector	Package	Venue and Date of Signing
Financial Services	2	Yangon, 6 April 2002
	3	Vientiane, 6 April 2005
	4	Da Nang, 4 April 2008
	5	Ha Noi, 4 May 2010
Air Transport	4	Phnom Penh, 23 November 2004
	5	Bangkok, 8 February 2007
	6	Ha Noi, 10 December 2009

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Mutual
Recognition

Mutual Recognition Arrangement (MRA)

Mutual Recognition Arrangement (MRA)

- ❑ At the 7th Summit (Bandar Seri Begawan, 5 November 2001), ASEAN Leaders mandated the start of negotiations on Mutual Recognition Arrangement (MRA) to facilitate the flow of professional services under AFAS
- ❑ An MRA enables professional service providers registered/certified in its signatory countries to be equally recognised in other signatory countries
- ❑ MRA does not warrant unrestricted free flow of foreign professionals, relevant domestic regulations and market demand still applies

Concluded MRAs

ASEAN has concluded 7 (seven) MRAs and these MRAs are now in various stages of implementation

MRA	Venue and Date of Signing
MRA on Engineering Services	Kuala Lumpur, 9 December 2005
MRA on Nursing Services	Cebu, 8 December 2006
MRA on Architectural Services	Singapore, 19 November 2007
Framework Arrangement for the Mutual Recognition of Surveying Qualifications	
MRA Framework on Accountancy Services	Cha-am, 26 February 2009
MRA on Medical Practitioners	
MRA on Dental Practitioners	

Different Models of ASEAN MRAs

- ❑ MRAs on engineering and architecture provide recognition for registered ASEAN professionals. Member States *wishing to participate* shall notify ASEAN Secretary-General
- ❑ MRAs on Accountancy Services and Surveying lay down the *broad principles and framework* for the negotiating bilateral or multilateral MRAs
- ❑ MRAs on medical practitioners and dental practitioners are based on bilateral registration processes. Member States *wishing to defer* implementation to notify ASEAN Secretary-General
- ❑ ASEAN is now focusing on implementing all signed MRAs



Services Elements in ASEAN's FTA/CEP with Dialogue Partners

ASEAN's Trade in Services Agreements

Services is an important element of ASEAN's *Free Trade Area (FTA)* and *Comprehensive Economic Partnership (CEP)* agreements with its Dialogue Partners.

- ❑ Completed trade in services agreements:
 - ASEAN-China: Signed on 17 January 2007 in Cebu
 - ASEAN-Korea: Signed on 21 November 2007 in Singapore
 - ASEAN-Australia-New Zealand: Signed on 27 February 2009 in Cha-am (Part of Single Undertaking under AANZFTA)
- ❑ Currently being negotiated:
 - ASEAN-India
 - ASEAN-Japan



Challenges and Way Forward

Common Challenges

Services liberalisation is an important driver of regional economic integration, yet it is not a simple task in ASEAN, just as in many parts of the world:

- ❑ Trade in services liberalisation is a relatively recent development compared with trade in goods liberalisation
- ❑ Services trade is inherently very different from goods trade:
 - Intangible and governed by myriad rules and regulations;
 - Can be undertaken through different modes of supply;
 - Cover a diverse range of sectors, regulated by numerous agencies/ministries. Some are unregulated or don't require regulation.
- ❑ Fear of displacement in the job market or market share
- ❑ Existing domestic rules and regulations (even constitution) preventing further liberalisation in certain sectors/areas

Challenges in AFAS Liberalisation

- ❑ A Diverse Grouping of 10 Member States
 - Integrating 10 nations with very different population size, economic size, development level, trade volume, etc.
- ❑ Short Time Frame for all Services Sectors
 - 2015 is the ultimate timeline and sooner for priority sectors
 - No a priori exclusion of any sector, only 15% flexibility
- ❑ Ambitious Compulsory Liberalisation Targets
 - Stricter requirements for quantity and quality for services commitments for each succeeding packages.
- ❑ Interplay between AFAS and FTA/CEP Liberalisation
 - FTAs/CEPs push AFAS process, and vice versa

Moving Forward

- ❑ ASEAN is committed to achieve the free flow of trade in services by 2015 as outlined in the AEC Blueprint.
 - Given the rapid pace of integration of global trading system and the intensifying pace of FTA/CEP negotiations
- ❑ Cooperation between all stakeholders (business communities, governments, academia, and civil society) will play a critical role
- ❑ ASEAN may need to enhance its effort on services facilitation and cooperation activities, to complement the liberalisation efforts

Further Resources

- ❑ ASEAN services main page:
<http://www.asean.org/20063.htm>
- ❑ Latest AFAS publication:
<http://www.asean.org/publications/AFAS-2009.pdf>

