Service Liberalization in ASEAN

Deunden Nikomborirak*

INTRODUCTION

The ASEAN Framework Agreement on Services (AFAS) was born out of the ASEAN Bangkok Summit in 1995, where a decision was made that ASEAN will launch negotiations in trade in seven service sectors, namely, banking, tourism, air transportation, maritime transportation, telecommunications, construction and professional services. It was believed that regional negotiations would solicit bolder commitments from member countries than those made in the General Agreement on Trade in Services (GATS) where the number of parties involved is much greater and the interests much more diverse. The GATS framework was used as the basis for negotiations in the AFAS. Member countries are to place requests and offers on liberalizing their respective service sectors.

The negotiation scheme based on the request-and-offer format did not prove effective, however, simply because most member countries were unwilling to open up their markets. Rather, they were hoping to benefit from prying open member countries' service markets, while protecting their own as much as possible. They, therefore, strategically held back their offers in the hope of being able to strike a better bargain with other members. This is evident in the "Initial Package of Commitments" made in December 1997, where commitments made were rather trivial and concentrated only on the tourism sector, where most member countries display a comparative advantage. Few commitments were made in key sectors such as finance and telecommunications. In light of the clearly unsatisfactory initial offers, an additional requirement was made that commitments made in the AFAS should, at the least, be more advanced than those made in the GATS.

The GATS-plus requirement did much help to improve member countries' offers that became the Final Package of Commitments made in September 1998. Other factors were also responsible. The spread of electronic commerce such as electronic banking and on-line accounting, consulting, insurance services has also forced member countries to open up their service industries with little choice or risk falling behind in the global information revolution. Nevertheless, the Final Package of Commitments were far from being "bold" as had been anticipated by the Coordinating Committee on Services (CCS). The following section will examine in greater detail the nature of these commitments in key sectors, namely, telecommunications, maritime transport, air transport and tourism. The examination covers five countries of the 10-member ASEAN, namely, Thailand, Malaysia, Singapore, the Philippines and Indonesia.

ASEAN-5 COMMITMENTS IN THE AFAS AND THE GATS

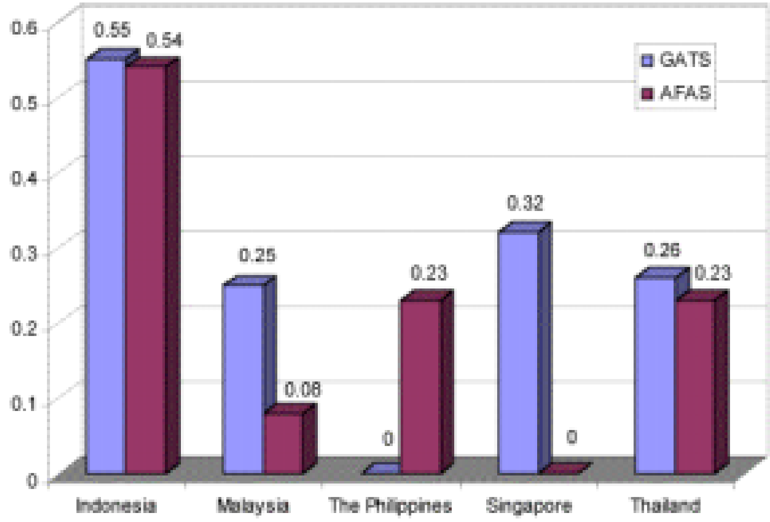
Despite the GATS-plus requirement, actual commitments made in the AFAS are only marginally better than those made in the GATS. And in some sectors, such as telecommunications, commitments in the AFAS are clearly inferior to those made in the GATS, reflecting the members' lack of genuine commitment to open up their service markets to their neighbors. Graphs a, b, c and d compare the AFAS and GATS commitments of the ASEAN-5 in four service sectors, namely, telecommunications, air transportation, maritime transportation and tourism.[1] Some of these commitments are elaborated below.

Comparison of Commitments in the GATS and in the AFAS

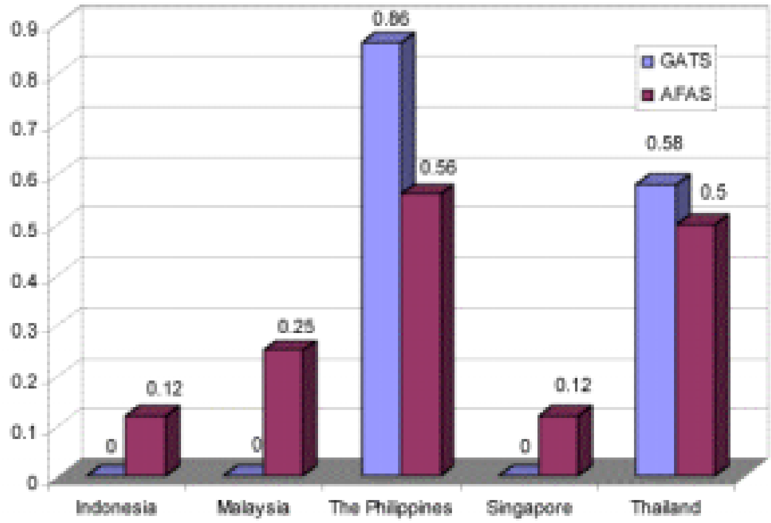
It is in the telecommunications sector that the difference between the GATS and AFAS commitments is most glaring. As can be seen in Graph a, with the exception of the Philippines, the ASEAN members made less progressive commitments in the AFAS than in the GATS. The discrepancies between the two sets of commitments in the telecommunications sector became even wider after more advanced commitments were made in the GATS under the Agreement on Basic Telecommunications (ABT), signed in 1997. Singapore made the most advanced commitment both to liberalize overseas call market in the year 2000 and to allow foreign ownership in local telecom businesses. Malaysia and the Philippines, both of which have already opened up their local markets since 1995, guaranteed market access in the international service sub-sector beginning January 1998 but did not commit to allowing foreign control of local telecom businesses. Thailand and Indonesia are obvious laggards. Indonesia committed to open up its overseas call market in 2005, while Thailand only committed to revise its commitments in 2006.

* *Dr. Deunden is Research Director for Economic Governance, Sectoral Economics Program, TDRI.*

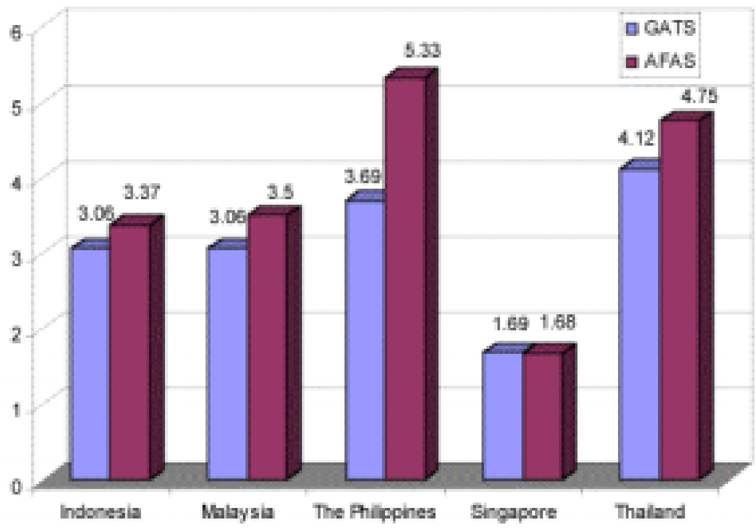
Graph a: Telecommunications



Graph b: Air Transportation

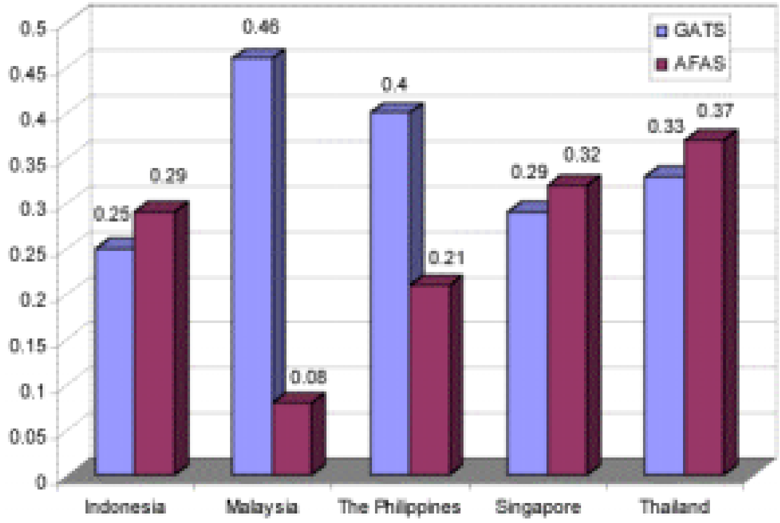


Graph c: Maritime Transportation



Source: Thailand Development Research Institute (TDRI). 2000. A Study of ASEAN Laws to Promote Greater Cooperation and Liberalization in Trade in Services and Investment. Bangkok: TDRI. (in Thai)

Graph d: Tourism



Source: ASEAN Secretariat.

Since the ABT is based on a reciprocal rather than MFN basis, ASEAN member countries that have not opened up their markets are not entitled to benefit from market liberalization as a result of the agreement. For example, since Thailand and Indonesia have not opened up their local markets, they will not be guaranteed access to international service markets in Malaysia, the Philippines and Singapore. Yet, European countries, the US, and other non-ASEAN countries with open markets will be able to access these markets.

Maritime transport service appears to be the only sector where commitments in the AFAS are clearly more advanced than those made in the GATS as can be seen in Graph c. This may be simply because the commitments under the GATS are minimal as negotiations in 1994 failed miserably. The collapsed negotiations were marked by the withdrawal of the United States from the negotiations, citing "unsatisfactory commitments" made by other members as the reason. The other reason for the more advanced commitments under the AFAS is that there is little competition among the ASEAN countries in the maritime sector. Singapore is by far the only leader in the region with the size of its fleet more than twice that of the Philippines, which has the second largest fleet. With not much to protect, the member countries are able to make more advanced commitments. However, as can be seen from Graph c, Singapore made the least commitments.[2] This would confirm that ASEAN members continue to give priority to protecting their own industry, even a relatively competitive one.

As for air transport service, the Philippines and Thailand made the most advanced commitments in the GATS and less advanced in the AFAS, while the remaining three members made very little commitments in the GATS, but additional ones in the AFAS (see Graph b). This would appear to indicate that both the Philippines and Thailand do not particularly favor regional liberalization in this industry. The picture is very much similar in the tourism sector. Here, Malaysia and the Philippines made the most advanced commitments in the GATS, but again, less advanced ones in the AFAS.

To conclude, it appears that bold commitments are made in the GATS rather than the AFAS as intended, and that most liberal commitments the ASEAN members made in the GATS are often watered down, rather than furthered, in the AFAS. In the following section, we shall examine the approach to negotiations that the individual member country has taken in the past that may help explain the lack of progress in negotiations.

Member Country's Attitude toward Liberalization and Commitments under the AFAS

Among the ASEAN-5 members, Singapore has the most liberal and competitive service sector and is therefore constantly prodding other members to make progressive liberalization in their respective service sectors. But Singapore does not seem to be taking the existing negotiation framework seriously. As can be seen from the schedules of commitments in Table 1, despite its relatively liberal regime, Singapore's commitments in both the GATS and the AFAS are trivial, be they in transportation, telecommunications or tourism. On the contrary, it did make bold commitments in the GATS under the ABT, where negotiations are more clearly focused and the agreement is based on a reciprocal rather than MFN basis.

Indeed, Singapore appears to prefer more concrete, focused, issue-based negotiations. For example, it has been advocating "regional open sky policy" among ASEAN countries since the landing rights issue is not included in the scope of negotiations in the air transportation sector in the GATS. Its attempt was not met with much success since Thailand, the key player as the current regional aviation hub, refuses to sign an open sky agreement with its neighbors for fear of losing its geographical advantage by allowing foreign airlines to pick up passengers from the Bangkok International airport. As a result, Singapore has begun to look outside the region. It signed an "open sky" agreement with the United States in 1997. Malaysia followed suit and signed a similar agreement with the United States shortly afterward.

Judging from the depth and coverage of commitments, the Philippines appears to have placed the most efforts in past negotiations. It has made the most advanced commitments both in the GATS and the AFAS in many sectors, particularly in maritime transport (passenger and freight transport) and also in air transport (computer reservation system), where it imposed no restrictions on commercial presence.

Thailand did make commitments in many sectors and sub-sectors, but most are considered trivial. In key service sectors as those shown in Table 1, Thailand committed very little. Moreover, Thailand is the only ASEAN member that requested for MFN exemptions for almost all service sectors, although this fact is not apparent in the schedule of commitments shown in Table 1. Thus, Thailand's commitments in the GATS are not as deep and wide as they would appear to be. This reflects the country's preference for selective liberalization.

Similar to Thailand, Malaysia and Indonesia did not make advanced commitments in the GATS or the AFAS. However, these two countries have far fewer MFN exemptions than does Thailand.

TYPE OF BARRIERS TO TRADE AND INVESTMENT IN SERVICES IN ASEAN COUNTRIES

Since the service sector remains largely non--traded despite the emergence of the electronic revolution, provision of services continues to rely mainly on foreign direct investment. Thus, barriers to market access and national treatment (equal treatment of foreign and local business entities) in services take the form of investment restrictions, in particular, control of foreign equity share in domestic enterprises, types of commercial establishment allowed (branches, subsidiaries or joint ventures), scope of service, and employment of foreign personnel.

To illustrate the types of barriers found in the service sector in the ASEAN region, the schedules of commitments of the five member countries under both the GATS and the AFAS in four key service sub-sectors chosen from each of the four service sectors examined in this study are presented in Table 1. The four sub-sectors include hotels (from the tourism sector), international services (telecommunications), passenger and freight transportation (maritime transport) and computer reservation systems (air transport).

Table 1 Commitments made by the ASEAN-5 in Key Service Sectors in the GATS and the AFAS

Country	Type of restrictions			
	Tourism (Hotel)		Telecommunications (International Services)	
	GATS	AFAS	GATS	AFAS
Indonesia	• Limitation on the size of the area of operation	• Double the size of the area	• Joint venture required • Foreign equity capped at 25%	• No commitments
	• Restrictions on employment of foreign personnel except for positions of managers and specialists	• Same as in GATS	• Restrictions on employment of foreign personnel except for positions of managers and specialists • Number of foreign employees limited to under 20 in joint ventures	• No commitments
Malaysia	• Foreign ownership restrictions • Joint venture with Malaysian control required • No commitments made for employment of foreign nationals	• Same as in GATS	• No commitments	• No commitments
Philippines	• Foreign ownership capped at 40% • Restrictions on type of position and length of stay of foreign employees. A letter of guarantee issued by relevant state authority also required.	• Same as in GATS	• No commitments	• No commitments
Singapore	• Mode 3 — No commitments • Mode 4 — As in horizontal restrictions	• Same as in GATS • No commitments	• Number of new operators not exceeding 2 • Foreign equity is capped.	• No commitments
Thailand	• No commitments	• No commitments	• No commitments	• No commitments

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Table 1 (Continued)

Country	Type of restrictions			
	Tourism (Hotel)		Telecommunications (International Services)	
	GATS	AFAS	GATS	AFAS
Indonesia	• Foreign entities can be set up only as representative offices.	• Joint venture is allowed with foreign equity not exceeding 60%.	• No commitments	• Foreign entity not allowed
	• Restrictions on employment of foreign personnel except for positions of managers and specialists • Fee for issuance of work permit is applied.	• Same as in GATS		
Malaysia	• Foreign ownership restrictions • Type of legal entity is restricted. • Type of ship—i.e., the minimum size of ship—is required. • Ship must be registered in Malaysia. • Restrictions on employment of foreign personnel except for positions of managers, specialists and business negotiators	• Same as in GATS	• No commitments	• Foreign entity not allowed
Philippines	• No restrictions	• Same as in GATS	• No commitments	• No restrictions except in the case that operator wished to set up won telecommunications network. • Foreign nationals are not allowed into this particular business.
Singapore	• No commitments	• No commitments	• No commitments	• Same as in GATS
Thailand	• Foreigners are not allowed to set up legal entities to operate a fleet raising Thai flag. • Foreign equity restrictions • Type of legal entity restrictions • Foreign crew not allowed • Only transfer of staff at the managerial and specialist level allowed	• Same as in GATS	• No commitments	• Foreign entities and persons are not allowed into this particular business.

The most common type of restriction found is the cap on foreign equity share, which is applicable to almost every service sub-sector examined. The only exceptions shown in Table 1 are the hotel sub-sector in Indonesia and passenger and freight sea transportation in the Philippines, in both cases there being no ceiling on the foreign equity share in local businesses.

The second most common type of restriction is that on the type of commercial establishment a foreign company is allowed to set up. For example, in the case of passenger and foreign maritime transport, only representative offices are allowed to be set up in Indonesia under the GATS. However, commitments under the AFAS allow for joint ventures. Joint ventures are mandatory for establishing a hotel business in Malaysia. Similar restrictions apply to many sub-sectors across different services.

The third most common type of barrier to trade in services among the five ASEAN countries involves the movement of natural persons (mode 4). As can be seen from Table 1, many ASEAN countries do not commit themselves when it comes to mode 4. For example, in the computer reservation system sub-sector, none of the five members made commitments with regard to employment of foreign personnel. In other service sectors or sub--sectors, employment of foreign nationals is often allowed only in the managerial and specialist positions.

To conclude, there remain many barriers restricting cross-border flows of capital and labor among the ASEAN countries. Ironically, such restrictions have indeed served well to protect the commercial well-being of local businesses and preserve employment among local nationals. However, the restrictions have also contributed to inefficiency and uncompetitiveness in the region's service industries.

OBSTACLES TO SERVICE LIBERALIZATION IN ASEAN

It has been six years since the birth of the AFAS, yet very little has been achieved in prying open the service sector in this region. This by no means suggests that ASEAN countries have not made any progress toward liberalizing their service sectors; rather, these regional and multilateral negotiations played a trivial role, or none at all, in encouraging deeper and wider liberalization. Most moves toward liberalization are the results of the member countries' own domestic policies. These include the decision by Malaysia and the Philippines to liberalize their respective telecommunications market in 1995, or Thailand's decision to lift the foreign ownership restriction for commercial banks in 1998 out of sheer necessity due to the financial crisis.

The lack of progress in the AFAS can be attributed to four key factors, namely, the lack of political will and genuine commitment to open up the service market, weaknesses in the negotiation framework, legal restrictions and institutional limitations.

Most ASEAN countries—with the exception of Singapore—do not have comparative advantages in services, except for a few services such as tourism and movement of natural persons. This is often the case because many service sectors such as telecommunications, transportation and utilities are still dominated by inefficient state-owned enterprises or monopolistic private operators. Recognizing the inability of the domestic operators to compete internationally, the government tries to protect these uncompetitive industries from formidable foreign competition. Thus, in the absence of privatization, deregulation and free and fair domestic competition, it is hard to imagine how such industries can ever become competitive. Under such circumstances, the prospect for opening up these markets to foreign, or even regional, competition is certainly bleak.

While protectionist policies pose obvious obstacles to regional liberalization, the inadequacies in the negotiation framework are also responsible for the lack of achievements in the AFAS. As mentioned earlier, the AFAS negotiation framework is based on the GATS framework. There has been extensive discussion in the World Trade Organization (WTO) about how the GATS negotiation framework can be made more effective. The current framework does not facilitate progressive liberalization. To begin with, little is known with respect to the extent of liberalization in member countries. The height of the barriers to trade in services, unlike tariffs in the case of merchandise trade, are difficult to estimate since they come in many different forms as the examples described earlier show. As a result, many commitments made in the GATS are in fact inferior to the status quo, rendering these commitments trivial. Second, there are neither a targeted level of achievement in liberalization nor a specific target date set for dismantling the multitude of barriers that exist. As a result, unfocused commitments are often marginal and are made in inconsequential service sub-sectors that have little impact on the overall industry. Third, sector-specific negotiations are sometimes constrained by horizontal restrictions that are not easily removed. For example, the movement of natural persons is certainly a sensitive issue that involves social and security concerns. Fourth, there are no clear measures to safeguard developing countries against the negative impacts of liberalization that could be worse than what had been originally anticipated. Finally, concerns were raised about domestic regulations that can pose serious obstacles to market access even when barriers to services trade are lowered.

Several suggestions have been made on how the existing GATS negotiation framework can be improved. To begin with, the status quo of the member countries' extent of liberalization need to be properly assessed to ensure that commitments made are not inferior to the status quo. This can be done through the Trade Policy Review Mechanism in much the same way as the case for trade in goods. Suggestions have also been made to adopt the negotiation framework employed in the ABT, in which specific sub-sectors to be negotiated (e.g., basic telecommunications) and the specific date of liberalization are determined. On the other hand, negotiations at the horizontal level, such as investment and movement of natural persons, are also crucial for the success in liberalizing these markets.

Besides the lack of genuine willingness among the members to liberalize their economies and the inadequate negotiation framework, domestic laws and regulations, as they exist today, represent another major constraint to successful liberalization. The many sets of rules and regulations that govern the service sector often tend to limit the scope of commitments negotiators are able to make. For example, Thailand is marked as the laggard in opening up its telecommunications market because of its least progressive commitment in the ABT. However, this can be explained by the fact that the existing law dictates state monopolies in the telecommunications sector. Making commitments that may contradict existing domestic laws would be equivalent to making a legal commitment to change those laws, which is certainly well beyond the scope of the WTO. Therefore, much legal overhauling is required before any bold movements can be expected in the regional as well as multilateral fora.

Finally, unlike the goods sector, the service sector is plagued with complicated domestic rules and regulations that come under the purview of many departments and ministries. For example, in the case of Thailand investment comes under the purview of both the Ministry of Commerce and the Board of Investment, which is under the Office of the Prime Minister. Regulations regarding employment of foreign nationals are set by the Ministry of Labour and Welfare and the Immigration Bureau, which is part of the Royal Thai

Police under the Office of the Prime Minister. Sector-specific regulations are concerns of the respective ministries. With the multitude of government authorities involved, coordination is indeed extremely difficult.

POSSIBLE MOVES TO ENHANCE REGIONAL SERVICE SECTOR LIBERALIZATION

While protectionist policies will no doubt continue to prevail in this region, the pressure to liberalize services is growing stronger each day with the advancement in technology that threatens to tear down century-old barriers to services trade. For example, with the development of long-haul aircraft, it will soon be possible to fly non-stop from the United States or Europe to Singapore. If so, Bangkok will lose its geographical advantage that has served it well in keeping the local airline and airport protected from the onslaught of competition from competing airports such as those in Malaysia and especially Singapore. Thailand, then, may not have much choice but open up its air transport market and lose its status as the regional hub to Singapore, as appears to be the case.

The advancement of electronic commerce will also have a deep and wide impact on trade in services. The emergence of the internet protocol (IP) telephony threatens to wipe out revenues of traditional international service operators. Already, overseas calls made through the internet have been snatching away a considerable portion of operator revenues. Similarly, e-commerce is tearing down all the barriers to a multitude of services, including banking, insurance and business services (accounting, legal, managerial advice, etc.), whose transactions can be conducted digitally. It is thus important for ASEAN countries to realize that the days of protecting domestic industries are numbered and that they should start thinking about saving the entire economy rather than protecting a few interest groups of local operators.

There are certain moves that can facilitate the ASEAN member countries in making more meaningful commitments.

First, the ASEAN seriously lacks information and data on the service sector. In keeping with the suggestion made in the GATS about enhancing the Trade Policy Review Mechanism, the ASEAN Secretariat may consider building a database on the status of key service sectors among member countries. The database could presumably include relevant laws and regulations that can potentially pose barriers to trade in services. In fact, the ASEAN Inter-parliamentary Organization (AIPO) has initiated preliminary studies to "take stock" of various laws governing services trade and investment in this region. This effort should be continued. ASEAN members should also cooperate in bringing more clarity, transparency and cross-comparability in their basic laws and regulations governing services trade and investment.

Second, considering the importance of the service sector to the national economy and the complexity of the laws and regulations involved, it may be necessary to negotiate trade in services and liberalization at the highest level of policy-making body that can initiate the required legislative changes.

Third, with reference to the suggestion made in the GATS, the ASEAN is also considering a different negotiation framework that is similar to the one used in the negotiation of trade in goods in the ASEAN or the ASEAN Free Trade Area (AFTA). That is, all services will be grouped according to a 5- or 7-digit code similar to the one used for manufactured products. A target date will be set for a certain percentage of the services to be liberalized, taking into account the set target date for an ASEAN Free Trade in Service Area in the year 2020. Also, as is the case in AFTA, services will be divided into two groups: fast track and slow track. Services listed under the fast track will have a shorter time horizon for liberalization. This particular negotiation framework is currently being considered in the ASEAN.

An alternative strategy would be to focus negotiations on specific sub-sectors that are of importance to the ASEAN economy with specific dates set for planned liberalization. Basic principles with regard to the rules and regulations governing the negotiated services should also be part of the agreement to ensure effective competition in the market *ex post* liberalization. This approach is similar to that used in the ABT that proved to be the most successful service negotiation in the GATS.

It is also important for the ASEAN to establish a working group for each of the service sectors to undertake in-depth industry study as well as assess and monitor member countries' progress in liberalizing the service sector according to the commitments they have made.

Finally, the ASEAN seriously needs a dispute settlement mechanism to ensure that commitments made are not backtracked, as seems to be the case in trade in goods. Without a credible settlement mechanism, commitments will not be as binding as they are designed and intended to be.

ENDNOTES

[1] The commitment index is calculated from individual country's schedule of commitment. A "0" score is given to all "unbound" entries, which imply no commitments made. A "1" score is given to "none" entries, which imply no restrictions to market access nor equal treatment between foreign and local commercial entities. Scores between 0 and 1 are based on the number of restrictions to market access or national treatment (equal treatment between local and foreign companies) listed in the schedule of commitment for each mode of service and for each sub-service category. The index represents the "average level of commitment to liberalize" in the particular service sector. However, the number of sub-sectors committed and the degree of commitment in each service sub-sector that may vary

greatly across countries are not reflected in the index.

2 Although Thailand appears to have a lower score, but this is only because it had made less liberal commitments in many insignificant sub-sectors. Singapore, on the other hand, failed to make any meaningful commitment in major sub-sectors, which are passenger and cargo transportation as can be seen in Table 1.

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