

# **East Asian Free Trade Agreements in Services: Facilitating Free Flow of Services in ASEAN?**

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## ABSTRACT

There have been large increases in the number of East Asian Summit (EAS) countries' Free Trade Agreements (FTAs) in services. Do these FTAs facilitate or hinder the free flow of services in ASEAN? Comparisons of liberalisation of services trade in FTAs with General Agreement of Trade in Services (GATS) commitments and Doha offers showed that in most cases, FTAs have improved beyond GATS and, for certain countries, somewhat beyond Doha. There was, however, little evidence found of actual liberalisation and most evidence pointed to negotiated offers never being at unilateral liberalising levels. Though weak, there have been identifiable differences in commitments under various EAS FTAs and political economy reasons for this tended to be dominant. Weak and partial FTAs do not liberalise where it matters nor drive integration through structural adjustment and trade based on comparative advantage. The Blueprint for an ASEAN Economic Community (AEC) and the ASEAN Charter, which includes aspects such as dispute settlement, could assist integration by providing a stronger, rules-based framework. In terms of the impact of differing commitments between ASEAN countries on their integration, FTAs that mimic unilateral and multilateral approaches could lead to competitive multilateralism where a "domino effect" attracts countries into FTAs that are then multilateralised and this would assist integration. Such FTAs would counter other agreements that hinder integration through introduced complexities (e.g. Rules of Origin (ROOs)) increasing transaction and other costs, and some ASEAN countries seeing forging bilaterals with non-ASEAN countries as inconsistent with and detrimental to the economic interests of ASEAN as a whole due to trade and investment diversion. A key element of integration is that the less developed ASEAN countries receive substantial capacity building in infrastructure, institutions etc, as well as being offered some more time and flexibility in their commitments. Specific recommendations within the broad categories of liberate, facilitate and cooperate that would promote ASEAN integration, in addition to those just mentioned, include liberalising investment; monitoring liberalisation; actively assisting services business sectors such as disseminating information on the benefits of liberalisation; and applying a "whole-of-government" approach with agencies working across portfolio boundaries.

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## ABBREVIATIONS

AANZFTA	ASEAN Australia New Zealand FTA
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Agreement
AIA	ASEAN Investment Agreement
ANZCERTA	Australia New Zealand Closer Economic Relations Trade Agreement
APEC	Asia-Pacific Economic Cooperation
APTIAD	Asia-Pacific Trade and Investment Agreements Database
ASEAN	Association of South East Asian Nations
ASEAN-6	Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand
BIT	Bilateral Investment Treaty
BOI	Bank of Indonesia
BPO	Business Processing Outsourcing
BTA	Bilateral Trade Agreements
CECA	Closer Economic Cooperation Agreement
CEP	Closer Economic Partnerships
CEPA	Closer Economic Partnership Arrangement
CER	Closer Economic Relations
CGE	Computer General Equilibrium
CLVM	Cambodia, Lao PDR, Vietnam and Myanmar
CSIS	Center for Strategic and International Studies
EAS	East Asia Summit. The current participating countries in the East Asia Summit include the ten ASEAN Member States, Australia, the People's Republic of China, the Republic of India, Japan, the Republic of Korea and New Zealand
ECA	Economic Cooperation Agreement
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
ESCAP	Economic and Social Commission for Asia and the Pacific
ESM	Emergency Safeguard Measures
EU	European Union
FDI	Foreign Direct Investment
FIPB	Foreign Investment Promotion Board
FS	Financial Services

FTA	Free Trade Agreements
GATS	General Agreement of Trade in Services
GATT	General Agreement on Tariffs and Trade
ICRIER	Indian Council for Research on International Economic Relations
IIT	Institute for International Trade
IPR	Intellectual Property Rights
IT	Information Technology
MA	Market Access
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NT	National Treatment
OECD	Organisation for Economic Cooperation and Development
PC	Productivity Commission
PECC	Pacific Economic Cooperation Council
PTA	Preferential Trade Agreement
QFB	Qualifying Full Banks
REPSF	Regional Economic Policy Support Facility
ROK	Republic of Korea
ROO	Rules of Origins
RTA	Regional Trade Agreement
SAD	Special and Differential Treatment
SAFTA	Singapore-Australia Free Trade Agreement
SEP	Strategic Economic Partnership
TAFTA	Thailand Australia Free Trade Agreement
TIS	Trade in Services
TPRM	Trade Policy Review Mechanism
US	United States of America
VIP	Vietnam Indonesia Philippines
VND	Vietnam Dong
WTO	World Trade Organization

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## EXECUTIVE SUMMARY

The last decade has seen a large increase in the number of East Asian Free Trade Agreements (FTAs), increasingly including services and investment. China and New Zealand are the latest to have just signed such a FTA. East Asian services sectors have grown rapidly, including in respect of trade, and are vital for development, both in their own right and as embedded components of sophisticated manufactures. It is often difficult to separate services from goods in various aspects, including in some policies and trade negotiations such as FTAs. Even at the World Trade Organisation (WTO) level, negotiations have involved a complex mix of trade offs including between services and agriculture. This said, the key question is do these FTAs facilitate or hinder the free flow of services in ASEAN?

A precursory question to this key question is what do FTAs achieve in terms of liberalisation relative to the WTO General Agreement of Trade in Services (GATS) commitments and Doha Round offers of East Asian Summit countries? The study addresses this question by adding to the Fink and Molinuevo (2007) analysis, which has limitations, through comparing liberalisation of trade in services by selected East Asian Summit (EAS) countries in regional FTAs with GATS commitments and Doha offers, as well as with unilateral liberalisation through field studies.

These comparisons showed that in most cases, FTAs have increased the number of committed sub-sectors and sectors beyond the GATS and, for certain countries, somewhat beyond the commitments offered in the Doha Round. There is, however, considerable variance among the countries and the agreements as to the extent to which commitments are “GATS-plus” or “Doha-plus”. The liberalisation commitments found in regional FTAs may go further than those made in the WTO, such as in mode 4 (movement of natural persons), but often not dramatically so. Furthermore, in some instances the current technical feasibility or commercial significance of some of the “improved” or “new” commitments may be open to question.

It is much less clear from the comparisons that the FTAs have created actual liberalisation but only little evidence could be found in field studies that this was the case, especially in ASEAN (the liberalisation of Singapore banking through its FTA with the United States (US) being a notable, but rare example). Other evidence pointed to negotiated offers put on the table never being at the level of unilateral liberalisation nor ever intended to be so. The economic benefits of services liberalisation mainly come from removing non-discriminatory market access which involves little reciprocity. This means that negotiations are ineffective in achieving what needs to be undertaken unilaterally.

Thus the FTAs appear to be generally weak in their liberalisation both relative to the WTO and unilateral liberalisations. And the commitments made in some of these trade agreements are conditional, for example, apart from Singapore, ASEAN members have conditioned their Doha offers on an acceptable level of reciprocity and successful negotiation of rules permitting safeguards on services trade. Moreover, analysis of schedules says little about the effect of any liberalisation on trade, investment and welfare. While econometric analysis by the Productivity Commission (PC) found there may be economic gains from service and investment provisions in FTAs that do liberalise, these results should just put pressure on for wider reforms, especially on a non-preferential basis.

In terms of the architecture of the FTAs examined, East Asian countries have generally followed a positive list approach in agreements (liberalisation to the extent mentioned) amongst themselves. FTAs involving the US follow a negative list approach (all liberalised except those mentioned) and have been found more liberalising but the relative effects of US negotiating power, and the information and other benefits of negative lists have not been well identified. A majority of intra-Asian FTAs either do not commit to Most Favoured Nation

(MFN) treatment (trading opportunities equal to that afforded to the most favoured nation) for treaty partners, or contain only soft obligations in this regard.

Though weak, there have been identifiable differences in commitments under various EAS FTAs. Various groups of factors have been put forward to explain these differences, such as the related factors of the level of development, openness of trade policies, strength of institutions and global integration, and the related political drivers, service exporters perceiving more gains from FTAs, and disappointment with the Doha Round. Political economy reasons tend to dominate analysis of potential factors such as that of the exclusion of sensitive sectors like agriculture from many FTAs. A number of the other non-political economy reasons such as regionalism being quicker, more efficient, or a more certain route to free trade, do not stand up to closer analysis.

Weak and partial FTAs do not liberalise where it matters nor drive integration through structural adjustment and trade based on comparative advantage (what countries do relatively efficiently). Integration is defined in terms of a single market and production base, or the Law of One Price holding with free flow of goods, services and skilled labour, plus freer flow of capital. It is a concept that can also apply domestically within a country, as well as externally between countries, with the same basic approaches to improving integration being applicable in both environments. Weak and partial FTAs do not necessarily allow the most efficient services providers into the market. Moreover, emerging “hubs and spokes” of such “dirty” FTAs can threaten integration, especially if the multilateral system and unilateral efforts weaken further.

ASEAN integration, which is a key to EAS integration given ASEAN’s intra-regional links, has an equitable development objective and has been driven by aspects such as the need to provide a sign of the region’s commitment to openness following the Asian economic crisis, and the strong growth in competitiveness of other developing countries such as China that has attracted investment away from ASEAN. However, the “ASEAN way” of consensual decision making has been found slow and to undermine institutional development. It has been felt that a “new ASEAN way” will need to be developed and accepted before regional economic integration can make ASEAN more competitive and attractive to international business. It was suggested that the “New ASEAN way” will require a treaty or charter, empowered ASEAN institutions, transfer of powers and related budget funds for economic integration to be achieved. The Blueprint for an ASEAN Economic Community (AEC) and the ASEAN Charter, which includes aspects such as dispute settlement, will assist in these regards by providing a stronger integration framework.

There are two broad views of the impact of differing commitments between ASEAN members on ASEAN integration – one that it will drag all countries forward to an integrated position and the other that it will lead to a fundamental breakdown in arrangements. Justification for the first view includes FTAs being a catalyst for multilateralism from the “domino effect” of countries not wanting to be discriminated against, and encouraging countries to lock in policy reforms. This justification will be dependent on the FTAs being “beyond WTO economically” as is evident when justifications of the second view are considered. Justifications of the second view of these FTAs hindering integration include complexity introduced by Rules of Origin (ROOs)(denial of benefits to non-partners in services agreements) etc increasing transaction and other costs, and some ASEAN countries seeing forging bilaterals with non-ASEAN countries as inconsistent with and detrimental to the economic interests of ASEAN as a whole, which is dependent on overall economic development, due to trade and investment diversion.

The first view reflects the need for a pro-active approach to meet the timing set for integration. Recent developments in ASEAN, such as the ASEAN-X (where ASEAN members agree that two or more member countries can liberalise trade in services between them for specific (sub)-sectors and other ASEAN countries join them later) and ASEAN2+X (which enables 2 member countries to agree to liberalise trade in specific sectors) approaches were to avoid some countries, and subsequently ASEAN, being held back in its

trade liberalisation. Australia and New Zealand, who have had an impressive history of unilateral liberalisation, making differing commitments in “beyond WTO economically”<sup>1</sup> FTAs does not appear to have harmed integration under the Closer Economic Relations (CER)(although the relative significance of the CER in promoting their integration over say the concurrent unilateral liberalisation that took place is open to question).

It is critical to the success of the first view that the less developed ASEAN countries receive substantial capacity building in infrastructure, institutions etc, as well as being offered some more time and flexibility as they catch up to the more developed ASEAN countries.

FTAs are a “second-best” reality but to be “good” FTAs they need to mimic unilateral and multilateral approaches by being comprehensive, concurrent, reforming domestic regulations, “beyond WTO economically” (extra-territorial MFN commitments (outside the FTA partners), national treatment (foreign suppliers receive “no less favourable” treatment than domestic suppliers), etc) with simple, harmonised ROOs. FTAs cannot address some issues that multilateral arrangements can address like agricultural subsidies but they can address other issues multilateral arrangements cannot address well, such as Mutual Recognition Agreements (MRAs) and investment, which contribute to the “beyond WTO economically” nature of the FTA. The improvements in FTAs should be undertaken in conjunction with a refocus on the WTO, especially in respect of further liberalisation and stronger support for non-discriminatory rules. FTAs that mimic unilateral and multilateral approaches could lead to competitive multilateralism where a “domino effect” attracts countries into FTAs that are then multilateralised. However, the convergence of these FTAs is yet to be fully addressed though beyond economic (rather than legal) consistency with the WTO would make this much easier. Other FTA features that contribute to such agreements serving as “building blocks” to the creation of an AEC include:

- aspects of the architecture that provided information on trade barriers;
- business networks already integrating and building off this through government facilitation and greater business involvement in FTAs;
- uniform standards;
- MRAs; and
- phasing in less developed country commitments.

An important point made in relation to FTAs and integration is the greater relevance of domestic trade policy compared to negotiating processes. Not all Asian governments still take this view with their thinking having reversed from prior to the Asian economic crisis when non-discriminatory unilateral liberalisation delivered the type of benefits that China and India have enjoyed more recently from the same approach. Another bout of China unilateral trade liberalisation in services might stimulate broader action along these lines. More information needs to be obtained and disseminated on the benefits of unilateral and multilateral liberalisation over FTAs to assist in this. FTAs could then make more sense in such an environment, free of trade diversion and able to facilitate addressing other “stumbling blocks” to integration such as powerful but minority nationalistic groups and conditions like forces against “openness” that supports “fragile regionalism”.

The study concludes with a number of specific recommendations falling within the broad categories of liberate, facilitate and cooperate that would promote ASEAN integration such as:

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<sup>1</sup> The term “WTO-plus” has taken on various meanings such as beyond WTO levels of commitments or the pursuit of trade-related objectives not immediately available through the WTO multilateral system (e.g. investments chapters, Intellectual Property Rights, labour, and environment agreements). It is for this reason the term “beyond WTO economically” has been used to represent aspects that go beyond the WTO in terms of liberalisation and economic efficiency (e.g. incorporating anti-dumping actions into competition policy such as in ANZCERTA) rather than just in terms of “on paper” commitments or non-WTO rules not necessarily aimed at liberalising trade (e.g. IPR, labour and environment arrangements). Thus it is “beyond” meeting the WTO’s obscure and inadequate rules on FTAs in services (and goods) which provide virtually no checks on the trade diversion and other economically harmful effects of such arrangements.

- progressively liberalise trade in services, including investment, strengthening its security, and automatic remittances of returns on investment;
- unilateral liberalisations should be the first priority, followed by significantly improved offers and requests in respect of multilateral liberalisation, and support for the Chair of the Services Negotiations Group;
- ensure that all FTAs are “beyond WTO economically”, involving real liberalisation, consider the best architecture for achieving liberalisation, and make consolidation easier;
- make FTAs comprehensive but allow limited gradualism for less developed countries;
- further capacity building, including in terms of appropriate institutions and developed infrastructure;
- improve statistics on services and services trade, and measure trade barriers along with their economy-wide impacts. Publicly disseminate the results and continue monitoring liberalisation, involving appropriate institutions which would be an element of necessary capacity building;
- apply a whole-of-government approach with agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues; and
- actively assist services business sectors to identify their competitiveness and business opportunities to facilitate their participation in trade.



## I. INTRODUCTION

Since 2000 when the only “Free Trade Agreement” (FTA) in services in East Asian countries was the ASEAN Framework Agreement on Trade in Services (AFAS), the region has become increasingly involved in a range of such FTAs. The number under negotiation has grown exponentially along with their sophistication and differences. Many now incorporate new agenda items such as competition policy and different architectures such as on scheduling and the inclusion of separate chapters on investment. ASEAN, politically established but with its cohesion based on economic cooperation, is a key regional arrangement in East Asia. Related concepts have developed around ASEAN such as the East Asian Summit (EAS), a pan-Asian forum involving ASEAN plus China, Japan, the Republic of Korea, India, Australia and New Zealand.

A core element of economically desirable FTAs is that they should result in the free flow of goods, services and investment. This feature is captured in an integration agenda set out recently in a Blueprint for an ASEAN Economic Community (AEC) and a new ASEAN Charter which covers dispute settlement. But not all FTAs automatically facilitate the free flow of aspects such as services and investment. Some, based perhaps more on political economy and foreign policy objectives such as political alliances, can result in minimal services and investment liberalisation or distort free trade flows through preferential access. A key question addressed in this study is whether FTAs can be “building blocks” for or whether they are “stumbling blocks” to ASEAN integration?

This study addresses the key issue outlined above through a number of specific research objectives. Firstly, assessments are made of the architectural characteristics and liberalisation impacts of East Asian FTAs relative to General Agreement of Trade in Services (GATS) commitments and Doha offers, as well as in relation to unilateral liberalisation via field studies. A key methodology applied in analysing East Asian countries services schedules is the Fink and Molinuevo (2007) approach which developed a database measuring FTA relative to multilateral liberalisations but because of its limitations has been added to in this study through qualitative analysis of selected schedules. Factors explaining any differences are then analysed (cross-sectionally), in particular from architectural and political economy perspectives. ASEAN economic integration aspects as encapsulated in the AEC are analysed in the last three research objectives, covering initially the impact of differing commitments such as observed between the more developed and the less developed ASEAN countries that are generally trailing on the ASEAN integration agenda. All of the research objectives, but especially the last three, are addressed through interviews of key officials, business interests and think-tanks in East Asian countries, and through a number of important research reports that have already been prepared on the issues, many under the REPSF program (see Hew 2007 for a listing). Features of service agreements promoting and distracting from deepened economic integration as set out in the AEC are then analysed. Finally the above key question is explicitly addressed in the last research objective on approaches to promote ASEAN integration under various trade strategies where liberalisation, facilitation and cooperation are looked at in respect of WTO compatibility, and the advancement of regional building blocks and the avoidance of stumbling blocks to wider liberalisation. This question could be put as whether FTAs that discriminate against ASEAN non-partners can be a part of ASEAN integration with the answer depending on how much discrimination, for how long, and whether the agreements can be consolidated into ASEAN-wide arrangements.

After setting out background information on a number of key issues such as the drivers of the ASEAN integration agenda and approaches to liberalisation, the structure of the report follows the line of the research objectives and concludes with some recommendations on promoting services integration.

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## **II. BACKGROUND**

### **A. THE IMPORTANCE OF SERVICES IN DEVELOPMENT**

The services economy, and the expansion of trade in services, was recognised to varying degrees as important in the development of EAS countries. This is illustrated in the cases of China, Republic of Korea (ROK) and Japan. The Chinese government has ambitious plans to expand the sector and its trade, as does the Chinese business sector with new industry arrangements having recently been put in place to promote trade in services, and actively seek out and disseminate business opportunities. There is an appreciation of the need to improve the efficiency and competitiveness of China's services industries, and the need to move to intellectual and service delivery-based economic activity. Japan on the other hand does not appear to have a similar sense of urgency or need to change existing policies. Japan's interests in relation to trade in services seem largely related to underpinning Japan's interests in sophisticated manufacturing. Political economy aspects can lead to services taking a backseat to less economically important sectors. ROK sits in between, with more of a focus on sophisticated manufacturing than reform of service industries which is mainly driven by China's pursuits in this sector. Similar stories can be told in other EAS and ASEAN countries though India's trade is skewed more towards services than other EAS countries including Australia and New Zealand who have had a service focus for many years (Asher and Sen 2007)<sup>2</sup>. Singapore has also had a focus on services for some time, Malaysia has introduced services into its latest Master Plan, and Vietnam and Cambodia to a lesser degree have undertaken significant unilateral liberalisation that was bound in their respective accession to the WTO for many services.

### **B. SERVICES LINKS TO GOODS**

Though the study will focus on the economic aspects of trade in services, the research objectives cannot always be considered only in terms of services. Often FTAs are negotiated as a package with trade-offs between the various broad sectors. Moreover, insights are frequently obtained from the negotiations in other, more traditional broad sectors such as goods. An example would be Thailand's stronger commitment in agriculture in the Thailand Australia FTA (TAFTA) once more time was allowed to introduce liberalisation commitments (Scolly and Trewin 2006). There are also often strong linkages between some goods sectors and associated services (Hew 2007) that tie them together, including in policies. For example services negotiations in FTAs with Thailand have frequently reflected a partner's manufacturing investment in the country. Many view sophisticated manufactures as a combination of goods and embedded services that could not thrive without access to the most competitive and leading edge technologies and services (Golub, Jones and Kierzkowski 2007). Processes often look at one sector, be it goods or services, in isolation but activities are generally an integration of many sectors, goods and/or services.

### **C. ASEAN ECONOMIC INTEGRATION**

ASEAN economic integration, in particular its deepening as captured in the AEC, has taken on greater urgency due to a number of factors, such as the need to provide a sign of the region's commitment to openness following the Asian economic crisis in the late 1990s; the strong growth in competitiveness of other developing countries such as China and India that has attracted ASEAN investment, a key factor in member's development; and increased

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<sup>2</sup> Statistics on services and services trade are poor but Sally and Sen (2005) include some on the ASEAN-6, China and India that show India and Singapore have a high proportion of services trade and that the services trade of EAS countries ranks highly in world values.

confidence in the integration process achieving its objectives such as more equitable economic development (Soesastro 2005).

But regional economic integration based on the “ASEAN way” of consensual decision making has been said to undermine institutional development and to be too slow (Hew 2008). It is felt a “new ASEAN way” will have to be developed and accepted before regional economic integration can make ASEAN more competitive and attractive to international business. This was thought to require a treaty with strategic choices on the desired form of economic regionalism; the degree of detail and specificity; systems of implementation, compliance and enforcement; and space and incentives for deepening and widening (Soesastro 2005). Without such a treaty or charter, empowered ASEAN institutions, transfer of powers, and related budget funds, it is felt economic integration will not materialise. The Warwick Commission (Warwick 2007) also discusses a similar issue in relation to decision-making, contrasting the WTO’s “a single undertaking” approach (all parties would have to agree to it as a whole) with a less consensual approach that would allow a subset of members to make commitments, which they have termed “critical mass”. Key criteria in the “critical mass” approach are identifying positive global welfare benefits, non-discrimination, and accommodation of the income distribution effects of rule making.

Economic integration is just not an external concept between countries but one that can apply to a country’s domestic economy. China is said to be more integrated externally from the east coast with its Foreign Direct Investment (FDI) and export growth than it is in its interior regions. The non-coastal regions have not benefited as much from China’s openness, either in terms of productivity or of income growth. Domestic integration between diverse provinces, such as through better transport and logistics as well as freer flows of resources, would lead to large productivity gains and narrow income disparities. Provinces would be able to use their comparative advantages (what countries do relatively efficiently), built on niches such as in cheaper resources, to improve their standing within a more integrated economy. This diverse domestic situation applies in most East Asian economies, including those in ASEAN. Thus integration is a relevant issue both domestically in many countries, as well as externally amongst diverse countries. Notably, the same actions undertaken domestically for greater integration apply to external integration; freer flows, better infrastructure and institutions etc, so as to be able to make use of comparative advantage.

#### **D. CHANGES IN EAS COMPARATIVE ADVANTAGE AND TRADE POLICIES**

As noted by Sally (2006), trade and FDI trends over the last half century illustrate that Japan, the ROK and Singapore have developed a comparative advantage in higher-value goods and services. China has developed a strong comparative advantage in labour-intensive goods for export, as should India if it could relax its severe labour market restrictions. ASEAN would gain from deeper integration into global supply chains that now include China extensively. But this would require flexibility by ASEAN economies to exploit their changing niches (e.g. cheaper labour of CLVM countries), liberalising further (especially in agriculture and services for ASEAN-6 countries that are losing their cheap labour advantage – individually at different rates, for example education and health services labour tends to be cheaper in Malaysia than Singapore), and strengthening domestic institutions and infrastructure.

Paralleling the change in trade and FDI trends has been changes in trade policies since the Asian economic crisis. The Asian economic crisis slowed the pace of trade policy liberalisation across much of the developing world, most directly in the financial sector which flowed through to trade and FDI. ASEAN enthusiasm for further liberalisation has generally faded, apart from Singapore and countries acceding to the WTO (though even these have lessened their liberalisation commitments post-accession, especially multilaterally but also unilaterally). ASEAN presents a diverse situation with highly open (goods) trade in Singapore, relatively liberal trade policies for other ASEAN-6 (but with large pockets of protection in agriculture and services), and highly protected newer ASEAN economies

(though the appeal of WTO accession provided an important impetus to significant unilateral liberalisation by some of these countries, including in services).

## **E. APPROACHES TO TRADE LIBERALISATION**

China undertook significant unilateral liberalisation initially, that was deepened by WTO accession before focusing on FTAs. India's experience differed as its unilateral liberalisation followed WTO membership but was prior to its involvement in FTAs. This has left India with a more liberalised manufacturing sector but still highly protected agriculture and services in general. This last aspect is due in part to democratic politics involving minority party and regional interests which has also been a factor for some ASEAN countries. Vietnam, which is not one such country, has like some other WTO-acceding ASEAN countries had a different pattern of liberalisation; unilateral first, involving the most efficient partners, then ASEAN bilaterals followed by binding at not less than the bilaterals (deepened) through the WTO. ASEAN, and more broadly EAS countries, are not necessarily "best international practice" in many service sectors. China, India and Vietnam have benefited substantially through faster growth from liberalising unilaterally, as was very positively asserted in the case of Vietnam at the workshop on the draft report.

Because of, or in spite of stalled WTO negotiations in the Doha Round, member countries have become increasingly involved in FTAs. Even if the Doha Round were concluded, there is a view that there would be only modest liberalisation of trade in services. This involvement in FTAs has been very noticeable in ASEAN countries (and with ASEAN as a group) as well as other EAS countries, both developing like China and India as well as developed like Japan and Korea. FTAs or bilateral arrangements are often viewed as a means of strengthening political rather than economic relations (Bhagwati 1999). Empirical work has consistently shown that any economic gains from FTAs are small compared to those from unilateral liberalisation (e.g. Kommerskollegium National Board of Trade 2007). Dee (2007) showed that the large majority of the gains from services liberalisation came from removing non-discriminatory market access which involves little reciprocity so negotiations can do little in this area which needs to be undertaken unilaterally. Moreover, WTO commitments made with accession have tended to be at best unilateral reforms bound "on paper" rather than real new liberalisations.

There appears to have been too much recent emphasis on trade negotiations<sup>3</sup> per se rather than unilaterally determined trade policy linked to domestic structural and institutional reforms. The World Bank has estimated that 65% of developing countries' tariff liberalisation between 1983 and 2003 came unilaterally compared to 25% multilaterally and only 10% from FTAs. Most of the benefits from unilateral liberalisation accrue to the country undertaking the reforms (for the case of Indonesia, see Bird et al. 2007). While additional benefits occur if trading partners also reduce trade barriers (terms of trade effects or induced changes in exchange prices can be important), these are relatively small compared to the gains from a country's unilateral liberalisation. Moreover, if all countries liberalise unilaterally then these additional "multilateral" benefits will be realised (terms of trade effects become less important). The relatively larger benefits of unilateral liberalisation are to be expected since negotiated liberalisation (either multilaterally or bilaterally) predominantly opens a country's trade in areas where it is most competitive and its trade barriers are already relatively lower than in protected "sensitive" industries where most of the economic gains from improved resource-use efficiency must come.

While negotiated outcomes might minimise the adjustment costs from associated liberalisation and may achieve a satisfactory result politically, including in terms of gaining overseas market access, offering liberalising measures that minimise domestic dislocation also implies few economic gains, the fundamental economic objective of a country's trade

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<sup>3</sup> Much of the discussion of negotiated outcomes draws on Bosworth and Trewin (2008).

policy. Only by exposing inefficient industries to international competition to drive domestic restructuring, and creating specialisation and trade, will a country gain from liberalisation.

Within negotiated liberalisation approaches, FTAs can be of limited benefit in getting trading partners to agree in areas that they would find difficult to address multilaterally, for example mutual recognition for professional services and other qualifications. Within FTAs, countries are also able to undertake commitments in areas not comprehensively dealt with in the WTO, such as government procurement, investment, and competition policy.

However, the essential contribution of unilateral liberalisation needs to be appreciated far more in trade negotiations where such a vital economic message seems to be quickly lost in a mercantilist “game” of opening one’s own market as a concession (cost) for achieving reciprocal opening in other markets. Mercantilist notions that exports are good but imports are bad, and that countries should resist negotiating their own liberalisation (or binding in support of unilateral liberalisation) while trying to maximize opening abroad and avoiding unilateral liberalisation because nothing is gained in return, are the reverse of the true situation (Thirlwell 2004).

The political attraction of FTAs as reflected in the mercantilists’ “game” is also their greatest economic weakness. Trade policy is a country’s main domestic economic instrument for ensuring economic efficiency, productivity and growth. Using trade policy as a pawn in a game, or making it subservient to non-economic objectives in negotiations, runs the risk of generating economically non-sensible outcomes. Non-trade issues, such as political alliances, are better handled separate of trade (CIE 2005), and thus are not the focus of this study of economic integration.

### **III. COMPARATIVE ANALYSIS OF SERVICES AGREEMENTS, GATS COMMITMENTS AND DOHA OFFERS OF EAS COUNTRIES**

#### **A. SUMMARY OF THE FINK AND MOLINUEVO APPROACH**

Fink and Molinuevo (2007) look at the liberalising impacts of East Asian FTAs relative to multilateral trading arrangements from both an architectural and a frequency analysis of commitments under both forms of arrangements. They observed a number of empirical patterns relevant to this study.

Beginning with sectoral aspects, key ASEAN sectors are logistics, health care, tourism, e-ASEAN, air travel, financial services, telecommunications, professional business services and education. Distribution and tourism services were found to offer the most new and improved commitments in FTAs, followed by construction, business and communication services. The smallest number of value-added commitments was found in some well-known sensitive sectors such as health, transport and financial services.

An investigation into measures affecting the integration of ASEAN's priority sectors looked at the case of logistics (see De Souza et al 2007). Through interviews they identified the existence of barriers and their significance to free trade in logistics services on a scale of 1-6. This research showed that logistics services faced a broad range of impediments in foreign markets such as customs (the greatest), followed by land transportation regulations, foreign investment etc. On a country basis, logistics services "friendliness" was highest in Singapore, followed by Brunei Darussalem and Thailand, then other ASEAN countries apart from Indonesia which was ranked the weakest.

In relation to modes of supply, modes 1 (cross-border supply) and 2 (consumption abroad) tend to be the more completely liberalised in the FTAs while mode 3 (commercial presence) tends to mimic multilateral restrictions. While there are a large number of new and improved commitments in mode 4 (movement of natural persons), these on closer examination tend to be minor in their impact (though provisions recognising certain professional qualifications could potentially go beyond multilateral outcomes).

Aggregate country assessments are a key feature of the Fink and Molineuvo (2007) analysis. Liberalisation undertakings vary considerably between countries but the reasons for this need to be identified. They find Cambodia and Vietnam as being at one end of the spectrum in not offering any value over their multilateral commitments. However, the rigorous WTO accession process may have pushed their non-reciprocal multilateral liberalisation commitments to their unilateral limits. Malaysia and the Philippines commitments in their respective FTAs with Japan, and Thailand's with Australia, do not go much beyond the GATS. At the other end of the spectrum they place FTA commitments made by Japan, the Republic of Korea, and Singapore. They also place in this category Laos PDR with its commitments under the Laos-United States (US) BTA which includes full national treatment (foreign suppliers receive "no less favourable" treatment than domestic suppliers) and market access (tariff and non-tariff measures for the entry into markets) in a large number of sectors such as professional, telecommunications, construction, distribution, financial, health and education services, and binding under international laws. China's commitments under its FTA with ASEAN offer only limited value-added over its WTO accession commitments. For selected business and transport services, China has committed full foreign ownership and eliminated economic needs tests (whether there is a need that cannot be satisfied by local suppliers). A similar assessment is undertaken with respect to the most liberal commitment a country has made across all of its FTAs. Only some results differ, for example the Philippines performs more like Lao above in this assessment.

In terms of more up-to-date results, analysis of the Australian and Thai agreements using the Fink and Molinuevo (2007) methodology that was drawn on in Bosworth and Trewin (2008), found disappointing commitments, with only small improvements over their GATS

commitments, themselves second-rate. Analysis of the Indian and Singapore FTAs by Mukherjee (2008) found that whilst FTA commitments had gone beyond GATS in various ways, India's Comprehensive Economic Cooperation Agreement (CECA) commitments to Singapore sometimes did not match its revised Doha offer, perhaps because unlike Singapore its revised offer followed CECA's implementation. Singapore's better offer in CECA than its revised Doha offer was put down to Singapore wanting "coin" for negotiated preferential agreements. China and New Zealand have just signed a comprehensive FTA (covering goods, services and investment, as well as agreements on labour and environment), a prerequisite being New Zealand's recognition of China as a "market economy" for purposes of anti-dumping investigations. This is China's first FTA with a developed country and could have important implications on EAS FTAs and related services. For example, it is claimed the FTA has provided "GATS-plus" commitments in the tourism, education, construction and transport services sectors but it does not cover trade in services being purchased by the governments. It uses a positive list approach (liberalisation to the extent mentioned). It includes a reciprocal Most Favoured Nation (MFN) clause (trading opportunities equal to that afforded to the most favoured nation) applying in environmental, construction, agriculture and forestry (limited to OECD countries), (integrated) engineering, computer and related services, and tourism services. MFN is prospective, that is it will apply to new agreements involving the two countries but not to current ones. Some aspects of movement of natural persons and investment were also liberalised. New Zealand's FTA provisions in trade in services also seem to make "GATS-plus" commitments in their bilateral and plurilateral (Transpacific-SEP) FTAs with Singapore (Sen 2008). Sen (2006a) undertook a comparative analysis of FTAs involving ASEAN, China and India, concluding that these at best resulted only in partial liberalisation and were unlikely to be building blocks towards global free trade on their own and need support from unilateral and multilateral liberalisation.

The Fink and Molinuevo (2007) study and related ones by Roy et al (2006) generally agree that the FTAs that have liberalised most beyond the WTO GATS, at least "on paper", are those involving the US with its "template" approach involving specific architectures like negative lists (all liberalised except those mentioned) and investment chapters, strong leverage, etc.

## **B. QUALIFICATION TO THE FINK AND MOLINUEVO APPROACH**

Impediments to services trade are more difficult to measure than for goods, where tariffs or other border barriers dominate. Recent attempts to quantify the extent of services liberalisation in FTAs compared to GATS by examining the extent to which they broaden and/or deepen liberalisation commitments such as Fink and Molinuevo (2007), looked at percentage changes in the number of impediments (e.g. licenses). These measures are very dependent on the assumptions made on the baseline (e.g. should the base be the GATS, Doha offers, or unilateral liberalisation), time periods, modes etc (see some different conclusions obtained between Fink and Molinuevo 2007, the chosen framework, and the similar approach of Roy et al 2006). Thus any conclusions drawn need to be specific in terms of these assumptions. Moreover, the approach is imperfect in that it requires subjective judgments as to what is a partial or full commitment etc to arrive at a quantitative measure. In addition, the quantitative focus of the analysis may not reflect the real value or technical feasibility of "new" or "improved" commitments. Thus, for example, the value of a "new" full mode 1 commitment in tourism accommodation services may be questioned due to lack of technical feasibility (e.g. a hotel cannot move across borders). Similarly, the current commercial significance of additional mode 2 commitments in certain sectors seems doubtful at best. Often some key liberalisations need to be specifically described as is undertaken below, otherwise they could be lost in an aggregated general summary measure (e.g. ASEAN countries mode 4 provisions (movement of natural persons) in some FTAs such as TAFTA).

Given a lack of information, the above-mentioned studies cannot detail the extent to which FTA commitments involve "real liberalisation", nor assess the degree to which any



liberalising commitments would actually increase trade. It is worthwhile to undertake a comparison of services agreements and commitments of EAS countries under various FTA and the GATS with “real liberalisation” that has taken place unilaterally (see sub-section 3.5.2), which is not always bound into trade agreements, to provide useful information for the other research objectives such as that on explanatory factors for any differences. The extent to which FTAs are leading reform is important in terms of their usefulness in promoting regional integration.

The difficulties measuring services flow over to econometric and model estimates of the impacts on trade and the economic benefits of reforms to these impediments. In the case of changes in tariffs, these can be modelled as a change in (relative) prices and the associated impacts on economic welfare, employment etc through the use of economy-wide models that capture linkages between various sectors of the economy, and both direct and indirect (flow on) effects of induced changes. In the case of changes in services impediments, these often need to be converted to changes in productivity and their associated impact on trade, investment, economic welfare, etc (see sub-section 3.5.3 for an application). This is no easy matter. Consider the example of converting some change in equity thresholds, relaxed visa requirements say, that may make a single contribution in a frequency measure, into a change in costs, market access etc (for more details on these approaches see PECC 1995). The change may make no difference to market entry and comparative costs, or it could make a fundamental change, but either way it would be counted the same in terms of the frequency measure of service impediments.

Some regulatory trade restrictions on services raise prices by creating scarcity thereby generating economic rents to producers while others increase the real cost of producing them and it is not easy converting such restrictions into either of these forms (Dee and Findlay 2007). The Australian Productivity Commission (PC) has developed restrictiveness indexes for various services that can help estimate cost reductions from liberalisation of services (see Findlay and Warren 2000). Furthermore, like for goods, the adverse effects of trade diversion from FTAs on national welfare also need to be taken into account since, although services involve no tariff revenue, preferential rent-creating measures can redistribute rents (above normal profits) abroad just like tariffs, thereby adversely affecting welfare (Dee and Findlay 2007). For example, allowing foreign investment in a statutory monopoly could reduce the country’s national welfare by distributing rents overseas and to the preferential partner if done under a FTA. The adverse efficiency effects of providing preferential access through commercial presence can be substantial and long-term since the advantages of being “early into the market” are significant in many major services sectors.

Fink and Molinuevo (2007) is given as the relevant framework for the study, covering key architecture such as the treatment of investment (mode 3 and/or separate chapter) and Rules of Origin (ROOs) (denial of benefits to non-partners in services agreements), as well as evaluation of the value-added of FTA liberalisation undertakings relative to pre-existing multilateral GATS services commitments in terms of depth and breadth. However, in terms of EAS countries they do not cover Australian schedules, nor some Indian, Japanese and ROK ones. Some of these gaps have been filled through research undertaken as part of Marchetti and Roy (2008).

Other limitations of the Fink and Molinuevo (2007) analysis include “new generation” FTA aspects such as comprehensiveness (e.g. covering issues, some of which can involve political economy aspects, such as investment, competition policy, labour and environment) which might not fit evaluation just in terms of liberalisation undertakings. Non-economic benefits of FTAs have been put forward, for example the benefits of political alliances such as from the European Union (EU), in justifying the high cost of some associated policies such as the Common Agricultural Policy. The non-economic benefits of such arrangements will tend to be more dissipated in multilateral arrangements and are thus more prevalent in bilateral and regional arrangements. However, as mentioned earlier, non-trade issues, even if they can deliver significant benefits, are better handled separate of trade, supporting the

focus on economic aspects undertaken in this study. Although the study focuses on economic aspects of FTAs, relevant “new generation” FTA aspects will be identified in the analysis.

Such quantification and other difficulties make the estimated impacts of negotiated services liberalisation, either multilaterally or bilaterally, far more problematic and uncertain but these estimates still add a useful additional impact dimension to the commitments, etc.

### **C. SELECTIVE ANALYSIS OF EAS COUNTRIES’ TRADE IN SERVICES LIBERALISATION**

Because Doha has stalled, many EAS countries (though not a number of recently acceded countries) have looked to FTAs to drive liberalisation. However, the Fink and Molinuevo (2007) results suggest that negotiated outcomes never get to achieve unilateral liberalisation levels. AFAS is thought to have made little progress on services liberalisation, at best mainly repeating GATS offers, despite high non-tariff barriers in priority sectors (See Hew 2007, particularly the Findlay et al chapter on this last aspect, and the listed REPSF report by Vo and Bartlett 2006). Many countries are not offering to bind their more significant unilateral liberalisation to keep “coin” for trade negotiations though other reasons have been put forward such as leaving policy space, domestic interests, and a fear of the unknown.

In this portion of the research project, liberalisation of trade in services by a selected number of EAS participants is examined and liberalisation commitments made in one or more regional FTAs qualitatively compared with the potential for liberalisation commitments represented by offers tabled in the Doha Round of WTO negotiations. The focus of the research is on regional services liberalisation so services trade-related agreements between and among EAS countries only are looked at. The analysis provided in this section is supplemented importantly by the comparison tables for the relevant EAS countries found in the Annex.

#### **1. General Observations from the Analysis**

The overall message from the aggregate analysis of the individual EAS countries is that, in most cases, FTAs have increased the number of committed sub-sectors and sectors beyond the GATS and, for certain countries, somewhat beyond the commitments offered in the Doha Round. There is, however, considerable variance among the countries and the agreements as to the extent to which commitments are “GATS-plus” or “Doha-plus”. Moreover, although the FTAs have led to somewhat broader coverage, it is much less clear that they have created actual liberalisation, rather than liberalisation “on paper”. It also seems to be the case that progress in achieving binding commitments on trade in services is a gradual process. The liberalisation commitments found in regional FTAs may go further than those made in the WTO, but often not dramatically so.

The survey of selected EAS countries’ agreements reveals that several of them feature chapters dedicated to the movement of natural persons and overall a number of horizontal and specific commitments are made for mode 4 trade, although both tend to be very narrow in scope. For example, in its EPA with Indonesia, Japan makes a number of commitments in respect of Indonesian nurses and certified care workers (there are restrictions on language requirements but training provided by Japan – the same commitments have been made with other ASEAN countries such as the Philippines bringing into question how preferential these really are), and several agreements relax the conditions for, and extend the periods of stay afforded to, intra-corporate transferees. The category of contractual service supplier has also been added to several agreements and commitments made to allow temporary entry to qualifying individuals.

In terms of the architecture of the FTAs examined, East Asian countries have generally followed a positive list approach in agreements amongst themselves, even when the individual countries have accepted a negative list approach in their FTAs with the US. The only agreements between EAS partners that follow a negative list approach are the Australia-

Singapore FTA (analysed) and the Korea-Singapore FTA (not analysed). There is a reasonable degree of uniformity in the sectors that are typically excluded from coverage in the agreements, in particular air transport, and in the fact that many agreements include separate chapters on investment. Greater divergences exist with respect to provisions on ROOs, and regarding rules establishing precedence between disciplines on services and those relating to investment, which creates scope for future uncertainties. The existence of MFN obligations in bilaterals could impact the negotiation and extent of future liberalisation through bilateral agreements, yet a majority of intra-Asian FTAs either do not commit to MFN treatment for treaty partners, or contain only soft obligations in this regard.

The tables in the Annex concentrate the comparative analysis on scheduled services commitments in GATS, Doha Round offers and selected FTAs. It must be recalled that there are also important "WTO-Plus" provisions that affect services liberalisation in a number of FTAs which are simply not on the table in the current WTO negotiations. Many of the FTAs include pre-establishment investment provisions, competition policy chapters and liberalisation of government procurement of services. Some FTAs have significant provisions addressed to the mutual recognition of professional qualifications. Certain bilateral agreements incorporate provisions allowing for the temporary movement of categories of services providers (care workers, chefs and massage therapists) not normally freed up through the GATS negotiations where mode 4 commitments generally relate only to senior managers or specialists and often only as intra-corporate transferees.

There are also certain additional points that need to be made in respect of the liberalisation of trade in services through the current Doha Round. The first point is that a successful outcome to the current negotiations appears increasingly unlikely. The second point is that the eventual level of ambition of services liberalisation that may be reflected in an outcome to the Doha Round may not offer sufficient reciprocity for some EAS countries to maintain the offers they now have on the negotiating table. A third point that cannot be ignored is that a number of ASEAN countries (less Singapore) have conditioned the maintenance of their current Doha Round offers not only on an acceptable level of reciprocity in the negotiations but also on the successful negotiation of rules permitting safeguard actions on trade in services. It is difficult to see how a consensus could be reached on rules permitting safeguard actions for services trade.

Of the EAS countries analysed, Australia and India stand out as the countries that have made offers in the Doha Round most nearly approximating what they have been willing to do in bilateral agreements, and in some cases, their Doha offers are better than what they have committed to in FTAs. In the case of India, this has been put down to the fact that they are now a major exporter of services and playing a lead role in representing developing countries in the WTO, plus a major proponent of greater liberalisation of modes 1, 2 and 4. For EAS countries other than Australia and India, it is generally the case that commitments on liberalisation through bilateral or regional FTA arrangements are more numerous and of a higher quality than those made or offered in the WTO.

## **2. Choice of EAS Countries for Analysis**

Unavailability of information made it impossible to analyse some EAS countries' liberalisation of trade in services for this project. For example, while information on China's services commitments in its GATS schedule and in its agreement with ASEAN was available, access to China's Doha Round services offer was denied. Cambodia, Myanmar and Vietnam have not made Doha Round offers, and the offers made by some other ASEAN countries were also unavailable. From among the EAS countries for whom Doha offers were available, a representative group of countries from different parts of the region, at different levels of development and with different relationships with the ASEAN group, namely Australia, India, Japan, Malaysia, Singapore, and Thailand, were selected for analysis that covered all the required aspects.

### **3. Choice of Agreements for Analysis**

Six bilateral and regional FTAs were chosen as comparators for what the selected group of EAS countries was doing in the WTO and bilaterally. The AFAS (Sixth Package of Commitments-2007) was selected as the comparator FTA for Thailand and Malaysia. The rationale is to see what two different ASEAN Members, both of whom are active in WTO negotiations, are prepared to do in an ASEAN context relative to WTO. The India-Singapore CECA is used as the comparator FTA for India to see what a non-ASEAN developing country was prepared to do in an agreement with an ASEAN member, albeit a highly developed one. The analysis for Singapore was based on the 2002 Agreement between Japan and Singapore for a New-Age Economic Partnership. This allowed a look at what an ASEAN member was prepared to do by way of liberalisation with a non-ASEAN developed country. In the case of Japan, the comparator FTA selected is the not yet in force (the agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007). Here the interest is to see what Japan might do with a far less developed but commercially attractive ASEAN partner. This agreement also gives insights into what Japan is currently prepared to commit on services trade. Finally, what Australia has indicated it is prepared to do in the WTO negotiations with what it has committed to in two separate FTA negotiations is compared through its agreements with Thailand (TAFTA) and with Singapore (SAFTA). This allows the positive list approach with a reluctant liberaliser (Thailand) to be compared with a negative list approach involving a much more open and developed ASEAN partner.

### **4. Country Summaries for Selected EAS Countries**

#### **a. Australia**

Australia's relative liberalisation commitments in the GATS/Doha Round and in FTAs are analysed in respect of two FTAs: TAFTA and SAFTA. While both are with ASEAN members, the agreements produced two very different results. It is also the case that TAFTA is a positive list agreement, while SAFTA is a negative list approach to services with a number of "WTO-Plus" provisions.

In general terms, Thai reluctance to engage in more liberalising negotiations on services induced Australia to hold back concessions it easily could have made in TAFTA. The inadequacy of the existing agreement is recognised implicitly in both sides' agreement to further negotiations on services trade in 2008 (though this feature is also part of SAFTA).

The FTA with Thailand is notable for its provisions on movement of natural persons where Australia has made provision for the temporary entry of qualified Thai Chefs and agreed to work toward similar provisions for qualified Thai massage therapists. In nearly all other horizontal commitments addressed to mode 4 entry, access to the market is limited to senior executives and or managers/specialists.

In terms of sector-by-sector liberalisation, there are a considerable number of sectors where Australia has more liberalisation on offer through the GATS and Doha Round than it has committed to its reluctant partner in TAFTA. These include: business, communications, construction, distribution, financial, and transportation services. More or less equivalent liberalisation is on the table for: environmental, health and social, tourism, and recreational cultural and sporting services. Only in the case of certain Thai-specific educational services is it possible to imagine that the Australian commitments in the FTA are more attractive than what is on offer in the GATS negotiations.

The situation with Singapore in the SAFTA is very different from that of TAFTA. First of all, before turning to the sector-by-sector schedules and reservations, SAFTA is very much a "WTO-Plus" agreement where Australia has made commitments to liberalise government procurement of services and where SAFTA chapters on investment, competition and electronic commerce all work to the benefit of services liberalisation. The agreement also contains very important provisions in respect of mutual recognition and rules (safeguards and subsidies).

Australian mode 4 horizontal commitments in SAFTA are definitely a big improvement on the country's GATS schedule. Many of the same improvements are now reflected in the Australian Doha Round offer which is potentially nearly as liberalising as the SAFTA provisions, some of which (e.g. rights for permanent residents) may be more liberalising than the Doha offer.

In terms of sector-by-sector commitments, it must be recalled that Australia is starting from a relatively high base level of commitments in its GATS schedule and as a commitment to making progress in the Doha Round, it has tabled an offer that would improve on the pre-Doha situation in a large number of sectors. Nevertheless, on the basis of the analysis, it appears that there are no sectors where Australia's current Doha Round offer read in combination with the GATS schedule is more liberalising than the commitments made by Australia in SAFTA.

Better than WTO commitments are made through SAFTA for communications, financial, environmental, tourism and transportation services. Commitments on legal services are also better in SAFTA than in the WTO context. Services commitments that are roughly equivalent as between the WTO and SAFTA apply to business, construction, distribution, educational, health and social, and recreational, cultural and sporting services.

#### **b. India**

India started from a relatively low level of bound commitments in its GATS schedule (less than a quarter of sectors are bound under mode 3 and less than 10 percent for mode 1). In large part for this reason, but also because it is suspected that the Government has come to consider that the country will gain more from services liberalisation than initially believed in the Uruguay Round, India has offered improvements in the Doha Round in a notable number of sectors (although some take the form of improvements to sectors already partially committed under the GATS schedule).

For horizontal commitments, mainly addressed to movement of natural persons, India's FTA commitments with Singapore appear to be marginally more liberalising than those in its GATS schedule or potentially on offer in the Doha Round.

In terms of scheduled or offered commitments by sector, the picture is mixed. Indian offers that are more forthcoming than committed in the FTA with Singapore are on the table in the Doha Round for education and environmental services. Commitments and offers that are roughly comparable between the FTA and Doha Round are found in the construction services, distribution services and financial services sectors.

Sectors where India has been willing to go further in the FTA than in the WTO context include business services, communications services, health and social services, tourism and related services, transportation services, and recreational, cultural and sporting services. However, in most cases, the FTA commitments are only marginally more liberalising than what is on offer in the Doha Round.

It should be noted that in many cases, India's Doha Round offer of commitments in commercial presence (mode 3) are subject to review and approval by the Indian FIPB or some level of restriction on foreign equity levels.

Finally, the India Doha Round offer is expressly conditioned on the outcome of WTO negotiations on disciplines on domestic regulation.

#### **c. Japan**

As a highly developed country, Japan starts from a high base level of commitments in its GATS services schedule and in some cases this may limit the options for further improvements in the WTO negotiations or through bilateral FTAs. That said, and although there are a few cases where Japan's GATS schedule/Doha Round offer are essentially equivalent to what Japan has committed to in its EPA with Indonesia, there are no cases where the Doha Round offer is superior in its promise of liberalisation to what has been

committed to in the EPA with Indonesia. It should be recognised that, as of the date of this research, the agreement with Indonesia has not yet entered into force.

The horizontal commitments on mode 4 issues found in the EPA with Indonesia largely resemble those potentially on offer by Japan in the Doha Round. However, in another case where a bilateral FTA contains unique liberalising features not generally found in the GATS, Japan has agreed in the EPA with Indonesia to commitments permitting the temporary entry of persons who engage in supplying services as nurses or certified care workers (though with restrictions on language requirements etc).

In terms of sectoral liberalisation commitments, Japan has made much better commitments to Indonesia through the EPA on business, communications, construction, distribution, environmental, health and social, tourism and recreational, cultural and sporting services (the last four of which have not seen improvements offered by Japan in the Doha Round negotiations). Marginally better commitments are made by Japan in educational services and roughly equivalent commitments are on the table for financial and environmental services.

#### **d. Malaysia**

The Malaysian offer in the Doha Round appears to offer liberalisation beyond that of the country's GATS schedule only in a very limited number of areas and even then, *Bumiputera* (native) preferences, foreign equity restrictions and the absence of bindings on national treatment undercut the commercial significance of the offer.

Malaysia's horizontal commitments, dealing with national treatment, preferences and mode 4 questions, are the same for the GATS schedule, Doha Round offer and ASEAN AFAS commitments.

As is the case for Thailand, there are no instances where Malaysia has been more forthcoming in the GATS or Doha Round negotiations than it has been in its ASEAN AFAS commitments. Although Malaysia has offered a considerable number of improvements in the Doha Round for business services, its AFAS schedule is far better than what is on offer in the WTO. Business services are also importantly affected in AFAS by the ASEAN plan for mutual recognition agreements in a number of sectors. In six sectors where extensive commitments have been made by the country in the AFAS context (distribution, financial services, environmental services, health and social services, tourism and transportation services) no offers at all have been tabled in the WTO negotiations.

AFAS commitments are only marginally better than GATS and the Doha Round offer for construction services. More or less equivalent AFAS and GATS liberalisation would be the case if Malaysia's Doha Round offers are maintained for communications services, recreational, cultural and sporting services and skills training services.

Malaysia's offer in the Doha Round is expressly conditioned on the satisfactory outcome of negotiations on rules allowing safeguard actions on trade in services.

#### **e. Singapore**

Singapore, as the ASEAN group's most highly developed member, has the best initial GATS schedule and has also been more active than any other ASEAN Member in pursuing FTAs with non-ASEANs, including with other countries of the EAS. It can also be observed that Singapore, like Australia, seems to tailor its FTA commitments to the reciprocity shown by its FTA partner, with fewer commitments made to countries less willing to make commitments and more with those who are more willing partners in liberalisation.

In many cases, the very comprehensive nature of Singapore's GATS schedule limits the degree to which services might be further liberalised either in the WTO or through a bilateral FTA. Moving to the Singapore-Japan FTA as a comparator, in no case do Singapore's commitments in the GATS or Doha Round offer promise more liberalisation than what has been committed to in the FTA with Japan.

Singapore's horizontal commitments in mode 4 are essentially the same for the FTA with Japan and the offer in the Doha Round.

Although Singapore has a fairly extensive offer in the Doha Round on business services, there are a number of business services covered in the FTA with Japan where Singapore has demonstrated a willingness to go beyond both the GATS schedule and Doha Round offer, including for architecture, engineering, legal (in respect of consultancy services for Japanese law) and a number of "other" business services, including advertising, rental, investigation, prospecting and surveying services. Telecommunications is a sector in which Singapore already has high quality commitments in the GATS Schedule, so "GATS-plus" improvement should be expected to be marginal. Even so, it appears as though the commitments offered to Japan in the FTA do offer liberalisation that goes further than what is on offer by way of improvements through Singapore's Doha Round offer.

Distribution services are important and with no commitments in its GATS schedule, it is imperative that Singapore begin to liberalise in this sector. Tentative and mostly limited liberalisation is on offer in the Doha Round, but Singapore has gone much further in terms of scope of coverage and depth of commitments in its FTA with Japan, in particular with relaxation of some of the limits on wholesaling and a commitment opening up the retailing services sector. In its GATS schedule, Singapore already has a fairly liberal set of commitments on financial services, albeit with some limitations (mainly foreign equity limits), so we would expect to see limited and mainly marginal improvements through the Doha Round and the FTA. The FTA appears to go somewhat further than GATS in liberalising mode 3 for insurance services. More than anywhere else, transportation services seems to be the sector in which Singapore has been most ambitious in agreeing to liberalisation that goes well beyond its GATS schedule and what is on offer in the Doha Round. Many sub-sectors addressed in the FTA are not covered at all in the GATS context.

Apart from the superiority of the scheduled commitments in the FTA, the agreement with Japan also liberalises government procurement of services and provides a mechanism for mutual recognition of professional qualifications.

#### **f. Thailand**

Of the countries whose services trade liberalisation is studied, Thailand has made by far the least meaningful commitments. In fact, whether considering Thailand's Doha Round offer or its commitments in the ASEAN AFAS, the value of the commitments tends to be seriously undermined by limitations on foreign equity to no more than 49 percent (meaning that in effect Thailand is only offering to make commitments to majority-Thai providers of services). Beyond this, improvements offered by Thailand in the Doha Round and commitments in AFAS tend to be marginal (although AFAS commitments are considerably better than the Thai Doha Round offer, in part because of the "WTO-Plus" nature of the AFAS mutual recognition agreement exercise).

Thailand's horizontal (mainly mode 4) commitments in ASEAN do not appear to be materially more liberalising than those committed to in GATS or offered in Doha.

In no case does Thailand's Doha Round offer appear to be more liberalising than what has been committed in the ASEAN AFAS context, although in some cases (tourism and transport services) the AFAS commitment is only marginally better than what is on offer in the Doha Round. Apart from those sectors where no offers at all have been tabled in Geneva, the biggest gap between WTO and AFAS commitments is probably in business services.

Thai AFAS commitments and GATS schedule/Doha Round offers are essentially the same for distribution, educational and environmental services. No Doha Round offers at all have been tabled by Thailand for telecommunications, construction, financial, environmental, health and social, and recreational, cultural and sporting services.

Thailand's Doha Round offer is not at all impressive, yet even what is on the table is conditioned on the satisfactory outcome of negotiations on rules allowing safeguard actions on trade in services as is the case for all ASEAN members apart from Singapore.

#### **D. ARCHITECTURE OF THE EAS FTAS**

For those countries analysed in this section, the country tables in the Annex also summarize key aspects of the comparator FTA's architecture. In addition to this country-by-country information for the selected EAS countries studied here, many of the FTA architecture tables originally produced in the Fink and Molinuevo (2007) study have been modified and updated. Specifically, information relating to agreements involving non-EAS countries has been deleted from the tables, and information added concerning four agreements signed since the cut-off date for that study, namely: Japan's agreements with Thailand, Brunei Darussalam and Indonesia, and the ASEAN-Korea TIS Agreement.

Modified and updated tables of those in Fink and Molinuevo (2007) follow below, with the table numbers in parentheses corresponding to those in Fink and Molinuevo (2007).



**Table 3.1 (2) - Sectoral Carve-Outs**

<b>Agreement(s)</b>	<b>Carve-out(s)</b>
AFAS, Australia-Singapore FTA, Australia-Thailand FTA, ASEAN-China TIS Agreement, India-Singapore ECA, EFTA-Korea FTA, EFTA-Singapore FTA, Korea-Singapore FTA, China-New Zealand FTA	Core air transport services
Japan-Malaysia EPA, Japan-Philippines EPA, Japan-Singapore EPA, Japan-Brunei EPA, Japan-Indonesia EPA, Japan-Thailand EPA, ASEAN-Korea TIS Agreement	Core air transport services and cabotage in maritime transport
Mainland-Hong Kong CEPA, Mainland-Macao CEPA, New Zealand-Singapore FTA	None
ANZCERTA	None, although both parties list air services and coastal shipping in their annexes of reservations.

Source: Fink & Molinuevo (2007), p.9, as modified and updated by IIT

**Table 3.2 (3) - Scheduling Approaches**

<b>Agreement(s)</b>	<b>Listing of sectors</b>	<b>Listing of level of openness</b>
Mainland-Hong Kong CEPA, Mainland-Macao CEPA	Positive	Positive
AFAS, ASEAN-China TIS Agreement, Australia-Thailand FTA, India Singapore ECA, Japan-Malaysia EPA, Japan-Philippines EPA, Japan-Singapore EPA, New Zealand-Singapore FTA, Japan-Brunei EPA, Japan-Indonesia EPA, Japan-Thailand EPA, ASEAN-Korea TIS Agreement	Positive	Hybrid
Australia-Singapore FTA, ANZCERTA	Negative	Negative
Korea-Singapore FTA	Negative, except for financial services for which a positive list is adopted	Negative, except for financial services for which a hybrid list is adopted

Source: Fink & Molinuevo (2007), p. 10, as modified and updated by IIT

**Table 3.3 (4) - Classes of Measures in Negative List Agreements**

	<b>(Cross-border) trade in services</b>	<b>Investment</b>	<b>Trade in financial services</b>
Australia-Singapore FTA	National treatment, market access	National treatment	(Not treated separately)
Korea-Singapore FTA	National treatment, market access, local presence requirements	National treatment, performance requirements, limitations on senior managers and boards of directors	National treatment and market access
ANZCERTA	National treatment, market access, commercial presence requirements	Not specifically covered, although agreement gives suppliers right to select preferred form of commercial presence	(Not treated separately)

Source: Fink & Molinuevo (2007), p. 16, as modified and updated by IIT

**Table 3.4 (5) - National Treatment Provisions**

<b>Agreements</b>	<b>Standard of likeness</b>
AFAS, ASEAN-China TIS Agreement, Australia-Singapore FTA, Australia-Thailand FTA, India-Singapore ECA, Japan-Malaysia EPA, Japan-Philippines EPA, Japan-Singapore EPA, New Zealand-Singapore FTA, Japan-Brunei EPA, Japan-Indonesia EPA, Japan-Thailand EPA, ASEAN-Korea TIS Agreement, China-New Zealand FTA	Like services and service suppliers
Korea-Singapore FTA, ANZCERTA	In like circumstances, referring to services and service suppliers (Korea-Singapore) and persons and services provided by them (ANZCERTA)
Mainland-Hong Kong CEPA, Mainland-Macao CEPA	No explicit national treatment discipline

Note: The standard of likeness indicated here refers to the national treatment provision of FTAs' services chapter. Different standards may prevail in the investment chapter of FTAs.

Source: Fink and Molinuevo (2007), p. 21, as modified and updated by IIT.

**Table 3.5 (6) – Most Favoured Nation (MFN) Provisions**

<b>Agreement(s)</b>	<b>Type of MFN provision</b>
AFAS	Intra-regional MFN obligation subject to ASEAN-X formula
Japan-Malaysia EPA, Japan-Philippines FTA, Japan-Brunei EPA, Japan-Indonesia EPA	Non-party MFN obligation subject to a negative list of reservations
ANZCERTA	Non-party MFN obligation
Australia-Thailand FTA, India-Singapore ECA, Japan-Singapore EPA, Japan-Thailand EPA	Non-binding non-party MFN provision
Australia-Singapore FTA, ASEAN-China TIS Agreement, Korea-Singapore FTA, Mainland-Hong Kong CEPA, Mainland-Macao CEPA, ASEAN-Korea TIS Agreement, New Zealand-Singapore FTA	No MFN disciplines
China-New Zealand FTA	Prospective MFN: does not apply to FTAs or multilateral agreements already in force at date of entry into force of China-New Zealand FTA, or to any measures taken as part of a wider process of economic integration or trade liberalization between the parties to such existing agreements

Notes: The type of MFN provision indicated here refers to FTAs' services chapter. Different types may prevail in the investment chapter of FTAs. Even though the ASEAN-China FTA does not have a formal intra-regional MFN obligation, the agreement makes clear that the commitments of China apply to all ASEAN member countries and the commitments of each ASEAN member country apply to China and the rest of the ASEAN member countries.

Source: Fink and Molinuevo (2007), p. 24, as modified and updated by IIT

**Table 3.6 (7) - The Treatment of Investment in Services Agreements**

<b>Agreement(s)</b>	<b>Definition of commercial presence in services chapter</b>	<b>Definition of investment in horizontal investment disciplines</b>	<b>Relationship between services and horizontal investment disciplines</b>
Mainland-Hong Kong CEPA, Mainland-Macao CEPA	--	--	No substantial disciplines on either services or investment
ASEAN-China TIS Agreement, ASEAN-Korea TIS Agreement	GATS definition of commercial presence	--	No investment disciplines, only services disciplines apply
Korea-Singapore FTA	--	FDI, portfolio investment and various forms of tangible and intangible property	No services disciplines, only investment disciplines apply.
ASEAN Framework Agreement on Services/ASEAN Investment Area (AIA)	Not explicitly defined, but implicitly follows GATS	Foreign direct investment (not further defined)	AIA does not apply to investment in services
Australia-Thailand FTA	GATS definition of commercial presence	Foreign direct investment, as defined by IMF	One single schedule of commitments for services and investment
Australia-Singapore FTA	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	One single schedule of commitments for services and investment
India-Singapore ECA, Japan-Malaysia EPA,	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	Services chapter prevails in case of inconsistencies
New Zealand-Singapore FTA	No minimum ownership or control threshold	FDI, portfolio investment and various forms of tangible and intangible property	The investment chapter's national treatment and MFN obligations do not apply to commercial presence as governed by services chapter
Japan-Philippines FTA	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	For the Philippines: investment chapter's disciplines on national treatment, MFN, and performance requirements do not apply to service sector
Japan-Singapore FTA	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	Relationship not expressly defined. Singapore has scheduled a reservation which effectively incorporates the limitations scheduled under the services chapter into the investment chapter.
Japan-Brunei EPA	GATS definition of	FDI, portfolio	Services chapter prevails

	commercial presence	investment and various forms of tangible and intangible property, including goodwill	in case of inconsistencies relating to investment chapter's disciplines on national treatment, MFN, and performance requirements, otherwise investment chapter prevails.
Japan-Indonesia EPA	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	Services chapter prevails in case of inconsistencies relating to investment chapter's disciplines on national treatment, MFN, and performance requirements, otherwise investment chapter prevails.
Japan-Thailand EPA	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	Investment chapter does not apply to measures relating to investors and investments in service sectors, except that: (a) specified disciplines (most, but not national treatment or prohibition performance requirements) apply to management, conduct and disposition of investments in non-financial services; and (b) a specified, but narrower, list of disciplines (including access to courts, expropriation and compensation, and subrogation but not national treatment, MFN or prohibition performance requirements) applies to management, conduct and disposition of investments in financial services
ANZCERTA	No definition of commercial presence,	Negotiations on a CER Investment Protocol are ongoing	Provisions of services protocol apply subject to the foreign investment policies of the parties
China – New Zealand FTA	GATS definition of commercial presence	FDI, portfolio investment and various forms of tangible and intangible property	Investment chapter does not apply to measures adopted or maintained by a Party affecting trade in services except for a listed sub-set of disciplines, namely those relating to transfer of funds, fair and equitable treatment, compensation for losses, expropriation and subrogation

Source: Fink and Molinuevo (2007), p. 26, as modified and updated by IIT.

**Table 3.7 (8): Movement of natural persons: key architectural choices**

Agreement(s)	Definition of mode 4	Separate chapter or agreement related to the movement of natural persons
<i>Positive list agreements</i> ASEAN-China TIS Agreement, New Zealand-Singapore FTA, ASEAN-Korea TIS Agreement, Japan-Brunei EPA	GATS	--
ASEAN (AFAS)	GATS	ASEAN Framework Agreement on Visa Exemption
Australia-Thailand FTA	GATS	Chapter on movement of natural persons, providing for additional rights and obligations to those set out in the services and investment chapters
Japan-Malaysia EPA	GATS	Provision on key personnel in investment chapter (or BIT)
India-Singapore ECA	GATS	Chapter on movement of natural persons, commitments subject to reservations scheduled under services chapter
Japan-Singapore EPA	GATS(weaker exception)	Chapter on movement of natural persons, commitments apply only to sectors included in a party's services schedule
Japan-Philippines EPA	GATS	Chapter on movement of natural persons, relationship to services chapter not further defined
Mainland-Hong Kong CEPA, Mainland-Macao CEPA	No definition	--
Japan-Indonesia EPA	GATS	Chapter on movement of natural persons and separate annex with commitments for specified categories, including in respect of investors and certain specific professional services. Relationship to general services chapter and annexes of specific commitments not defined.
Japan-Thailand EPA	GATS	Chapter on movement of natural persons and separate annex with commitments for specified categories, including in respect of investors, persons who engage in professional services (Japan only), specialists, and instructors. Relationship to general services chapter and annexes of specific commitments not defined.
China-New Zealand FTA	GATS	Chapter on movement of natural persons and two annexes containing specific commitments of each party. Chapter applies to measures affecting movement of natural persons falling into the following categories: business visitors; contractual services suppliers; intra-corporate transferees; skilled workers; and installers and servicers.
<i>Negative list agreements</i>  Australia-Singapore FTA	GATS	Chapter (or annex) on movement of natural persons, commitments subject to reservations scheduled under services and investment chapters
Korea-Singapore FTA	NAFTA	Chapter on movement of natural persons, prevailing over services chapter as far as 'immigration measures' are concerned
ANZCERTA	No definition	The Trans-Tasman Mutual Recognition Arrangement (TTMRA) allows a person registered to practise an occupation in one jurisdiction to do so in the other as well, subject to listed exemptions.

Source: Fink and Molinuevo (2007), p. 32, as modified and updated by IIT.

**Table 3.8 (9): Rules of origin for juridical persons**

Agreement(s)	<u>Benefits of FTA</u>		Other provisions
	... limited to Domestically owned or Controlled service suppliers	... extended to juridical persons constituted under domestic laws and having substantive business operations in the domestic territory	
Australia-Singapore FTA, Korea-Singapore FTA	No	Yes	No substantive business operations test for party-owned or controlled service suppliers
Mainland-Hong Kong CEPA, Mainland-Macao CEPA	No	Yes	Offers in-depth definition of substantive business operations
ASEAN (AFAS), ASEAN-China TIS Agreement	No	Yes	Benefits also extended to juridical persons with substantive business operations in the territory of any party (services chapter only)
Japan-Singapore EPA	No	Yes	Benefits also extended to juridical persons with substantive business operations in the territory of any party (services chapter only).  No substantive business operations test for party-owned or controlled service suppliers
New Zealand-Singapore FTA	No	Yes	Benefits also extended to juridical persons with substantive business operations in the territory of any party (services chapter only)  No substantive business operations test for party-owned or controlled service suppliers (services chapter)  No substantive business operations test in investment chapter
Japan-Malaysia EPA,	No	Yes	Parties can deny FTA benefits to service providers of the other party where they are owned or controlled by persons of a non-party with which a party does not maintain diplomatic relations or where certain trade sanctions apply  No substantive business operations test in services chapter (only in investment chapter) but where service provided through commercial presence other than juridical person, benefits extended only to presence (e.g. branch) through which service supplied, not to parts of service supplier located outside relevant party  No extension of benefits to branches of enterprises of third states

			(investment chapter)
Japan-Philippines EPA	No	Yes	<p>Parties can deny FTA benefits to service providers and enterprises of the other party where they are owned or controlled by persons of a non-party with which a party does not maintain diplomatic relations or where certain trade sanctions apply</p> <p>Substantial business operations test for third party owned or controlled service suppliers does not apply to maritime transport services supplied by a vessel registered under the laws of the other party</p> <p>Where service provided through commercial presence other than juridical person, benefits extended only to presence (e.g. branch) through which service supplied, not to parts of service supplier located outside relevant party</p> <p>No extension of benefits to branches of enterprises of third states (investment chapter)</p>
Australia-Thailand FTA	Yes (for services and Certain investment disciplines)	Yes (for chapter on promotion and protection of investments)	--
India-Singapore ECA	Yes (for services supplied through commercial presence and investment disciplines)	Yes (for services supplied cross border and through consumption abroad)	<p>Benefits can be denied if juridical person is owned or controlled by persons of the denying party</p> <p>No substantive business operations test for party-owned or controlled service suppliers</p> <p>In the case of financial services, three Singaporean banks are expressly listed as beneficiaries</p> <p>There are sectoral carve-outs of ROOs e.g. in telecoms, financial and audio-visual services</p>
Japan-Brunei EPA Japan-Indonesia EPA	No	Yes	<p>Parties can deny FTA benefits to service providers and enterprises of the other party where they are owned or controlled by persons of a non-party with which a party does not maintain diplomatic relations or where certain trade sanctions apply</p> <p>No substantive business operations test for party-owned or controlled service suppliers and enterprises.</p> <p>Where service provided through commercial presence other than juridical person, benefits extended only to presence (e.g. branch) through which service supplied, not to parts of service supplier located outside relevant party</p>

Japan-Thailand	Yes	No	<p>Parties can deny benefits to service providers and enterprises of the other party where they are owned or controlled by persons of non-parties with which a party does not maintain diplomatic relations or where certain trade sanctions apply</p> <p>Where service provided through commercial presence other than juridical person, benefits extended only to presence (e.g. branch) through which service supplied, not to parts of service supplier located outside relevant party</p> <p>Investment chapter benefits denied to branches of enterprises of third states but extended to a third party owned or controlled enterprises that have substantive business operations in territory of the other party.</p>
ASEAN-Korea	No (test is commercial presence)	No (test is commercial presence)	<p>Parties can deny benefits to service suppliers when the service supplier does not have a commercial presence in a Party. When the commercial presence is a branch or representative office, benefits will not be extended to any other parts of the supplier located outside territory where service supplied. For maritime service supply, benefits may be denied where vessel is registered under laws of, or operated or used by a person of, a non-party.</p>
ANZCERTA	No	Yes	<p>No substantial business operations test: benefits afforded to any body corporate established under the laws of a party, or association comprising or controlled by a natural or corporate body of a party</p>
China–New Zealand FTA	No	Yes	<p>Benefits can be denied if juridical person is owned or controlled by juridical persons of a non-party or of the denying party and has no substantial business operations in the territory of the other party.</p>

Source: Fink and Molinuevo (2007), p. 39, as modified and updated by IIT.



**Table 3.9 (10): Rules of origin for natural persons**

Agreement(s)	... extended to domestic nationals (or 'citizens')	<u>Benefits of</u>	Other provisions
		... extended to permanent residents	
Australia-Singapore FTA, India-Singapore ECA, Korea-Singapore FTA	Yes	Yes	--
Australia-Thailand FTA, Japan-Philippines EPA, Japan-Indonesia EPA, Japan-Thailand EPA	Yes	No	--
AFAS, ASEAN-China TIS Agreement, New Zealand-Singapore FTA, ASEAN-Korea TIS Agreement	Yes	not automatically	Benefits extended to permanent residents only if a party accords substantially the same treatment to its permanent residents as to nationals
Japan-Malaysia EPA	Yes	No (for Japan) Yes (for Malaysia)	--
Japan-Singapore EPA	Yes	No (for Japan) Yes (for Singapore)	--
Mainland-Hong Kong CEPA	Yes (for Mainland)	No (for Mainland) Yes (for Hong Kong)	--
Mainland-Macao CEPA	Yes (for Mainland)	No (for Mainland) Yes (for Macao)	--
Japan-Brunei EPA	Yes	No (for Japan) Yes (for Brunei)	
ANZCERTA	Yes	Yes (to natural persons "ordinarily resident" in a party)	A party may accord differential treatment to the persons of the other party to the same extent it accords differential treatment to its ordinary residents
China-New Zealand FTA	Yes	Yes, but not immediately. Also, New Zealand's annex of commitments on the movement of natural persons limits temporary entry in listed categories to Chinese nationals	Until such time as China enacts its domestic law on the treatment of permanent residents of foreign countries, the obligations of each party with respect to the permanent residents of the other party are limited to its obligations under GATS

Source: Fink and Molinuevo (2007), p. 43, as modified and updated by IIT.

**Table 3.10 (11) - New Sectoral Disciplines Found in FTAs.**

Agreement(s)	Sector(s) covered
Australia-Singapore FTA, Korea-Singapore FTA, Singapore-US FTA	Electronic commerce and telecommunications
Australia-Thailand FTA, India-Singapore ECA	Electronic commerce only
Japan-Singapore EPA	Telecommunications only
AFAS, ASEAN-China TIS Agreement, Japan-Malaysia EPA, Japan-Philippines EPA, Mainland-Hong Kong CEPA,, Mainland-Macao CEPA, New Zealand-Singapore FTA, Japan –Brunei EPA, Japan–Indonesia EPA, Japan–Thailand EPA, ANZCERTA, China–New Zealand FTA	No sectoral disciplines

Notes: Domestic law does not permit aspects such as e-signature.

Source: Fink and Molinuevo (2007), p. 48, as modified and updated by IIT.

## **E. CASE STUDIES OF SPECIFIC SECTORS, UNILATERAL LIBERALISATION, AND SOME ANALYTIC RESULTS**

### **1. Financial Services in FTAs**

Financial services is one of the sectors that was discussed in each of the country summaries. A mixed picture is presented from the aggregate analysis. No Doha offers were made in the case of Malaysia and Thailand, equivalent offers to commitments under the FTAs summarised were made in the case of India and Japan, and in Australia's case its Doha offers were much better than its commitments under TAFTA but the opposite was the case with SAFTA. In Singapore's case, a fairly liberal set of commitments have been made so only limited improvements would be expected through the Doha Round and the FTA. The following Table 3.11 on financial services in EAS FTAs presents further information on the sector in specific FTAs.

**Table 3.11: FTAs Reviewed for Financial Services**

Integration Economic Agreement	Negative or Positive List?	GATS-type market access obligation for mode 3?	Specific chapter/annex on financial services
New Zealand–Singapore	Positive	Yes	No
Japan–Singapore	Positive, except that a negative list is used in relation to national treatment for mode 3.	Yes	Yes (but no MA). It covers: definitions, prudential carve-out, recognition of prudential measures, new financial services, modification of schedules, and dispute settlement.  Also a chapter on cooperation in financial services (regulation, development of capital markets, development of infrastructure)
Singapore–Australia	Negative	Yes	Yes (but no MA). It covers: definitions, prudential carve-out, transfer of information, new financial services, and dispute settlement.
US–Singapore	Negative	Yes	Yes
Republic of Korea–Chile	Negative	No (nor for mode 1)	Financial services excluded from the agreement
EFTA–Singapore	Positive	Yes	Yes (but no MA). It covers: definitions, prudential carve-out, transfer of information, recognition of

			prudential measures, dispute settlement, exception for monetary policy, etc (similar to GATS Annex on FS), NT (similar to Understanding on FS).
China–HKC	Positive (for China)	Yes	Positive List (for China), GATS Plus
China–Macao China	Positive (for China)	Yes	Positive List (for China), GATS Plus
US–Australia	Negative	Yes	Yes
Thailand–Australia	Positive	Yes	No commitments on FS. But will start negotiations on FS three years after entry into force of FTA.
Japan–Mexico	Negative	No	Yes. It is a self-contained chapter. Parties shall be bound by the terms and conditions that each Party is committed to under the OECD Code of Liberalisation of Capital Movements, as may be amended, and the GATS, including the Understanding on Commitments in Financial Services, and under other international agreements to which both Parties are parties.
Japan–Malaysia	Positive List	Yes	Yes (but no MA). It covers: definitions, prudential carve-out, recognition of prudential measures, dispute settlement, and new financial services.
Korea–Singapore	Negative List	No	Yes. It is a self-contained chapter. It contains a GATS-type obligation for MA. Commitments made according to a positive list approach.
Singapore–India	Positive List	Yes	Yes (but no MA). It covers: definitions, prudential carve-out, recognition of prudential measures, further disciplines on transparency, transfer of information, new financial services, and modification of schedules.

Possible limitations of aggregate approaches are addressed by supporting these with case studies such as those presented in this section. The next case study looks at a situation where a FTA may have led to liberalisation but in the process may have also led to diversion effects. There were some other limited examples of where FTAs may have lead to some liberalisation though not in ASEAN apart from Singapore, for example India unilaterally liberalising the real estate and construction sectors then undertaking commitments in its FTA with Singapore.

### Box 3.1: Some ASEAN financial services and FTAs

Some of the key points from the fieldwork relate to more disaggregated sectoral examples of FTAs' impacts on liberalisation, for example banking in Singapore following its FTA with the US and its impact on banking under the India-Singapore CECA. (Malaysia followed Singapore's liberalising initiative though not its willingness to bind the liberalisation.) There were similar developments in Vietnam banking to those just outlined (and also with Cambodia making more liberal commitments in AFAS following liberalisation in its WTO accession).

The FTA with the US prompted Singapore to liberalise some financial activities, particularly with regard to banking and to cross-border supply of insurance services. US banks have been able to set up branches and Automatic Teller Machines in competition as Qualifying Full Banks (QFBs) with Singapore banks. Singapore banks have consolidated and become more competitive as a result of liberalisation. Banking is a sector of interest in all ASEAN countries, some of which have liberalised unilaterally or off WTO-accession, as well as in FTAs with countries such as the US which places a lot of importance on liberalisation in this sector. In the following, the situation in India where some trade diversion seems to have occurred will be described along with the situation in some ASEAN countries.

Under the India-Singapore agreement, Singapore agreed to grant QFB status to three Indian banks provided they meet prudential norms (e.g. capital adequacy and deposit credit ratios). QFB will permit the opening of more branches and Automatic Teller Machines and attracting more depositors. Indian banks are facing difficulties in accessing the Singapore market due to high regulatory requirements with none after two years having obtained full QFB status. Domestic policy in India encourages small operators but minimum capital requirements overseas then locks them out. Also public Indian banks have difficulties changing to suit new regulations. India offered to permit three Singaporean banks to open a fixed number of branches in India. Singapore banks have applied for national treatment status in India to establish wholly-owned subsidiaries and these applications are pending with the Reserve Bank of India.

Singapore gave different commitments to India and the US in its FTAs with a clear preference to the US banks in terms of discriminatory access. Under the US FTA, US banks with QFBs were allowed to establish up to 30 customer service locations compared to 25 for Indian banks under CECA. Now quantitative limits on the number of licenses with QFB privileges have been lifted for US banks with subsequent expansion (e.g. Citibank). The US-Singapore FTA has a separate investment chapter that provided more flexibility and resulted in the US being less affected by changes in domestic regulations that have affected what was negotiated with India within the GATS framework. US banks seemed better equipped in terms of information on the Singapore market.

Currently only the US is allowed the cross-border supply of marine, aviation and transit insurances, direct broking of this insurance and reinsurance broking to Singapore.

In Vietnam, US banks have the rights to mobilise VND, following a schedule based on a growing percentage of their capital. Currently foreign banks such as the ANZ Bank can only hold 20% of ownership. Vietnam has a large number of domestic banks, including government-owned conglomerates in energy etc that have substantial cash to invest, and there has been little consolidation by regulation or market forces. A general law giving the same rights to foreign as to domestic banks is being discussed.

## 2. Unilateral Liberalisation and the Indian Information Technology (IT) Sector

The benefits of unilateral liberalisation are an aspect that aggregate approaches cannot measure because of a lack of detailed information in the schedules etc. It was mentioned during interviews in the field study that countries' unilateral regime were better than their offers, for example in the case of Indian financial and telecommunications sectors, but not in the case of its retail services (Mukherjee 2008). On occasions this was put down to holding back "negotiating coin". The following case study of Indian IT that arose in field study discussions is presented as an example of the benefits of unilateral liberalisation.

### Box 3.2: Unilateral Liberalisation and Indian IT

IT is one of the fastest growing sectors in India, having had a ten-fold increase in the last decade. Indian IT started growing in the late 1980s with development of the software industry. From sending professionals to provide services in developed country markets at cheap rates, Indian companies moved up the value chain to provide integrated software solutions to global clients through offshore development. They established a global reputation during the Y2K (Year 2000) burst and off-shoring of software services gradually led to business process outsourcing (BPO) in the mid-1990s. Successful operation of captive units lead to the emergence of independent BPOs and then software companies also entered this segment. Indian companies are diversifying into new markets through a combination of cross-border mergers and acquisitions, partnership agreements and alliances with local

players. They are also in the process of setting up multi-location delivery platforms to mitigate geo-political and socio-economic risks and to benefit from unique skills (such as language and culture) in individual countries/regions. Acquisition of foreign companies and multi-location delivery centres are enabling Indian companies to access new technology, widen their client base and upgrade skills.

Unlike the industry in some countries such as Singapore, the Indian IT industry has largely grown under private initiatives but with government facilitation. To encourage foreign investment and facilitate knowledge and technology transfer, 100 per cent FDI is permitted in the IT-BPO sector. Companies face minimal regulatory and policy restrictions. They also enjoy a wide range of fiscal incentives such as exemption from services tax and tax holidays but previous analysis has shown that such incentives are less of a factor in location decisions than aspects like a transparent and predictable business environment. Other relevant government schemes include Export Processing Zones, Export Oriented Units, Electronics Hardware and Software Technology Parks. Service outsourcing companies are allowed to import duty free capital goods. The government has significantly liberalised the telecom sector to facilitate the growth of IT. Some states such as Karnataka and Andhra Pradesh have amended their labour laws to allow women to work in night shifts. Unlike the manufacturing sector, software and BPO services are not bound by rigid labour laws. Andhra Pradesh has declared this sector “essential services”, forbidding employees from going on strike. There are also state-level incentives included concessional land and electricity supply (as is the situation in the agricultural sector).

At the international level, the Indian government has taken proactive measures to remove barriers to trade in this sector. At the WTO, India’s negotiating position has changed substantially since the Uruguay Round. In that round, India was sceptical about liberalising the services sector. Since then India has unilaterally liberalised some sectors such as IT and become competitive. Now India is a major player in the on-going Doha negotiations in services and is pushing for liberalisation commitments in modes 1 and 4 (the two main modes of delivery of IT/ITES services) and in computer and related services. India is the coordinator of pluri-lateral requests in modes 1, 2 and 4, and co-sponsor of the request in computer and related services. India is ready to bind its unilateral regime in the WTO. India is also actively pursuing bilateral agreements. It has signed the CECA with Singapore and is negotiating agreements with countries such as Japan and Korea, and regional blocks such as the EU. It would be difficult to sign any bilateral trade agreement with India without substantial liberalisation of computer related services and modes 1, 2 and 4.

### 3. Some Measurement of the Trade and Investment Effects of FTAs

The above aggregate studies cannot assess the degree to which any liberalising commitments would actually increase trade, investment and welfare. For this reason the following case study of analytic approaches to measuring the effects of FTAs on trade, investment, welfare etc is presented to illustrate the extra effort that is required to move beyond just measuring the impact on inputs to the key areas of interest.

The Productivity Commission (PC 2003) looks at the trade and investment effects of FTAs, including new evidence on the effects of non-trade provisions such as services, investment, competition policy, government procurement, etc. As the focus was on the effects of non-trade provisions on trade and investment, econometric approaches were applied to existing FTAs rather than ex-ante CGE modelling that provides enough structure to measure changes in economic welfare. On the trade side it was found that two thirds of the recent FTAs analysed diverted more trade from non-members than they created amongst members. This finding is consistent with the observation that many of the provisions in FTAs used to support their preferential nature such as ROOs restrict overall trade. The non-trade

provisions can have similar trade diversion effects to the traditional trade ones. Trade and other provisions can have a significant impact of investment flows, with the trade from such investments constituting traditional diversion of trade. The analysis suggests that on balance the non-trade provisions of the FTAs looked at had not distorted the geographical distribution of FDI which is consistent with the not strongly preferential nature of some of the non-trade provisions such as intellectual property rights. It is also consistent with non-trade barriers being of the type that raised the costs of doing business rather than creating rents that raise prices above costs, with preferential liberalisation being beneficial. Thus the results suggest that although there appear to be real economic costs from FTA trade provisions there may be economic gains from the non-trade provisions but that should just put pressure on reforming aspects such as services, investment, competition policy and government procurement, especially on a non-preferential basis.

#### **IV. FACTORS EXPLAINING ANY EAS DIFFERENCES IN THEIR VARIOUS COMMITMENTS**

Fink and Molinuevo (2007) do not explain what factors might be behind any differences in various commitments apart from noting that there is a positive relationship between the extent of commitments in a country's FTAs and its level of economic development. Sally (2007) makes a related but more general statement that advanced developing countries not only have more liberal trade policies but stronger institutions and are more globally integrated. Roy et al (2006) do ask the question of why some countries undertook commitments in FTAs and not in the GATS. They put this down to "political impetus" driving FTAs, service exporters perceiving more commercial gains from simpler FTAs with their preferential access (and this simpler identification of export interests appealing to political representatives), and disappointment with the Doha Round, as well as concerns with free-riding.

##### **A. POLITICAL ECONOMY REASONS**

As pointed out by the Productivity Commission (PC 2003), answering the questions of what factors explain differences in commitments and whether FTAs are "building" or "stumbling blocks" towards integration that is "beyond WTO economically" requires a political economy perspective. It was mentioned during a number of the interviews that many of the EAS FTAs were driven more by politics than economics, including using FTAs to open sectors that might appear too politically sensitive to do unilaterally. A number of other factors apart from the political economy have been mentioned as possible explanations of differences between commitments made under multilateral trade arrangements and various FTAs. Some of the other factors could fit the political economy explanation but are often not put forward in this context, for example FTAs being driven by regional interests such as production networks (including in services like those associated with goods as observed in Thai FTAs with Australia and Japan), or driven to address trade diversion threats from other regional FTAs as in the case of Malaysia's involvement with FTAs.

Other factors put forward such as regionalism being quicker, more efficient or a more certain route to free trade than multilateral negotiations have been addressed by Bhagwati (1999). He points out that even the EU, which has higher intra-trade than ASEAN, has not yet fully eliminated internal trade barriers, that big players can extract concessions from smaller trading partners in FTAs which might not be in the world's best interests, and that FTAs can tend to be "second best" and thus fail or stagnate.

Thus the political economy would appear the key reason for differences in various commitments by EAS countries and this will be mainly analysed in the study. However, a number of the other factors put forward will also be addressed.

##### **B. OTHER REASONS**

Some of the other reasons it was stated during the field study or in relevant research why bilateral agreements were thought to be more liberalising in reality include (see also Warwick 2007 for a different list):

- Fewer number of players in FTAs which may offer greater reciprocity potential with a higher "lowest common denominator" (but also more chance of not engaging the best partners), less complicated and thus faster negotiations, and less of a trade negotiating mentality of holding back liberalisations as negotiating chips (the "negotiating chip" approach was mentioned in a number of EAS countries during the fieldwork, such as India in relation to their unilateral liberalisation but not in relation to their weaker, more equivalent WTO and FTA levels of commitment);

- Greater flexibility in terms of addressing adjustment costs to liberalised situations such as allowing more time for liberalisation (or phasing, some example of which are provided in Table 4.1) and other more suitable forms of adjustment assistance which might not be possible under the WTO (the review process that is built into a number of FTAs was mentioned in interviews as allowing the agreements to evolve over time, focusing liberalisation pressures on remaining barriers, dissipating any “spaghetti bowl” effects and further enhancing economic integration);
- Agendas that go beyond the WTO approach (e.g. fuller incorporation of investment, competition policies, government procurement, and e-commerce, though some of these are often better addressed outside of trade policies and agreements);
- More control over areas of concern (e.g. safeguards such as Emergency Safeguard Measures (ESMs) which have been an important issue for ASEAN apart from Singapore (see Clogstoun, Bosworth and Trewin 2006, and Bosworth and Narjoko 2006 for more details on this issue) though it was mentioned in Indian interviews that a desire for ESMs portrays a conservative mindset that is off-putting to prospective partners);
- Better architecture, for example the WTO has a somewhat artificial separation between goods and services, and a positive services list which most ASEAN countries strongly favour (the effectiveness in liberalisation of positive relative to negative lists has been both questioned (see Bosworth and Trewin 2008)<sup>4</sup> and supported (see Fink and Molinuevo 2007). A negative list is thought to be a better starting point by supplying more information on regulations but sometimes these are not all that transparent (e.g. state regulations within the US). Countries need a stocktake of their trade regimes regardless of their approaches to scheduling, to liberalisation, etc. When service sectors are unregulated there can be a fear of the unknown that a negative list could lead to (or just a fear of the unknown – some ASEAN officials at the workshop saw a negative list and heard of built-in safeguards for the first time)). ;
- Talking about multilaterals may be easier for business, given the standardised approach, (and as pointed out in interviews, bring in all traders and investors equally, including the most efficient who may not be partners in negotiated FTAs) but bilaterals with their often closer relationships, say between private and public institutions, can be more acceptable (the benefits are more visible if they are sector specific and quicker to obtain but also raise the danger of capture by vested interest) plus relatively more institutions/diverted resources being allocated to their consideration might assist in their acceptance; and
- Timing, with the last negotiated multilateral liberalisations dating back to the Uruguay Round and most FTAs being negotiated in the interim, which relates to the faster reason given above.

### C. ANALYSING POTENTIAL FACTORS

The number of FTAs that have now been negotiated by EAS countries is quite sizable and many involve similar partners. Thus there has developed a comprehensive data set that is amenable to sophisticated cross-sectional analysis that can take advantage of common factors, such as partners, to help identify from the list of potential factors the key ones explaining EAS differences in commitments in various trade agreements. The data sets that

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<sup>4</sup> A negative list approach was chosen in the Australia New Zealand Closer Economic Relations FTA (ANZCERTA) and had the effect of capturing gains immediately from the inception of the agreement and then focusing future negotiating effort on excluded sectors. In the years following negotiation of the Trade in Services Protocol this focus has resulted in the relatively small number of inscriptions on the negative list to be more than halved. A tight drafting of exceptions was very useful at the inception in limiting the extent of the exceptions. This agreement placed both countries in a strong position to pursue and gain liberalising benefits in the WTO and in other FTAs quickly, as well as pursue liberalisation benefits globally as a central plank of their trade policies. Another important consideration under ANZCERTA was that the broadest possible application of the agreement to as many sectors as possible at the outset of an agreement limited the effectiveness of lobbying by sectors for permanent or prolonged exclusion. There would appear from this example to be clear benefits from negative listing architecture if trade liberalising outcomes are to be maximized and the benefits are to be captured early.



**Table 4.1: Examples of Commitments Providing for the Phasing-In of Liberalisation**

	<b>Sectors</b>	<b>FTA Commitments Providing for Phasing-out of Restrictions in Place</b>	<b>In FTAs with</b>
<b>Australia</b>	Financial services	Foreign life insurers will be allowed to operate branches.	US and Singapore
<b>China</b>	Professional services	Wholly owned operations in architectural, engineering, integrated engineering, and urban planning and landscape architectural services to be permitted as from December 2006.	Hong Kong and Macao
<b>Singapore</b>	Business services	Existing Singaporean laws to be modified so as to relax conditions under which US law firms are permitted to provide legal services.	US
		Foreign power companies will be allowed to supply electricity to non-household consumers in two phases: phase 1 will be two months after the electricity market opens in the second half of 2002; and phase II will be six months after phase I. In the final phase, scheduled for implementation by 2003, retail sale to the remaining consumers (mainly household consumers) will be fully opened.	
		For architectural services, the requirement of "residency" in Singapore shall be phased out by April 2005. The requirement that not less than two-thirds of the directors of a corporation be Singapore registered or allied professionals shall be reduced to 51% by April 2005.	
<b>Thailand</b>	Financial services	Current ban on new licenses for full-service banks will be lifted within 18 months, and within 3 years for "wholesale" banks that serve only large transactions. Licensed full-service banks will be able to offer all their services at up to 30 locations in the first year, and at an unlimited number of locations within 2 years. Locally incorporated subsidiaries of US banks can apply for access to the local Automatic Teller Machine network within two and a half years. Branches of US banks get access to the Automatic Teller Machine network in 4 years.	US
	Tourism, education and maritime transport	As from January 2005, equity participation of up to 60% (subject to certain criteria) by Australian investors/service suppliers is allowed in major restaurants or hotels, tertiary education institution specialising in science and technology and located outside Bangkok, and certain maritime cargo services.	Australia

have been developed from the large number of FTAs negotiated are now of a size to even allow more formal econometric analysis of various aspects such as the factors underlying their spread (see Manger 2006). FTAs being preferential can involve trade diversion losses so it is important to identify a benchmark of desirable FTA features that will promote real liberalisation such as MFN, ratchet mechanisms (that lock in any new liberalisation measures that any trade agreement partners might adopt after the agreement was signed), liberal denial of benefit provisions, negative versus positive lists, and promotion of treatment of investment, and transparency.

One area of focus that provides useful additional information on explanatory factors is that of sensitive sectors. These sectors can often have a greater weight in decisions such as on trade commitments and looking at them in isolation will often provide useful additional information. Some analysis of the "AIA-plus" (e.g. Trewin and Scollay 2006) took this approach in looking at levels of protection etc to identify sensitive sectors and their correlation with other measures such as comparative advantage. Sensitive sectors tend to be left out of FTAs and this might be considered a definition of such sectors. Agriculture tends to be a sensitive sector that is often left out of FTAs and this is mainly for political economy reasons as analysis invariably shows that the economic benefits from trading arrangements are dramatically increased by the inclusion of agriculture (for example see differences in Centre of International Economic's estimates in relation to the Australia US FTA with and without agricultural liberalisation (Dee 2004)). This would be more the case with arrangements involving ASEAN which contains a number of countries where agriculture is an important part of the economy in terms of production, employment, consumption, exports etc.

Sally (2007) looks at the political economy of trade policy reform through a taxonomy of relevant determinant factors, namely circumstances (especially crises), interests, ideas, institutions and factor endowments. The same taxonomy could be used for explaining any EAS differences in their commitments under various trading arrangements. Circumstances/crises have been an explanation of the ASEAN uptake of FTAs in respect of illustrating a commitment to liberalisation following the Asian economic crisis (Soesastro 2005). Interests such as ASEAN concerns with China etc growth are identified as a key factor in integration which includes FTA approaches. Vested interests such as those of minority producers that demand protection would also tend to favour FTAs over multilateral arrangements as they offer more opportunities for capture. The influence of ideas on policy is difficult to measure but outward orientation, market-based pricing and other liberalising ideas on the one hand, and market failures, government intervention and other non-liberalising ideas on the other hand, can be associated with differences in countries' commitments (more in terms of unilateral liberalisation than between multilateral and bilateral commitments, for example as with countries like China that recently acceded before becoming involved in FTAs). Some ASEAN countries initially embracing the idea of negotiating FTAs has lead to others following suite. The unilateral liberalisation story as evident in Vietnam's development is less understood. Institutions can be interpreted broadly, incorporating "formal rules" type institutions and "informal constraints" type institutions. Making generalisations about institutions and policies, and how these might explain differences in performance, is difficult. However, the Australian PC has been credited with instituting much domestic trade-related policy reform in Australia that was undertaken unilaterally and bound multilaterally (Gretton 2008). Independent and transparent institutions measuring the costs of protection and regulation across the economy can assist the adoption of efficient policies. But institutions' influences, unless they are very well established, can wax and wane with changes in the political environment. Advice on the lack of benefits and potential costs of FTAs can be ignored and the trade policy focus shift away from a unilateral approach supported by the multilateral system to commitments being made through FTAs and involving more institutions. Recent developments in terms of the AEC Blueprint and ASEAN Charter raised the issue of greater empowerment for institutions such as the ASEAN Secretariat. Factor endowments do not appear to be a consistent determining factor from a political economy perspective, however, ASEAN factor endowments have been important in the development

of production networks and hence for integration, including in the form of FTAs. Overall the determinant factors suggest that the political economy has been important in explaining any differences in commitments under various trading arrangements.

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## V. THE IMPACT OF DIFFERING SERVICES COMMITMENTS ON THE ASEAN INTEGRATION AGENDA

The next three chapters focus on ASEAN integration aspects. Some of these aspects might be able to be generalised to the EAS and others might not. These different situations will be identified where they are important.

### A. DEFINING INTEGRATION

Before addressing the impact of differing service commitments on the ASEAN integration agenda, it is important to have a clear sense of what is meant by integration. A number of previous RESPF reports have looked at this issue (e.g. Dennis and Yusof 2003, Findlay 2007, and the Lloyd chapter in Hew 2007). The latest interpretation is that it relates to the economic integration (now by 2015) of an AEC into “a single market and production base, turning the diversity that characterizes the region into opportunities for business complementation making the ASEAN a more dynamic and stronger segment of the global supply chain” Bali Concord II 2003. This interpretation can be defined in terms of the application of the Law of One Price holding in all markets (though in the case of the AEC this is interpreted as “free flow of goods, services and skilled labour, and a freer flow of capital” Vientiane Plan of Action 2004). The Law of One Price requires elimination of both border and beyond-the-border measures that discriminate against foreigners. Some regulations such as service licensing systems apply to both domestic and foreign suppliers but still inhibit market integration (e.g. standards) and should be addressed for broader economic integration. The necessary conditions required by a single market are very demanding. For example, a single market requires some harmonisation in tax rates across the country members and, to some extent, the use of a common currency. Table 5.1 illustrates ASEAN has a way to go for the extent of integration in the EU though both are less integrated in services than in goods with the EU having more barriers in services, such as with legal services, than in goods. It was estimated early on in the integration process that a single EU market would add around 5% to GDP, reduce prices, increase growth, and create millions of extra jobs (Cecchini 1988).

**Table 5.1: Status of economic integration for some FTAs and economic integration initiatives**

Aspect of FTAs or economic Cooperation	Trade or economic agreements and status of economic integration			
	EU	ASEAN	Japan-Singapore	NZ-Singapore
<b>Border measures</b>				
Market access	√	*	*	*
Temporary movements of business persons	√	X	√	√
<b>Beyond-the-border-measures</b>				
National treatment	√	*	√	√
<b>Across-border-measures</b>				
Mutual recognition of labour standards	√	X	X	√

**Note:**

- Status 1. √ means implementation of all measures related to the aspects of FTAs or economic agreements has been undertaken.
2. \* means implementation of only some or few of the measures related to the aspect of FTAs or economic agreements has been undertaken.
3. x means none of the measures related to the agreements were addressed.

The integration commitment being made by ASEAN members applies implicitly to integration of their markets but explicitly to full integration which would have free trade as part of the global supply chain with the rest of the world. Countries are looking beyond ASEAN as this grouping is thought still too small to have an impact (half the size of China). For many ASEAN members trade outside of ASEAN, such as with China, is more significant than its intra-ASEAN trade. However, more integration is required within ASEAN first before broader FTAs can be seriously considered. The impact of ROOs and margins of preference in any ASEAN members' FTAs need to be taken into account as the best kind of integration involves free trade not only between ASEAN but with the rest of the world. Integration within ASEAN alone would be limited in terms of addressing Chinese and Indian growth which has been a key driver in the push for integration (Soesastro 2005). ASEAN integration is a necessity, not an option in terms addressing Chinese and Indian development.

Market integration is not sought for its own sake but to achieve more equitable economic development, reduced poverty and socio-economic disparities ("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" Hanoi Plan of Action 1998). Based on the experience of the EU and other economic integrations such as the ANZCERTA, these appear to offer the potential to deliver such goals and associated benefits but maybe over a lengthy period of time (Bhagwati 1999). This study focuses on economic market integration but will incorporate any relevant aspects of political and social integration as has occurred in market integration such as the formation of the EU. Freer movement of labour has been an important factor in the success of integration in the EU and ANZCERTA.

**B. DIFFERENCES IN SERVICES COMMITMENTS**

Returning to the differences in services commitments, ASEAN consists of countries covering a wide range of stages of development. In the broad, the ASEAN-6 are at a higher stage of development than CLVM countries (though a recent middle grouping of VIP countries out of these two groups reflects the dynamics of development and the positive impact of integrating with world markets on development). The broad difference has often been reflected in CLVM countries having more time to meet certain targets associated with integration although Vietnam has tended to have met many of these targets with its faster development following unilateral liberalisation. Some less developed members would appear to have concerns about the pace of economic integration which could open their markets to intra-ASEAN competition too quickly in their eyes.

Within the broad groupings, Singapore is more highly developed than the rest of the ASEAN-6, and Vietnam is the most highly developed of the CLVM countries. Singapore started negotiating separate FTAs before other ASEAN countries, and some of the less developed ASEAN countries are yet to negotiate any FTAs in their own right (e.g. Cambodia and Myanmar). There is a sense Singapore feels that FTAs are a route to ASEAN services liberalisation and hence integration but some other ASEAN countries do not. Others see Singapore doing its own thing causing ASEAN to lose its bargaining power in negotiations (but recall the earlier discussion on the misplaced support for the benefits of such

negotiations over unilateral liberalisation). Any trade diversion or loss of trust would be more worrying.

Regardless of any such differences, some (mainly the more developed) ASEAN countries are following Singapore's path to some degree in an attempt to make progress on services liberalisation. The same applies to ASEAN as a whole (many individual ASEAN country FTAs are shortly followed by negotiation of FTAs with ASEAN as a whole which could help integration). But other ASEAN countries are not mimicking Singapore, which has zero tariffs on goods (Singapore FTA negotiations on the goods side tend to focus more on ROOs than tariffs and if these support the ASEAN supply chains, other ASEAN countries will benefit from Singapore's actions) and hence a focus on comprehensive FTAs that include services and investment. ASEAN as a whole is more focused on goods and has higher protection of services (Toh 2007). For example, the Thailand-Japan EPA deliberately does not go beyond GATS in telecommunication and financial services, as well as some other services. Such protection seems based on the earlier mentioned lack of understanding of the benefits of unilateral liberalisation, maintaining protection as they currently have no comparative advantage in many service activities (apart from tourism and mode 4) (Nikomborirak and Stephenson 2001).

In addition, some EAS countries are more concerned with investment, or only services related to their manufacturing interests. The majority of the FTAs involving ASEAN countries are with countries outside of East Asia (Kawai and Wignaraja 2007) so focusing on the EAS would not fully address the integration issue.

Singapore has also taken a difference stance on the need for Emergency Safeguard Measures (ESMs) to the rest of ASEAN (Bosworth, Clogstoun and Trewin 2006). The ASEAN (less Singapore) approach to EMS in services is an EAS integration issue – it shows a defensive mindset and a concern about a surge in services that will be reflected in a conservative approach. Some ASEAN countries have a fear of the unknown and so play things safe.

### **C. INTEGRATION IMPACT OF DIFFERENT SERVICES COMMITMENTS**

There are two broad views of the impact of such differing commitments on ASEAN integration – one is that it will drag all countries forward towards an integrated position, and the other is that it will lead to a fundamental breakdown in the arrangements (Sen 2006). Justification of the first view includes FTAs being a catalyst for multilateralism from the “domino effect” of countries not wanting to be discriminated against, and encouraging countries to lock in policy reforms (World Bank 2004). Justification of the second view is based on the view of some ASEAN countries that forging bilateral arrangements with non-ASEAN countries is inconsistent with and detrimental to the economic interests of ASEAN as a whole (e.g. trade and investment diversion – see Banda and Whalley 2005 who undertake a general comparison of agreements involving ASEAN countries), hindering integration which is dependent on overall economic development. And it would appear there is a correlation between economic development and FTA uptake. Another reason is complexity introduced by ROOs etc increasing transaction and other costs, and hindering integration. Some industries do not make use of FTA arrangements and thus show little interest in AFAS, but FTAs can still impose transaction and other costs on such industries.

Analysis of previous experiences and the field studies throw some light on the likely outcome in respect of these two views such as that the timing outlined for integration would suggest a pro-active approach will be required. There are potential dangers for ASEAN if it takes a more conservative “Least Common Denominator” approach in trade negotiations, for example individual countries losing opportunities and the group progressing too slowly. For instance, the commitments that ASEAN offered in its FTAs tend to be much lower than what the ASEAN countries have agreed under AFAS and hence has only had a very marginal impact on the whole ASEAN integration process. ASEAN-X, where two or more member countries can liberalise trade in services between them for specific (sub)-sectors and other

ASEAN countries join them later when they feel ready, is a consensus approach to avoid these dangers. ASEAN2+X is a non-consensus approach which enables 2 member countries ready to liberalise specific sectors to proceed without consensus, but this approach is yet to be applied and it is unclear what would happen, as a procedural matter, in the absence of consensus.

Australia and New Zealand are strongly integrated through their CER (see Box 5.1) and are negotiating an FTA with ASEAN as a group but have negotiated FTAs with individual ASEAN and other countries. Australia, which is at a higher level of development than New Zealand, has broader and more diverse trade interests than New Zealand, and there are other political and social differences between the two countries, so it is understandable that distinct FTAs have been negotiated, such as the AUSFTA, and separate ones have and are being negotiated with ASEAN countries like Singapore and EAS countries like China. These negotiations have not weakened the CER, in fact if they have had any effect it would be to take the CER further down the integration path through introducing greater competition or any positive experiences that could be expanded within the CER, but both partners have a history of substantive unilateral liberalisation.

#### **Box 5.1: Australia New Zealand Closer Economic Relations trade agreement**

The initial agreement to establish free trade in goods entered into force in 1983. In 1988 it was comprehensively reviewed and the parties agreed to free trade in goods without exception and to trade in services commitments which were fully implemented in 1990. Additional measures to integrate the two economies and facilitate economic exchanges have been adopted over subsequent years.

CER is an ambitious and comprehensive FTA, with many “GATT/WTO-plus” elements. It helped to reverse the poor economic performance of both countries in the 1980s/early 1990s and then politically opened the way to, and contributed to economic reform and efficiency improvements that have characterised both countries strong economic growth achievements over the last twenty years. The two countries moved from near the bottom of the scale of economic growth among OECD countries in the early 1980s to be among the top performers.

It is not widely understood that both countries had erected many barriers to trade specifically designed to impede competition from the other – and these were constituting a deadweight drain on each economy – not just high tariffs, but quotas, import prohibition, exclusive dealing arrangements, import licensing, restrictive inter-industry agreements, exclusionary standards, export prohibitions, exclusionary government purchasing, distortionary export incentives and industry bounties, to name just some of the measures impeding trade across the Tasman Sea at the beginning of the 1980s.

All these impediments and distortions have been eliminated under the CER Agreement. And the significant number of persons who were employed in lobbying for them, and administering them, have been re-deployed into productive endeavours.

Of interest and of significance is that rapid implementation of agreements reached was pursued so as to capture quickly the economic benefits. Tariffs were eliminated over 5 years, but the significant non-tariff protection that remained in 1988 – notably to many agricultural and other products – was eliminated and the two countries brought to free trade conditions within 18 months. This meant that the gains were enjoyed by the government which undertook the reforms.

The Trade in Services Protocol was seen as important to reinforce the connection between with goods trade and to lock in and commence the freedom to trade in services. It was the first services agreement with negative list architecture and one in which the subsequent liberalising effort by both countries has succeeded in eliminating more than half the exceptions initially inscribed on the list in 1988. (In 1988, 13 were listed by Australia, and 8 in the case of New Zealand, although no service sector was entirely excluded by either country).



Implementation of policy neutrality among all sectors of the economy was seen as an important objective after both governments had pursued selective support for many decades, which been an ignominious failure in both countries.

In 1988 and since, the two governments have pursued a policy of integrating the two economies by facilitating harmonising regulatory approaches, including establishing a bi-national institution – the Australia New Zealand Food Authority – to set common food standards and regulation. They also acted in 1988 to eliminate anti-dumping in the FTA to ensure that liberalisation benefits were not thwarted by industries seeking continuing protection from the imposition of dumping duties. Competition laws and practice were substantially harmonised in 1988. While the smaller-sized New Zealand economy gained most from access to the much larger Australian economy, Australia made large efficiency and welfare gains across the economy, for example by laying the foundation of a truly national economy by breaking down long standing state government protection affecting goods and services, and discriminatory state government purchasing, which had resulted in Australia having a number of segmented markets further limited by geographic separation.

CER is the most comprehensive coverage, most liberalising and most business facilitating free trade agreement in existence. In particular, both economies used the Agreement to open up competition, across all sectors of (agriculture, manufacturing and services) including cosseted, uncompetitive industries and to achieve flexibility and efficiency gains on an economy-wide basis, often at world's best practice levels, for their economies. Experience with the CER has shown that to obtain the maximum economic benefits trade liberalisation needed to extend to competition from all sources.

Social development is highly dependent on services such as education, health and transport and differing services commitments will have an effect on relative social development. However, an equality focus of every country having to achieve the same level of development first would be a constraint to integration, offering less specialisation and trade opportunities, and holding back growth and social development. This point would be obvious in the unlikely case that an approach of pulling the more developed ASEAN countries back was implemented. Consistency/uniformity is not always best as there are trade and other economic benefits in diversity. ASEAN recognises this with its statement about “turning the diversity that characterizes the region into opportunities for business complementation”. On the other hand, without paying appropriate attention to economic cooperation (e.g. trade facilitation) there will be no effective integration.

Differences in levels of development within ASEAN need to be addressed through training, giving more time and flexibility to catch up, and capacity building in new generation FTA aspects like competition policy, etc. There are substantial differences in the skill and capability of government officials, the institutional arrangements (government and business – many business associations in ASEAN are fairly passive compared to those in the more developed EAS countries), as well in the strength of country strategies, amongst ASEAN members. Such capacity building will generally need to be broader than ASEAN and this is already happening in countries such as Vietnam through various international and country development agencies (see Warwick 2007 for a discussion of the benefits to donors from Aid for Trade).

It was suggested in the interviews that there possibly needs to be an EAS Secretariat and an “Initiative for East Asian Integration” that would focus assistance for less developed countries, with more resources than the ASEAN Integration Initiative, including a broader knowledge. Often there are poor services statistics (e.g. bilateral trade between India and ASEAN) and little relevant research. There is a strong need for good data (Asher and Sen 2007) and research, as well as transparent public policies, for social development that fully reflects national interests. Such institutions could be important economically and politically as was pointed out by Soesastro (2005) in respect of the AEC. However, there are other

approaches to addressing these issues, for example assigning the tasks to existing institutions such as ADB, APEC etc (Soesastro 2006), or better coordination of development assistance and commissioned research. ERIA (Economic Research for ASEAN and East Asia) has just been established with funding by Japan's Ministry of Economy, Trade and Industry and it may be able to make a worthwhile contribution in this area. Using a secretariat and national governments would provide a two-track approach.

## VI. FEATURES OF SERVICES AGREEMENTS PROMOTING AND DISTRACTING FROM THE CREATION OF THE AEC

### A. PROMOTING FEATURES

There are various features of service agreements that could promote or distract from the implementation of the AEC. Fink and Molinuevo (2007) put forward compatibility with WTO rules on economic integration as a general feature of FTAs that should promote institutions such as the AEC. The fact that the WTO allows FTAs under certain conditions suggests they could be “building blocks” but also “stumbling blocks” if these conditions are not met.

Fink and Molineuvo (2007) also put forward some other general characteristics of FTAs that make them either more “building” or “stumbling blocks”. On the “building block” side, FTAs are said to offer inroads towards more open markets through less resistance from vested interests if they are already facing some foreign competition (though this and the next point can be achieved probably better through unilateral liberalisation), and strengthened support for more multilateral market opening if preferential liberalisation proves successful. In addition, FTAs may spur a process of competitive multilateral liberalisation once countries, motivated by the threat of being left out (“domino effect”), move to conclude FTAs with all their major trading partners (see Box 6.1).

#### **Box 6.1: Trade or economic cooperation initiatives involving ASEAN countries**

Various comprehensive economic partnership/cooperation initiatives have been dubbed as “FTA-plus” and “WTO-plus”. A “domino effect” is evident from the initiatives. China’s proposal of an agreement with ASEAN was rapidly followed by similar offers of comprehensive economic partnership/cooperation from Japan, Korea, India, and Australia-New Zealand (the latest proposal has come from the EU).

Japan chose both an ASEAN-wide umbrella and bilateral FTA agreements with individual ASEAN countries. Japan had a bilateral agreement with Singapore prior to the ASEAN-wide initiative, but followed up with bilateral negotiations with Malaysia, Indonesia, Thailand, the Philippines and Vietnam. There has been a concession between Japan and the individual ASEAN countries that the concluded liberalisation schedules between Japan and the individual countries will not be renegotiated but annexed in the ASEAN-Japan EPA agreement. Accordingly, Japan will be bound to accord to all ASEAN countries the same preferences it has given to any ASEAN country, and any ASEAN country in a bilateral with Japan would have to extend the same preferences it agreed to accord to Japan to all ASEAN countries. Korea and India also had bilateral agreements with Singapore before embarking on the ASEAN-wide agreements. China embarked on a bilateral agreement with Thailand after initiating the ASEAN-wide agreement. At this stage, it is unclear what would be the full relationship between the ASEAN-wide agreements and the bilateral agreements, in particular relating to ROOs and sensitive lists.

The scope of the partnership/cooperation agreements extends beyond trade liberalisation in goods, to include liberalisation of trade in services and investment; and issues such as trade and investment facilitation; government procurement; intellectual property protection; and competition policy.

They also typically include economic and technical cooperation over broad areas, and in addition, they include special and differential treatment, flexibility, and capacity building for the less developed CLMV.

Framework agreements were reached prior to negotiations on the various components of

the comprehensive partnership/cooperation in trade in goods, trade in services, investment, and dispute settlement mechanism. Only the ASEAN-China agreement has implemented an Early Harvest Program, while the ASEAN-India initiative has abandoned such an intention. The trade in goods agreement is usually negotiated and implemented first, while negotiations on services and investment continue.

All initiatives have been unable to resolve sensitive issues that have frustrated WTO negotiations. Some regional and bilateral agreements may have breached the WTO GATT Article XXIV on “substantially all trade” and GATS on “substantial sectoral coverage”. Agricultural products are on the sensitive and exclusion lists of several countries, as are textiles and some other labour-intensive products plus a range of service sectors, many with heavy government involvement.

It appears that the concept of amalgamation cannot readily be used to consolidate these various initiatives into a single, coherent region-wide trade agreement or initiative. However, given ASEAN’s involvement in these various initiatives, it can still play a critical role in creating a regional trade agreement or economic cooperation.

Although these various initiatives may not become building blocks, the processes of negotiating each initiative have become a valuable learning process that can be brought to bear in negotiating an extremely difficult region-wide FTA. The various ASEAN-China agreements could improve ASEAN’s market access, the scope for scale economies, and the region’s attraction for foreign investors. ASEAN also enjoys the political and economic benefits of a “hub”. With each agreement signed and implemented, more trade and investment, and institutional and procedural barriers, have come down and economic efficiency improved. The increased competition from imports and foreign suppliers, and investors, has put pressure on ASEAN countries to undertake domestic structural and institutional reforms so as to improve competitiveness.

Source: Soesastro (2006)

Fink and Molineuvo (2007) also put forward a number of specific “building block” aspects of ASEAN FTAs that could promote the creation of the AEC. These could include ROOs if they are liberal and the foundation of “beyond WTO economically” FTAs, offering small ASEAN countries the opportunities to overcome their disadvantages of smallness by pooling resources and combining markets, leading to greater economic integration. Similarly they could include the feature of extra-territorial MFN obligations (outside the FTA partners).

There are other features of service agreements identified elsewhere that could promote or distract from creation of the AEC. As discussed in the last section, phasing in liberalisation, especially in respect of the ASEAN-6 and CLVM countries’ levels of development differences, could be an important feature of service agreements promoting or distracting from the creation of the AEC. Related trade facilitation measures aimed at addressing constraints to trade such as different standards would also help promote the creation of the AEC.

As pointed out in a number of research reports (e.g. Kawai and Wignaraja 2007, and Kimura 2006), pressure for ASEAN economic integration through formal FTAs is coming from the ad hoc, market-driven integration of strong production networks and supply chains, which have been an increasingly important topic in the trade of countries in the East Asian region. Kimura (2006) points out the importance of services in improving production network through efficient service links between production blocks in East Asia and that FTAs need to liberalise services to contribute to this market-driven liberalisation. Athukorala and Yamashita (2007), for example, show that the extent of intra-regional trade which supports international product fragmentation increased substantially in the last two decades. These production networks and supply chains are relevant to services, both in terms of linked services such as logistics and in terms of purely service networks such as in the professions. Technological change such as in telecommunications has made it more efficient to break some production into

smaller specialised blocks linked by services. This increasing importance of services (Jones and Kierzkowski 1990) has increased the importance of liberalising services in the network region. Eddy and Owen (2007) showed that the ASEAN private sector saw barriers to trade in services as more restrictive in general than those in goods and that where barriers were high in goods they tended to be high in related services. Information on services regulation, identified as an important feature in economic integration by Fink and Molinuevo (2007), was recognised as the main barrier. There could be positive spillovers from FTA to WTO negotiations through such information provision.

## **B. DISCOURAGING FEATURES**

Given what was stated in the last paragraph, understanding the interrelationship between service agreements, and the importance of production networks, become important issues in setting the agenda moving towards the AEC. One particular question worth addressing here is whether or not agreements in services help to increase the “regionalism” in the region, including the Southeast Asian region. This is in the context of “fragile regionalism”, a concept set out by Baldwin (2006). He argued that the regionalism in east Asian is fragile due to the following characteristics: (1) industrial development in each country in the East Asian region is too dependent on the industrial development of the other countries in the region, (2) there is no guarantee that any country in the region will always keep its high degree of trade openness, or, in other words, there is no guarantee that countries will not move back from a very liberal trade regime to a very protective one, and (3) there is no form of “top level management” in the region which can impose a discipline mechanism governed by WTO rules. These aspects are just as applicable to the services’ dimension.

On the general stumbling blocks side, Fink and Molinuevo point out that FTAs can lead to a diversion of trade with the beneficiaries of this then lobbying against multilateral liberalisation, and FTAs can, as has been observed, divert scarce negotiating resources away from multilateral (and intra-ASEAN integration-related) liberalisation negotiations. Trade diversion in services would be at the heart of the economic effects of FTAs and their integration role, and Fink and Molinuevo (2007) not only mention trade diversion in respect of the usual concerns on ROOs but also in respect of a special services diversion aspect concerned with “first mover” advantages. Related concerns involve excluded trade and the agreements being closed to new members. Bilaterals by ASEAN countries can have negative spillovers on ASEAN non-partners, including on political confidence/trust building.

In terms of specific “stumbling block” aspects that could distract from the creation of the AEC, Fink and Molinuevo (2007) mention two. Firstly, agricultural subsidies, a bargaining chip for services liberalisation and Doha progress, can only be reduced on a multilateral basis. Private sector interests getting their market opening demands met in FTAs may result in perceptions that there is little to be gained from multilateral negotiations.

There are other features of service agreements identified elsewhere that could distract from creation of the AEC. One of the possible distracting features is the risks that a multitude of overlapping FTAs can result in negative “noodle bowl” effects, inhibiting intra-ASEAN trade, even when the FTA arrangements are not used. An over-arching broader regional agreement might stand more of a chance of promoting economic integration. Kawai and Wignaraja (2007) amongst others (e.g. Dennis and Yusof 2003) also identified different standards that could evolve from overlapping FTAs as playing an important role in distracting from the creation of the AEC.

There were a number of relevant points that came out of the field studies on features distracting from the creation of the AEC and some not already discussed are mentioned next. ASEAN is getting more serious about integration but individual ASEAN members, and ASEAN as a whole, face constraints to achieving this. One such constraint was mentioned earlier in respect of the position ASEAN minus Singapore have taken on ESMs which is looked on as a sign of a conservative, slow approach to liberalisation as has been evident in AFAS to this point in time. Integration is as much about politics as it is about economics.

There are difficulties for some governments with strong but minority nationalistic groups of stakeholders to change laws and regulations. This has also been evident in the EU where some member countries have not followed others in terms of the extent of economic integration, for example in respect of a common currency. In addition, some of those interviewed saw the integration process needing to be driven more by industry, with government facilitating this, than attempted to be driven by government officials, with minimal involvement from industry.

### **C. TREATMENT OF SOME KEY ISSUES IN FTA PROVISIONS**

The study looks at the treatment of FTA provisions and how the following issues affecting the creation of an AEC are resolved in various FTAs:

- Substantial business operations/denial of benefits

Most FTAs extend benefits to third party service suppliers if they fulfil two criteria, namely being established in one of the FTA partners, and having “substantial business operations” in that country, or, in some instances, in any FTA partner (although the definition and scope of the phrase can limit the extension of benefits from an FTA, it is almost never defined in FTAs and its meaning is not clear). Denial of benefits is another related issue affecting the creation of an AEC, and how these provisions are crafted in an FTA can be critical to whether it promotes or distracts from the development of an AEC. The Singapore-Korea FTA was given in the field study as an example where denial of benefits, for example in communication services, could impact on ASEAN integration.

- MFN

The existence of MFN obligations in FTAs, especially of the extra-territorial type, could impact the extent of future liberalisation through such agreements, yet a majority of intra-Asian FTAs either do not commit to MFN treatment for treaty partners, or contain only soft obligations in this regard. Table 3.5 set out the situation for a number of ASEAN FTAs. Fink and Molinuevo (2007) also discuss this issue in respect of ASEAN. They mention that AFAS has preferential treatment accorded on a MFN basis but that there have been recent exceptions such as with the 2003 ASEAN-X amendment aimed at advancing negotiations for those members that are ready and willing to commit to more open service markets. In the discussion they raise the issue of there being an incentive to ask trading partners for MFN treatment as it ensures benefits flow from any current or future FTAs with non-parties but that this diminishes the bargaining position of some countries in future FTAs and strengthens multilateral negotiations.

- National treatment

National treatment is a major WTO discipline that ensures contestability of services markets by foreign suppliers. Table 3.4 overviewed different standards found in the selected EAS FTAs and national treatment was also mentioned in Table 3.3 on negative list agreements and Table 3.6 on investment in service agreements. The language used in the agreements can be important in terms of liberalising effects with different terminology such as “like services and service suppliers” and “like circumstance” leaving open narrower or broader interpretations.

- Domestic regulations

Most services agreements establish disciplines on domestic regulation to cover measures that are non-discriminatory and qualitative in nature, and falling outside the usual scope of agreements. These regulations generally have a legitimate regulatory purpose but may also restrict trade beyond what is required to meet the policy objectives, hence the need for establishing disciplines. Rules on domestic regulations can be classified in terms of administration of regulatory measures (that could follow a GATS or NAFTA approach), necessity tests (which for WTO members requires objective and

transparent criteria that are not more burdensome than necessary to ensure service quality), and sectoral disciplines as set out in Table 3.10.

Table 6.1 undertakes a comparison across some ASEAN countries of FDI policy to illustrate the diversity on issues like national treatment outlined above even though this issue shows the greatest degree of integration.

Table 6.1: Comparisons across some ASEAN countries on foreign direct investment policy

ISSUE	INDONESIA	MALAYSIA	THAILAND	VIETNAM
<b>National treatment</b> <sup>5</sup>	Yes. Foreign investors have to be in the form of Perusahaan Terbatas (PT) and subject to list of sectors closed and open with restrictions.	Yes, apart from equity conditions	<i>Not know at this point</i>	Proposed <sup>6</sup>
<b>Separation of functions</b> <sup>7</sup>	Subject to the new implementing regulation	Partial; Industrial Agency (MIDA) is responsible for all promotion as well as licensing of manufacturing projects; other ministries license non-manufacturing projects, under rules set by the Foreign Investment Committee	Partial; Board of Investment (BoI) responsible for all promotion and has regulatory powers for award of incentives and enterprise licensing incentives when awarded; incentives are not incentive sought, Foreign Business Licences are approved by the Ministry of Commerce	None; Foreign Investment Agency (part of the Ministry of Planning and Investment) is responsible for both promotion and FDI entry licensing

<sup>5</sup> Note that in the WTO context where National Treatment applies, the concept is understood as not necessarily requiring identical treatment of domestic and foreign investors but that foreign investors are not discriminated against.

<sup>6</sup> Vietnam currently has different investment laws for different investors (domestic, foreign, cooperatives etc) but is preparing a new "Comprehensive Investment Law" which will create a level playing field for all sectors.

<sup>7</sup> Institutional separation of regulatory and investment promotion functions.



One Stop Shop <sup>8</sup>	Yes at three different layers (central, provincial, kabupaten/kota level)	No; the only regulatory authority exercised by MIDA is the licensing for manufacturing projects, so investors need to obtain approval from other agencies	Partial: BOI can give incentives, approve FDI projects, process visa and work permit applications, however, in publicising One Stop Shops, BOI emphasises investor servicing	No, multiple required	stop
Restricted List <sup>9</sup>	Yes; criteria and procedures established to the restricted list is outline in one presidential decree and the list itself is outline in another presidential decree	Not clear as the whether formal list exists	Formal listing of reserved activities is contained in the Alien Business Act (1999). Two conditional list exist, with the condition being approval by cabinet or Director-General of the Commercial Registration Department. However, a local company is any company in which foreign equity does not exceed 49%	Not clear as to whether formal list exists at present	
FDI entry process <sup>10</sup>	Will be determined in the implementing regulations	Limited; process still wholly discretionary, against nominated criteria	Limited; process still discretionary, against nominated criteria	Minimal, highly discretionary, against multiple criteria, though an automatic "registration" procedure applies to some projects	

<sup>8</sup> Existence of single agency with authority to provide approvals for multiple licenses and permits, as well as providing non-regulatory assistance to investors.

<sup>9</sup> Existence of formal list of restrictions on FDI; nature of restrictions (irrespective of where located).

<sup>10</sup> Transparency of the process.

<b>Company formation</b> <sup>11</sup>	Company formation for PT is governed by UUPT (Law No. 1 of 1995) while application for operational licence is governed by implementing regulation under UUPM (Law No. 8 of 1995)	Company separate - through registrar of Companies - from licensing of enterprise (MIDA for manufacturing, sector ministries for non-manufacturing)	Wholly separate; company formation is through the Business Development Office at the Ministry of Commerce, followed by licensing through that Ministry or BOI (when incentives are sought).	No separation for FDI, as companies are established under the applicable enterprise or investment laws - currently for FDI, the Foreign Investment Law. Recent changes provide for domestic firm to engage in all lawful activities, rather than those specifically licensed. No central companies registration system.
<b>Decentralised licensing</b> <sup>12</sup>	Local permits issued by local governments; national licenses largely delegated to sub-national government, except for a number of national licenses for activities that cross sub-national boundaries.	No	<i>Not clear: BOI may delegate limited powers to its regional offices</i>	Yes, authority devolved to provincial governments on the basis of project size
<b>Corruption</b> <sup>13</sup>	2.2/143	5.1/43	3.8/84	2.6/123
<b>Starting a Business (number of days; no. of procedures)</b> <sup>14</sup>	151/12	30/9	33/8	50/11

Source: Compiled mainly from the WTO website.

<sup>11</sup> Separation of company formation from enterprise licensing.

<sup>12</sup> Licensing authority devolved to sub national agencies.

<sup>13</sup> Corruption Perception Index produced by Transparency International: Score out of 10 (10 equal to "least corrupt", 0 "most corrupt")/position out of 179.

<sup>14</sup> From World Bank (2006).

## **VII. HOW TO PROMOTE ASEAN INTEGRATION UNDER VARIOUS TRADE STRATEGIES**

### **A. PROMOTION WITHIN TRADE STRATEGIES**

Most trade liberalisation, including in services, has been undertaken unilaterally (65%) reflecting that the benefits accrue predominantly to the country undertaking the liberalisation. Gretton (2008) provides an example of this – observed productivity and price changes in key infrastructure sectors following unilateral liberalisation estimated to have increased Australia's GDP by 2.5%, which can include higher incomes across regions and household groups if markets are flexible so that labour and capital can move to where there are the best opportunities. Bearing in mind that integration should be about the benefits in terms of growth and more equitable economic development, reduced poverty and socio-economic disparities, promoting unilateral liberalisation would be promoting integration in its fullest sense. Some countries within ASEAN undertaking unilateral liberalisation and demonstrating the economic benefits of such action should inspire others to follow suit and lead to the best kind of integration of free trade not only within ASEAN but with the rest of the world. It is also evident that there is some difference in views as to the extent to which services liberalisation will be a key part of the AEC, largely because support for why unilateral liberalisation is good for individual economies is weak in most countries. Such a view could substantially reduce the degree of envisaged integration since services liberalisation would seem an essential component of any significant integration and, as noted in the workshop, needs to be redressed through disseminated research.

There are further benefits such as in terms of better market access if trading partners also reduce their trade barriers but these are generally small relative to the gains associated with a country's own unilateral liberalisation and the associated reallocation of resources, improved competitiveness etc. Multilateral liberalisation has been associated with around 25% of trade liberalisation. Because multilateral liberalisation has a built-in WTO-consistent framework (e.g. MFN, comprehensive, and concurrent), integration will be facilitated if the unilateral liberalisation is locked in to a multilateral agreement.

Bilateral liberalisation has been associated with only about 10% of trade liberalisation. For bilateral liberalisation to be able to deliver the benefits discussed in unilateral and multilateral liberalisation, and thus promote economic integration in its fullest sense, it will need to be "beyond WTO economically" and devoid of constraints on trade and investment, and the associated economic costs, that some FTAs can have. The Warwick Commission (2007) puts the view that FTAs need to reinforce multilateral principles and make some specific recommendations in this regard, namely:

- clarify and improve disciplines and procedures with WTO provisions on FTAs;
- industrialised and large developing countries refrain from negotiating FTAs with each other; and
- develop a mechanism that facilitates collective surveillance of FTAs and possibly the establishment of a code of best practices.

### **B. PROMOTING APPROACHES**

Fink and Molinuevo (2007) discuss East Asian FTAs' compatibility with WTO rules on economic integration which would appear to be a precursor for ASEAN economic integration, especially under multilateral trade agreements. They look at this under a number of headings such as notification, substantial sectoral coverage (number of sectors, volume of trade affected and modes of supply), elimination of substantially all discrimination affecting members of the FTA, no raising of barriers to non-party WTO members, liberal ROOs, and

Special and Differential and other treatments for developing countries (flexibility in sectoral coverage, elimination of substantially all discrimination and ROOs), coming to the conclusion that compatibility is not always clear. Clarifying this aspect would help with ASEAN economic integration.

Returning to Fink and Molinuevo (2007)'s "building" and "stumbling blocks" mentioned in the last chapter, a number of general and specific views were put forward that had implications on promoting ASEAN economic integration. On the more specific views of ASEAN FTAs, to be "building blocks" these should have ROOs that are liberal and the foundation of "WTO friendly" FTAs; ensure extra-territorial MFN obligations; and have positive spillovers from FTA to WTO negotiations such as through the provision of information. They cannot address agricultural subsidies, a bargaining chip for services liberalisation, as these can only be reduced on a multilateral basis but they should be comprehensive so agriculture is included and other constraints on trade liberalisation in this sector addressed. They should demonstrate to private sector interests that their perception that market opening in FTAs means there is little to be gained from multilateral negotiations is wrong and thereby obtain private sector support for these negotiations. If all these aspects are addressed it will be clear that the net situation in terms of such FTAs is that they would be building blocks towards multilateral liberalisation and in the process, building blocks towards the key question of ASEAN's own economic integration.

There is a broader literature than Fink and Molinuevo (2007) on how to promote ASEAN integration under a variety of trade strategies. The IIT worked on evaluating barriers to trade in business services in ASEAN (see REPSF 2007) which builds off earlier work by McKinsey (2003) and Soesastro (2005). Some of this work is relevant to this issue such as the recommendations which include:

- seek incremental, qualitative improvements in AFAS commitments through articulating explicitly the motivation for policies; making discriminatory policies less distortionary; minimising restrictions on forms of establishment; making the criteria for economic needs tests more transparent; relaxing absolute prohibitions on foreigners forming partnerships with local professionals; providing a transparent and consistent framework for accepting foreign qualifications; and considering adjustments in policies where motivations are ambiguous;
- monitor changes in commitments and actual market reforms;
- separate temporary service providers from normal immigration and negotiate trade-friendly policies on permanent movements;
- consider shifting from a "positive" to "negative" list approach in services trade negotiations;
- improve transparency and predictability of domestic regulations and use international standards for harmonisation;
- pursue Mutual Recognition Agreements (MRAs) in all sectors and push for reciprocity in the interim; and
- increase awareness of AFAS by mobilising professional associations and involving them in negotiations (this would address the "fragile regionalism" issue mentioned in the last part).

They also develop an index measuring impediments to expanding ASEAN trade that can assist in promoting progress on this.

Private sector integration is happening but integration may not be left to them alone – it may need governments in a facilitating role of recognising, formalising and institutionalising so business risk is lowered (e.g. with IPR), as well as in terms of public infrastructure. Governments can get in the way however. The integration process cannot be left to government officials who in some cases will not have the incentives to take a pro-active or

even collaborative role. Professional bodies in some EAS countries have complained that bureaucratic infighting and domestic issues have hindered the development of MRAs involving independent bodies from interested countries. Think-tanks in many ASEAN countries that might emulate the role of the Australian PC, which is an independent and transparent government agency, run the risk of all such agencies of becoming politicised through government appointments and funding threats, or less effective through being bypassed on sensitive issues, and would be improved through independent funding from foundations. Government involvement should be clear with only one of the many ministries involved with services trade in each ASEAN country having key responsibility for the Blueprint etc – a coordinated “whole-of-government” approach to reform that does not leave decision making to a mass of regulatory or client government agencies.

There is the view that two main things are lacking for integration, namely awareness, and compliance/implementation. The latter was one of the issues Soesastro (2005) mentioned needed to be addressed through a treaty, empowered ASEAN institutions, transfer of powers and budget, for economic integration to materialise. The AEC Blueprint sets out an agenda in the one document, unlike Doha, but there is not a strong awareness of it. It identifies priority sectors that ASEAN should focus on such as those that will have overall spillovers like logistics which was added to the initial priority list. Some have said it is too ambitious and would be better if it was more focused. Others say this ambition is a good thing in that it provides political support for integration. And as noted in the workshop, the Blueprint puts external forces on governments to make substantial change in terms of domestic law and regulations, in order to meet the targets and deadlines set (see Box 7.1 on Indonesian reform of investment and logistic policies). Thus it could promote integration if there is a strong political will. The main argument for this is that, it could force ASEAN countries to have “one-voice” regarding the commitments they can offer to ASEAN FTA partners. Some consolidation is needed in ASEAN (e.g. one or two negative lists) because an FTA with 10 schedules (and 2 on the other side of the table in the case of AANZFTA) will be difficult. It is currently easier to negotiate with one country, as when negotiating with ASEAN now it is not clear what the joint position will be or what the attraction is over selected individual members. Integration will not be a static concept and will need to evolve but perhaps not as gradually as has been the “East Asian way” in the past – some significant action will need to be seen by 2012 in some focus areas for the 2015 target to be taken seriously. Capacity building will be important in making such progress but the AEC Blueprint and the ASEAN Charter do not contain concrete programs of assistance (AANZFTA has a chapter devoted to this).

**Box 7.1: Examples of domestic policy reform towards greater private sector or foreign ownership participation: Indonesian experience**

**a. Investment law**

A new investment law was passed by the parliament in early 2007 that substantially improves rules and regulations governing private investment in Indonesia. More importantly, the law acknowledges and accommodates aspects for greater economic cooperation and regional integration. The law now provides for national treatment. Another important aspect is the provision of quite flexible determination of a negative investment list, which could be reviewed by the government within a short period of time. In addition to all of these, the law includes greater detail and commitments to reduce red-tape. All these are reflected in more explicit and clearer criteria in the law and the stipulation of “one-stop shop” services for investment applications. The new laws are also provided in English to the benefit of many overseas investors. While it is an important milestone, the law depends substantially on other laws and regulation for successful implementation.

**b. Attempt to reform logistics policies**

Logistics is one of the twelve priority sectors put up for accelerating ASEAN economic integration. In the AEC Blueprint to achieve an integrated ASEAN logistics, leaders of ASEAN countries have agreed to liberalise and facilitate measures in the area of logistics services, as well as creating an integrated ASEAN logistics environment. The Blueprint has an extensive coverage of sectors related to logistics, including, for example, maritime cargo handling, courier and customs clearance services. The Indonesian government's quick response in relation to logistics in the AEC Blueprint was to some extent motivated by an awareness of a very uncompetitive Indonesian logistics sector (LPEM 2005). As an example of the immediate response, two policy-reform initiatives were developed and initiated. The first was the submission of a draft new maritime law was aimed at reforming services in Indonesian ports by dismantling the monopoly power by state-owned company (i.e., *PT. Pelindo*). It has been widely noted by the Indonesian business community that high inefficiency in the Pelindo's services raises the cost of goods produced or sold in Indonesia, eroding their competitiveness. The other important initiative is policy action taken to reform the overall logistics sector. In Indonesia, reforming the logistics sector implies that the government needs to coordinate with more than three technical ministries in terms of harmonising laws and regulations. Another important aspect of this immediate action was an intensive discussion with domestic private sector stakeholders. The discussion has already yielded positive result in terms of a more complete understanding by government of the situation in practice, including the concerns of domestic logistics services providers. This should provide some benefit for the government in undertaking necessary reform in advance, given the very tight deadline given by the AEC Blueprint.

The impact of the AEC Blueprint targets is clear; the government was forced to implement some domestic initiatives to meet or prepare the economic integration goal.

Source: Narjoko and Jotzo (2007)

The ASEAN Charter introduces what some see as a necessary rules-based approach that will provide more certainty such as through dispute settlement, but is yet to be tested. Currently disputes such as that between the Philippines and Thailand over tobacco often end up in the WTO. Testing of the new arrangements may occur in the near future. The latest Bulletin of Indonesian Economic Studies reports recent developments in Indonesian telecommunications where two companies involving Singapore investors have been fined, ordered to lower tariffs and divest (see Kong and Ramayandi 2008). These decisions appear based on an inconsistent interpretation of the law and little appreciation of the interest of the Indonesian people or the effect on investment. They are also against the spirit of the AEC Blueprint which states "a free and open investment regime is key to enhancing ASEAN's competitiveness in attracting FDI as well as intra-ASEAN investment" and sets out minimum foreign equity participation rates in services higher than those questioned in the above case. (See Box 7.2 for more details.)

**Box 7.2: Forcing or abusing competition: Indonesian Telecoms?**

Indonesia's Business Competition Supervisory Commission (KPPU) found Temasek – a Singaporean holding company – guilty of breaching the Indonesian anti-monopoly law. Temasek was alleged to have control over the two biggest Indonesian telecommunication companies, Indosat and Telkomsel, which led to price-fixing. In the decision, Temasek and its subsidiaries were ordered to sell their indirect stake at Telkomsel or Indosat within a two-year period, and the divested stake is to be offered so that it does not exceed five percent for each buyer. KPPU also told Temasek and eight other subsidiaries to pay a fine of Rp. 25 billion for each company. In addition, Temasek was required to release its voting rights in electing

Telkomsel's and Indosat's commissioners and board members, and lower its tariffs for mobile telecommunication service by 15%.

KPPU's judgment that Temasek could control the telecommunication industry through cross-ownership seems contentious for at least three reasons. First, Telkomsel and Indosat are different companies and not affiliated. Therefore, the KPPU's incorporation of Temasek's indirect ownership – through STT and Singtel – in Indosat and Telkomsel is clearly not valid. Second, it is the Government of Indonesia and Telkom (its state-owned enterprise) that has a dominant position in decision-making in Telkomsel and Indosat. Telkom owns 65% and 14.3% of Telkomsel and Indosat respectively, and the government holds so-called golden shares in Indosat which give it a veto power over Indosat's important decisions. Therefore, a question emerges, how could the government, as the major share holder of Indosat and Telkomsel let Temasek order Indosat and Telkomsel to fix the price? The third reason is that the telecommunication services tariff by either Telkomsel or Indosat is still under the bound tariffs set by the government. It is the government of Indonesia, along with Indonesia's Telecommunication Regulatory Body (BRTI), that regulates the main components of telecom tariffs.

Regardless of the quality of the KPPU's decision, it is clear that it undermines foreign investors' incentive to invest in Indonesia by highlighting the issue of uncertain policy on foreign participation. In the Temasek case, it also indicates how the power of protectionist groups can turn around government policy if not countered by broader society interests.

Source: Hapsari (2008), Kong and Ramayandi (2008).

Dennis and Yusof (2003) focus on three broad aspects for promoting ASEAN integration under a variety of trade strategies, namely liberalisation, facilitation and cooperation. These aspects are mentioned in the strategic approaches of the AEC Blueprint which specifies a form of ASEAN economic integration which cannot be seen as a static development, with continued dynamism needing to look outwards to other trading partners. In relation to liberalisation, mention is made of the ASEAN-X formula. Also mentioned in Hew (2007) is the need for the ASEAN2+X formula to expedite the implementation of AFAS. Facilitation includes uniform standards, national treatment in government procurement, and harmonisation of policies and institutions, as well as complementary support such as on developing transport infrastructure and professional services involving ASEAN countries and beyond. Cooperation has occurred through frameworks such as AFAS but can be broader than this, for example the Singapore-Japan and Singapore-India agreements have chapters on science and technology. It has been said that technology and investment agreements might suffice rather than FTAs.

Kawai and Wignaraja (2007) look at policy approaches that maximize the benefits and minimize the costs of East Asian FTAs to help make them more of a "building block" to global economic integration. A good trade agreement which promotes competition, adjustment and flexibility, either at the multilateral or bilateral level, will produce economic gains and stand the test of time. Basically this requires FTAs to drive domestic structural reforms and to be "beyond WTO economically" (MFN, open membership (though there is a trade-off between the breadth of participating countries and the depth of measures such as "WTO-plus" issues like investment, migration, IPR, and dispute settlement), comprehensive, simple and liberal ROOs, and harmonised regulatory and institutional frameworks). Consolidation is given some consideration to overcome the "noodle bowl" effect of multiple ROOs and varying standards increasing administrative and business costs (see also Box 6.1 drawing on Soesastro 2005 who saw aspects like the Blueprint for an AEC and the ASEAN Charter providing the framework around which FTAs involving ASEAN countries could be brought together). Bonapace and Mikic (2006) also look at the consolidation issue from an Asia-Pacific perspective, drawing on the EU experience for guidance though its situation is different from ASEAN, for example intra-EU trade is larger, EU countries cannot negotiate individual FTAs,

and directives at the Commission level have to be implemented by individual states. They put forward two methods for managing the “noodle bowl” effect and reducing the possibilities of trade and investment diversion, namely amalgamation into a larger FTA in a geographical region and adhering to “open regionalism”, and functional harmonisation through adherence to a common framework of principle, procedures and practices in negotiations (see Sen 2006 for more details). Finally, providing complementary support is suggested, such as strengthening the structural and institutional aspects of low income ASEAN countries’ economic systems like their supply-side constraints, including transport infrastructure, to take advantage of integrated regional markets and narrow development gaps within ASEAN.

Sally (2006) probably best addresses the effect of FTAs on regional integration in Asia. In his conclusion he points out that trade policy in Asia is currently very unbalanced, relying too much on weak and partial FTAs which will not liberalise where it matters and thus not be a driving force for regional or global integration. In fact, he warns that emerging “hubs-and-spokes” made up of dirty FTAs, threaten disintegration, especially if the multilateral trading system weakens further. He does recognise the reality of FTAs but notes they can be improved to mimic unilateral and multilateral approaches by being comprehensive, “WTO-plus” with simple, harmonised ROOs (denial of benefits in the case of services)(see also Sen and Sally 2005 who conclude ASEAN countries could not rely on external pressures for trade policy reform but needed this to be domestically driven unilateral liberalisation). Such improvements should be in conjunction with a refocus on the WTO, especially in respect of further liberalisation and stronger support from non-discriminatory rules. Most importantly, he points out that it is domestic trade policy that is important, and not as some governments currently appear to think, the negotiation process, in particular those associated with FTAs. This current thinking is the opposite to the focus that Asia had prior to the Asian economic crisis when non-discriminatory unilateral liberalisation delivered the type of benefits that China and India have enjoyed more recently from the same approach. He comments that another bout of Chinese unilateral trade liberalisation, say in services, might stimulate broader action along these lines. FTAs would make more sense in such an environment, free of trade diversion and other “stumbling blocks”.



## VIII. RECOMMENDATIONS

A number of recommendations are suggested from the earlier discussion and are specifically set out in this chapter.

EAS countries have many positives to display in their history of economic development. They should build on this record by addressing known weaknesses in their services sectors by progressively liberalising domestic policies, especially where they do not presently possess international competitiveness. All governments should commit publicly to the importance of their trade in services sectors and undertake to actively pursue improvements in their efficiency and competitiveness. This policy approach would entail not subsidising or protecting sectors but opening them to foreign competition, lead to improved service delivery and costs, and introducing greater efficiency and flexibility (see Gretton 2008 for a case study of Australia).

All governments should act to eliminate impediments to the free flow of investment among the region, strengthen the security of investments, and facilitate the automatic remittance of returns on investment.

Opportunities should be taken to act unilaterally as a first order priority. As second order priorities, the final and critical phase of the Doha development Round should be used to significantly improve offers and requests, and to support the Chair of the Services Negotiating Group in laying down the modalities for the negotiations to support such an outcome (it should be remembered that independent research shows that those countries liberalising the most in the Uruguay Round of Multilateral Trade Negotiations gained the most economically). Opportunities exist for ASEAN to not only make offers in Doha of the highest order consistent with commitments in FTAs and unilateral liberalisation but to seek greater cooperation and coordination in doing so.

EAS countries should also use and enter into regional and bilateral FTA/EPA negotiations only if the negotiating partners are prepared to be “beyond WTO economically” (MFN, liberal ROOs, comprehensive, concurrent, uniform standards etc) and accept real liberalisation outcomes implemented within 10 years, as required by the Understanding on Article XXIV of the GATT. Approaches such as moving from “positive” to “negative” lists, which can be more liberalising through providing greater information should be considered in negotiations. Strong consideration should be given to how any new FTA can be consolidated into the existing web of such agreements (e.g. liberal ROOs, extra-territorial MFN, uniform standards) and integration thereby assisted.

The ASEAN-6 and non-ASEAN EAS countries should set as an objective in multilateral, regional and bilateral trade agreements, that no United Nations Central Product Classification (CPC) services sector should remain entirely excluded from commitments under trade agreements within 5 years from the commencement of an agreement. For CLMV countries the equivalent target should be longer. This would allow for gradualism (within set deadlines like 2015) but would work against exclusions and deferrals, and operate on an automatic basis. Existing agreements which do not meet these standards should be brought into conformity within 3-5 years.

Mention was made about the lack of data on bilateral services trade, reinforcing that all statistics on services and services trade should be improved (perhaps following the OECD experience of disseminating data on services trade). To assist in identifying areas and sectors for early liberalisation, all countries should initiate action to measure the economy-wide effects of existing protection and regulation of policies, and the benefits of liberalisation, and to make the results of these studies public. Progress in these areas should be monitored. These aspects could be achieved either through the establishment of an independent regional or national transparency agencies, or through commissioned research. All

governments should encourage and fund more think-tanks/academics to undertake research in the services economy and trade in services issues, and independent foundations should also provide funding.

Capacity building in a wide range of trade policy areas should be provided to the less developed ASEAN countries from more developed EAS and other countries, international institutions, foundations etc.

To achieve success in reform, governments need to adopt a “whole-of-government” approach to reform, agencies working across portfolio boundaries to achieve a shared goal and integrated government response, and not leaving decision-making to regulatory or client ministries.

All EAS governments should actively assist their trade in services business sectors to identify their competitiveness and organise to identify business opportunities in the region, including those that would be assisted by the reduction or elimination of trade barriers, or other impediments to cross border trade flows. A good starting practice would be to emulate the statistical foundation and analysis of domestic industry capability of the Ministry of Commerce of China in its annual publication “China Trade in Services Report” (2007 is the current issue). EAS governments should also facilitate business integration activity through appropriate policies (e.g. competition, IPR) and infrastructure.

## REFERENCES

Asher, M. G. and R. Sen 2007, "*Towards Greater Economic Integration: The Growing Role of Cross-Border Services*", Asian Management Review, 2(2).

Athukorala, P. and N. Yamashita 2007, "*Product Fragmentation and Trade Integration: East Asia in a Global Context*", Working Paper in Trade and Development, Economic Division, Research School of Pacific and Asian Studies, ANU.

Baldwin, R. 2006, "*Managing the Noodle Bowl: the Fragility of East Asian Regionalism*", Discussion Paper Series, No. 5561, Centre for Economic Policy Research.

Banda, O.G.D. and J. Whalley 2005, "*Beyond Goods and Services; Competition Policy, Investment, Mutual Recognition, Movement of Persons, and Broader Cooperation Provisions of Recent FTAs involving ASEAN Countries*", NBER Working Paper 11232.

Bhagwati, J. 1999, "*Regionalism and Multilateralism: an Overview*", in Bhagwati, J., P. Krishna and A. Panagariya (eds), "Trading Blocs: Alternative Approaches to Analysing PTAs", The MIT Press, Cambridge.

Bird, K., H. Hill and S. Cuthbertson 2007, "*Making Trade Policy in a New Democracy after a Deep Crisis: Indonesia*", Working Paper No. 2007/01, Division of Economics, RSPAS, ANU.

Bonapace, T. and M. Mikic 2006, "*Asia-Pacific Regionalism Quo Vadis? Charting the Territory for New Integration Routes*", Chapter 5 in P. De Lombaerde (ed.), "Multilateralism, Regionalism and Bilateralism in Trade and Investment", 2006 World Report on Regional Integration,

Bosworth, M. and D. Narjoko 2006, "*Desirability, Feasibility and Options for Establishing ESM within the AFAS*", REPSF 05/007.

Bosworth, M. and R. Trewin 2008, "*The Domestic Dynamics of Preferential Services Liberalising: The Experience of Australia and Thailand*", chapter in WTO book on "Liberalising Trade in Services: Bilateral, Regional and Multilateral Perspectives in the 21<sup>st</sup> Century", Marchetti, J. and M. Roy (eds) (forthcoming).

Cecchini, P. (1988), "*The European Challenge 1992: The Benefits of a Single Market*", Wildwood House, Aldershot.

CIE 2005, "*Free Trade Agreements: Making Them Better*", RIRDC Publication No. 05/035, Canberra.

Clogstoun, R., M. Bosworth and R. Trewin 2006, *"Would Emergency Safeguard Measures Work for Services?"*, Asia-Pacific Economic Literature.

Dee, P. (2004), *"The Australia-US FTA: An Assessment Paper prepared for the Senate Select Committee on the FTA between Australia and the US"*, Australia Parliament House website.

Dee, P. (2007), *"East Asian Economic Integration and its Impact on Future Growth"*, The World Economy 30(3).

Dee, P. and C. Findlay 2007, *"Services in PTAS – Donuts or Holes?"*, Background Paper, Setting Priorities for Services Trade Reform, 29-30 November, Australian National University, Canberra.

Dennis, D. J. and Z. A. Yusof 2003, *"Developing Indicators of ASEAN Integration – A Preliminary Survey for a Roadmap"*, RESPF Project 02/001.

De Souza, R., M. Goh, S. Gupta and L. Lei 2007, *"An Investigation into the Measures Affecting the Integration of ASEAN's Priority Sectors: The Case of Logistics"*, Final Report, REPSF Project No. 06/001d.

Eddy, C. and R. Owen 2007, *"An investigation into the Measures Affecting the Integration of ASEAN's Priority Sectors (Phase 2): Region-wide Business Survey"*, REPSF Project No. 06/001e.

Findlay, C. 2007, *"An investigation into the Measures Affecting the Integration of ASEAN's Priority Sectors (Phase 2): Overview"*, REPSF Project No. 06/001a.

Findlay, C. and T. Warren (eds), 2000, *"Impediments to Trade in Services: Measurement and Policy Implications"*, Routledge, London and New York.

Fink, C. and M. Molinuevo 2007, *"East Asian Free Trade Arrangements in Services: Roaring Tigers or Timid Pandas?"*, World Bank East Asia and Pacific Region Poverty Reduction and Economic Management, June.

Golub, S., R. Jones and H. Kierzkowski 2007, *"Globalization and Country-Specific Service Links"*, HEI Working paper No. 05/007, January.

Gretton, P. 2008, *"Assessing the Importance of National Economic Reform – Australian Productivity Commission Experience"*, Productivity Commission Conference Paper.

Hapsari, I. 2008, *"Review of Economic Development: A Continued Upbeat Growth"*, The Indonesian Quarterly, Vol. 35(4).

Hew, D. (ed) 2007, *“Brick by Brick: The Building of an ASEAN Economic Community”*, Singapore: ISEAS.

Hew, D. 2008, *“Building an ASEAN Economic Community: From Vision to Reality”*, APEC Economies Newsletter, Vol.12, No. 1, Jan-Feb.

Kawai, M. and G. Wignaraja 2007, *“ASEAN+3 or ASEAN+6: Which way forward?”*, ADB Institute Discussion Paper No. 77, September.

Jones, R. and H. Kierzkowski 1990, *“The Role of Services in Production and International Trade: A Theoretical Framework”*, in *“The Political Economy of International Trade”*, R. Jones and A. Krueger (eds.), Basil Blackwell, Oxford.

Kimura, F. 2006, *“International Production and Distribution Networks in East Asia: Eighteen Facts, Mechanics, and Policy Implications”*, Asian Economic Policy Review, 1(2).

Kommerskollegium National Board of Trade 2007, *“Potential gains from trade liberalising in the Baltic Sea Region”*.

Kong, T. and A. Ramayandi 2008, *“Survey of Recent Developments”*, Vol. 44(1).

LPEM 2005, *“Inefficiency in the Logistics of Export Industries: The Case of Indonesia”*, Final Report.

Manger, M. S. 2006, *“The Political Economy of Discrimination: Modelling the Spread of Preferential Trade Agreements”*, paper for presentation at the Inaugural meeting of the International Political economy Society, Princeton NY 17-18 November 2006.

Marchetti, J. and M. Roy (eds.) 2008, *“Liberalising Trade in Services: Bilateral, Regional and Multilateral Perspectives in the 21<sup>st</sup> Century”*, WTO (forthcoming).

McKinsey & Company 2003, See articles on an ASEAN competitiveness project by A. Schwartz and R. Villinger published in The McKinsey Quarterly, [www.mckinseyquarterly.com](http://www.mckinseyquarterly.com) during 2004.

Mukherje, A. 2008, *“Services Liberalising in PTAs and the WTO: The Experience of India and Singapore”*, chapter in WTO book on *“Liberalising Trade in Services: Bilateral, Regional and Multilateral Perspectives in the 21<sup>st</sup> Century”*, Marchetti, J. and M. Roy (eds) (forthcoming).

Narjoko, D. A. and F. Jotzo 2007, *“Survey of Recent Developments”*, BIES Vol 43 (2).

Nikomborirak, D. and S. M. Stephenson 2001, "*Liberalising of Trade in Services: East Asia and the Western Hemisphere*", paper presented in PECC "Regional Trading Arrangements: Stocktake and the Next Steps" Trade Policy Forum, Bangkok, June 12-13.

PECC 1995, "*Survey of Impediments to Trade and Investment in the APEC Region*", A Report by PECC for APEC Trade Ministers.

Productivity Commission (PC) 2003, "*The Trade and Investment Effects of Preferential Trading Arrangements: Old and New Evidence*", Staff Working Paper, Canberra.

REPSF 2007, "*Expanding Trade in Business Services in ASEAN*", CATIF, CSIS, IIT and TDRI, REPSF Project 05/006.

Roy, M., J. Marchetti and H. Lim 2006, "*Services Liberalisation in the New Generation of PTAs: How much further than GATS*", WTO Staff Working Paper ERSD-2006-7.

Sally, R. 2006, "*FTAs and the Prospects for Regional Integration in Asia*", ECIPE Working Paper 01/2006, 2006.

Sally, R. 2007, "*The Political Economy of Trade Liberalising: What Lessons or Reforms Today?*", Trade Policy Report No. 18, South African Institute of International Affairs.

Sally, R. and R. Sen 2005, "*Whither Trade Policies in Southeast Asia? The Wider Asian and Global Context*", ASEAN Economic Bulletin 22(1).

Scollay, R. and R. Trewin 2006, "*Australia and New Zealand Bilateral CEPs/FTAs with ASEAN Countries and their Implications on the AANZFTA*", REPSF 05/003.

Sen, R. 2006, "*Bilateral Free Trade and Economic Cooperation Agreements in ASEAN: Evolution, Characteristics and Implications for Asian Economic Integration*", Policy Brief.

Sen, R. 2006a, "*New Regionalism in Asia: A Comparative Analysis of Emerging Regional and Bilateral Trading Agreements involving ASEAN, China and India*", Journal of World Trade, 40(4).

Sen, R. 2008, "*Enhancing Bilateral Economic Linkages through New Regionalism: The Case of Singapore and New Zealand*", chapter in ISEAS book "Trade Policy & the Role of Regional & Bilateral FTAs: The Case of New Zealand and Singapore", R. Sen (ed.).

Soesastro, H. 2005, "*Accelerating ASEAN Economic Integration: Moving Beyond AFTA*", CSIS WPE 091, March 2005.

Soesastro, H. 2006, "*East Asia's Institutional Identity: 'Community' or Less?*", CSIS paper.

Thirlwell, M. P. 2004, "*The Good, the Bad and the Ugly: Assessing Criticism of the Australia-United States Free Trade Agreement*", Lowy Institute Perspectives.

Toh, M. H. 2007, "*Relationship between the AJCEP Agreement and Japan's Bilateral EPAs with ASEAN countries*", REPSF Project No. 05/002.

Trewin, R. and R. Scollay 2006, "*ASEAN and CER Countries: Building on Investment Agreements*", preliminary background framework development for Hew et al (2007), "AIA-Plus: Building on Free Trade Agreements", REPSF Project No. 04/010.

Vo Tri Thanh and P. Bartlett 2006, "*Ten Years of ASEAN Framework Agreement on Services (AFAS): An Assessment*", REPSF Project No. 05/004.



Warwick Commission 2007, "*The Multilateral Trade Regime: Which way forward*", The Report of the First Warwick Commission, The University of Warwick, December.

World Bank 2004, "*Global Economic Prospects 2005: Regionalism, Trade and Development*", The World Bank, Washington D.C.

World Bank 2006, "*Doing Business in 2006: Creating Jobs*", The World Bank, Washington D.C.

## APPENDIXES

### A. APPENDIX 1: TERMS OF REFERENCE

	<p>EAST ASIA SUMMIT RESEARCH INITIATIVE (AADCP Regional Economic Policy Support Facility II) TERMS OF REFERENCE RESEARCH PROJECT 07/004</p>	 <p>Australian Government AusAID</p>
<p>I. Title</p> <p>East Asian Free Trade Agreements in Services: Facilitating Free flow of Services in ASEAN?</p>		
<p>II. Background and Significance</p> <p>Until 2000, the only trade agreement in services in East Asia was the ASEAN Framework Agreement on Trade in Services (AFAS). Since then, nineteen agreements have been signed with trading partners inside and outside of East Asia. On top of this, there are another 42 agreements under negotiations involving at least one party in East Asia.</p> <p>Fink and Molinuevo (2007) conduct a comprehensive assessment of the new generation of services agreements that have been concluded in the East Asia region. They provide a comparative review of the key architectural elements of the 20 East Asian FTAs to include the scheduling approach adopted by agreements, the main disciplines that determine their liberalisation content, the treatment of investment in services, the treatment of labour mobility, the rules of origin adopted, trade rules, and provisions for the settlement of disputes. In reviewing the various architectural choices they assess to what extent those choices create incentives for liberal negotiating outcomes, promote the transparency of services policies, and foster the credibility of these policies.</p> <p>They then evaluate the liberalisation content of the 20 FTAs, assessing the valued added of FTA liberalisation undertakings relative to pre-existing multilateral services commitments in terms of the depth and breadth of liberalisation undertakings by the main service sectors, the four modes of supplying services, and the scheduling approach of agreements. They are able to evaluate how far individual East Asian countries have liberalised across all their FTAs and whether market opening commitments to different FTA partners have been alike or dissimilar.</p> <p>The analysis show how much bilateral and regional agreements in services have led to market opening in services beyond existent multilateral commitments. Their assessment reveals that the ambition of liberalisation undertakings varies considerably. The 20 East Asian FTAs examined feature different degrees of ambition—ranging from agreements with broad sectoral coverage and deep liberalisation undertakings to agreements that add only limited value to existing GATS commitments.</p> <p>Finally, on the issue of whether the services component of East Asian FTAs is a ‘building block’ or ‘stumbling block’ to further multilateral liberalisation, they provide three arguments in support of the ‘building block camp position, namely: (1) most East Asian FTAs have adopted liberal rules of origin, reducing the discriminatory nature of trade preferences in services. Service providers from non-parties that have substantial business operations in the territory of a party typically benefit from the greater levels of openness available under FTAs. While this treatment still falls short of MFN treatment, they believe that it generates less resistance to further multilateral liberalisation from vested interests worried about preference erosion as in the goods case. From this view, one might argue that the obligation under GATS Article V to provide for liberal treatment of non-party service providers has laid the foundations for ‘WTO-friendly’ FTAs; (2) a number of East Asian FTAs provide for extra-territorial MFN obligations. They explained that countries</p>		



bound by many such MFN obligations become less attractive partners for future FTAs, because potential negotiating parties know that any negotiated preference will be extended automatically to others. As a consequence, the bargaining advantage offered by FTAs with a small number of players is undermined and incentives to negotiate at the multilateral level are strengthened; and (3) they cite positive spillover effects from FTA to WTO negotiations which may be more important in services than in goods. Services negotiations are more information-intensive, requiring a resource-intensive stock-take of domestic laws and regulations that might be considered measures affecting services trade. Governments that have carried out a comprehensive stocktake in the course of FTA negotiations may be better prepared for services negotiations at the WTO. In other words, the East Asian services FTAs may play a useful role in overcoming 'informational' obstacles to further multilateral integration. However, they caution that there is one important consideration that may lead East Asian FTAs in services to become a stumbling block towards progress at the WTO. The United States, the European Union, Japan, and several other WTO members consider greater engagement in the WTO's services negotiations as a quid pro quo for committing to trade reforms in agriculture—currently the key sticking point for unlocking the Doha Development Agenda (DDA) negotiations. They explain that one of the key trade policy measures in agriculture—domestic subsidies—by nature cannot be reduced on a preferential basis. Many East Asian countries would stand to gain from agricultural trade reforms at the WTO and, at the same time, are the targets of liberalisation requests in services. If the 'demandeurs' in services are able to advance their offensive interests through FTAs, important bargaining chips may be removed from the multilateral negotiating table. By the same token, private sector interests may have less of an incentive to lobby for a successful conclusion of the DDA, if their market opening demands can be fulfilled in FTAs.

While it is important to determine if the proliferation of services agreements in the region are stumbling blocks or building blocks towards multilateral integration, an important issue for ASEAN is its impact on its own integration goal. Region-convergent bilateralism can make positive contributions to the development of regionalism, whereas region-divergent bilateralism essentially undermines regional community-building endeavours. Will the wave of services agreements lead to region-divergent outcomes for ASEAN? For the EAS?

### III. Research Objectives

1. Conduct a comparative analysis of the services agreements and commitments of EAS participants in the various Preferential Trading Agreements (PTAs) and in GATS.
2. Analyse the services request and offer of EAS participants in the Doha Round.
3. What are the factors that can explain the differences in their commitments in the various fora?
4. What could be the impact of the differing commitments on ASEAN's own integration agenda?
5. What features of the services agreements will promote the creation of the ASEAN Economic Community? What features will distract from it?
6. How do you make sure that ASEAN integration is promoted even as ASEAN member countries pursue their unilateral, bilateral, and plurilateral trade strategies?

### IV. Scope of study

Both the architecture and the liberalisation commitments in the various services agreements must be examined.

### V. Outputs

The consultant will be expected to produce the following outputs:

1. Inception Report – a more detailed and thorough discussion of the approach presented in the proposal and includes a preliminary review of the literature (not simply a list of references), a work plan for the fieldwork/interview program (if any), draft questionnaires, and a proposed outline of the final report.
2. Interim Report – discusses the progress to date, details of interview program conducted, summary

<p>transcript of the interviews conducted highlighting key insights gained. When requested by an REPSF officer, the consultant is required to submit evidence of progress as reported in the interim report.</p> <ol style="list-style-type: none"> <li>3. Draft Report – covers all sections in the outline agreed at the inception phase.</li> <li>4. Final Report – incorporates comments, corrections, and recommendations from participants at the draft report presentation and from other reviewers.</li> <li>5. Policy Brief for ASEC publications</li> <li>6. 300-word write-up for AADCP newsletter</li> </ol> <p>In general, the report must contain:</p> <ol style="list-style-type: none"> <li>a. An Abstract and an Executive Summary</li> <li>b. Main body of the report: no page limit is specified, however it should be understood that the report must be extremely thorough whilst at the same time being succinct.</li> <li>c. A section or chapter thoroughly discussing the policy implications and recommendations.</li> <li>d. A section or chapter providing recommendations which will have a positive downstream effect on economic integration and cooperation between ASEAN and other EAS participants as well as support sustainable economic growth.</li> <li>e. A section stating how the recommendations and policies would have an impact on gender (women, men, girls and boys) and on economic and social relationship between them (if applicable).</li> <li>f. A section stating how the recommendations would have an impact on the environment (if applicable).</li> <li>g. A technical annex (if any) describing the applied methodology in sufficient detail to enable the study to be duplicated at a later date.</li> <li>h. The interview program (if any)</li> </ol> <p>While reflecting high quality analytical standards, the authors of the report should be aware that some of the audience for the report will be non-specialists and the writing style should reflect this by avoiding the excessive use of technical language and jargon. This criterion does not preclude the necessity for providing adequate and appropriate technical details, explanations and methodologies in connection with the project report; such technical detail as may be required should be contained in separate technical annexes to main reports. The study is likely to cover very technical issues, therefore, to be useful to policy advisers it will need to be carefully drafted with clear explanation of technical terms in appendices/footnotes, etc.</p> <p>Report and presentation formats must adhere to the prescribed REPSF style guidelines.</p>	<p>VI. Documentation and Views to be Considered</p> <p>Critical inputs to the study include but are not limited to the following documents:</p> <ol style="list-style-type: none"> <li>1. Services agreements and commitments of EAS participants in various PTAs and in GATs</li> <li>2. Fink and Molinuevo (2007) “East Asian Free Trade Agreements in Services: Roaring Tigers or Timid Pandas?” World Bank East Asia and Pacific Region Poverty Reduction and Economic Management</li> <li>3. Relevant policy documents</li> </ol> <p>Consultant must confer with the ASEC officer in charge of Services negotiations in the FTA unit of the ASEAN Secretariat.</p> <p>VII. Tasks and Required Activities</p> <ol style="list-style-type: none"> <li>1. Prepare and present a Draft Inception Report to the ASEAN Secretariat.</li> <li>2. Finalise Inception Report based on instructions from REPSF.</li> <li>3. Conduct the study and prepare Draft Report.</li> <li>4. Conduct two workshops to present the outcome of the study. One workshop will be for officials from ASEAN6 and another for officials from CLMV.</li> <li>5. Finalise the Report based instructions from REPSF.</li> </ol> <p>The consultant is required to submit reports to REPSF at least two weeks prior to its presentation. If</p>
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determined to be suitable for circulation, the report is then forwarded to ASEC/ASEAN committee for their review in preparation of consultant's presentation.

PowerPoint presentations must be submitted to REPSF at least three working days prior to the presentation

Schedules of submission of reports and presentations to be set by REPSF. Fieldwork to be arranged in consultation with REPSF, ASEC and ASEAN Member Countries.

#### VIII. Timeframe and Milestones

The Consultant is expected to complete the study in 4-5 months. Payment milestones are as follows:

Acceptance of revised inception report – 20%

Completion of fieldwork and submission and acceptance of interim report – 20%

Submission and presentation of Draft Report to ASEAN Secretariat/ASEAN committee – 30%

Acceptance of Final Report and other outputs listed in Section V of this TOR – 30%

#### IX. Expected Modalities and Resources

Team of consultants with combined knowledge and expertise in: (1) trade in services, the architecture of services agreements, and methods or techniques for the analysis of services agreements and commitments; (2) GATS and AFAS; (3) trade policy of the EAS participants; and (4) the political economy of trade policy and PTAs. Contacts with trade negotiators of EAS countries would be an advantage.

It is expected that sub-contractors will come from ASEAN and Closer Economic Relations (CER) countries (i.e. Australia and New Zealand). However it is encouraged, where relevant, to collaborate with and include research institutions and/or individuals from all East Asia Summit participants. In some specialist areas it may be pertinent for sub-contractors to involve team members, with professional experience, from non-EAS countries. Additionally, gender balance is also a consideration in team selection.

Required travel:

- 1 days to the ASEAN Secretariat, Jakarta to present inception report, conduct interviews, and collect data and/or other relevant documents (exclusive of travel)
- 2 days to an ASEAN capital to present the outcome of the study in a workshop for ASEAN6 officials (exclusive of travel)
- 2 days to an ASEAN capital to present the outcome of the study in a workshop for CLMV officials (exclusive of travel)

Consultant may propose fieldwork to EAS countries to conduct interviews and collect data, within the allocated budget for this project.

## **APPENDIX 2: INTERVIEW PROGRAM**

### **Australia**

Australian Services Roundtable, Jane Drake-Brockman, Executive Director

ANU, Prof Jenny Corbett, Director of the Australia-Japan Research Centre, Crawford School, and Razeen Sally, Visiting Fellow, Arndt-Corden Department of Economics, Research School of Pacific & Asian Studies

Department of Foreign Affairs & Trade, Michael Mugliston, Head, Asian Trade Taskforce: John Larkin (ASEAN Investment): David Rumble (ASEAN Services): Nadia Krievitz, Thai Section; and Charles Jebb, Vietnam, Cambodia, Laos & Burma Section

Department of the Treasury, Roy Nixon, Senior Adviser, Foreign Investment & Trade Policy Division

### **Cambodia**

Ministry of Economy & Finance, Mr Ly Se, First Deputy Director, Department of Economic Integration and ASEAN

### **China**

Australian Embassy, Ms Irene Sim, Minister Counsellor (Treasury); Mr Quentin Stevenson-Perks, Counsellor Education, Science and Training; Dr Carolyn Bull, Counsellor (Development Cooperation); Mr Ian MacIntosh, Counsellor (Economic); and Mr Daniel Clery, First Secretary (Economic)

The Australian, Mr Rowan Callick, China Correspondent

ANZ Bank, Mr Wayne Mo, General Manager, Beijing Branch

Beijing Association for Trade in Services, Ms. Liu Xiaobin, Deputy Secretary General

Chinese Academy of Social Sciences (CASS), Professor Yu Yongding, Director, Institute of World Economics & Politics, and Professor Zhang Yunling, Member of National Committee, Chinese People's Political Consultant Conference, Academy Member, Director of Division of International Studies

China Association for Trade in Services (CATS), Mr Gu Wenzhong, Acting Secretary General, and Mr Charles Z. Huo, Vice Director

China Chamber of International Commerce, Professor Chu Xiang Yin, Vice Chair, and Mr Mark Yuan, Project Manager, China Council for the Promotion of International Trade, Beijing Sub-Council

Ministry of Commerce, Mr Hu Jingyan, Director General; Mr Hu Hanming, Deputy Director, Department of Trade in Services; Dr Zhang Xiangchen, Chief Negotiator China Australia FTA and Director General; and Mr Hong Xiaodong, Chief Services Negotiator and Director, Services Division, WTO Affairs Department

University of International Business & Economics, Professor Tang Yihong, Head, International Trade Department; Professor Lin Guijun, Vice President; and Professor Peter S Bai, Professor of Economics

## **India**

All India Council for Technical Education, Prof Prasad Krishna, Advisor

Council of Architecture, Prof Vijay Sohoni, President

Federation of Indian Chambers of Commerce & Industry, Manab Majumdar, Senior Director and Team Leader, WTO & Foreign Trade Division

Indian Council for Research on International Economic Relations, Dr Arpita Mukherjee, Senior Fellow, Dr Surabhi Mittal; Senior Fellow; Dr Rajeev Anantaram, Senior Fellow (China); and Abhijit Sen Gupta (Services)

Indian Motion Picture Producers' Associations (IMPPA), Sushma Shiromanee Senior Vice President and Anil Nagrath Secretary

Ministry of Commerce and Industry, Amit Yadav, Director

NASSCOM, Ameet Nivsarkar, Head, Global Trade Development Program

Petroleum Federation of India (PetroFed), A. K. Arora, Director-General; Yogendra Sahai, Director (Communication & Marketing); and S. L. Das, Director (BD&C)

## **Indonesia**

Bank of Indonesia, Hassan S Kartadjoemena, Former Indonesian Ambassador to the GATT/WTO and Advisor to the Governor

Kadin, David Parsons, Senior Advisor

Ministry of Finance, Robinson Nainggolan, Deputy Director/Secretary of Coordinating Team On Services; Ali Chaerudin, Section Head/Member of Coordinating Team of Services, Centre for International Cooperation, Fiscal Policy Office; and R. Budi Santoso, Former Deputy Director, Directorate General of Financial Institutions

Ministry of Trade, Dr Erwidodo, Director-General Trade Research & Development Agency (TREDA); Dr Andin Hadiyanto, Director, Business Climate R&D Centre, TREDA; Ms. Ida Martha, SE, Section Head, Trade Cooperation for ASEAN, Directorate of Regional Cooperation; and Greg McGuire, International Trade Policy Advisor, TAMF program

World Bank, Sjamsu Rahardja, Economist

### **Japan**

Australian Embassy, Mr Allan McKinnon, Minister; Ms Alison Airey, Counsellor (Economic); and Mr Bruce Paine, Minister Counsellor (Economic), Senior Treasury Representative

Hitotsubashi University, Dr Kyoji Fukao, Economics Department

International Bankers Association, Mr Anthony Sorrenti, Executive Director

The Japan/Tokyo Chamber of Commerce & Industry, Mr Hidehiro Okayama, Deputy General Manager, International Division

Keio University, Professor Fukinari Kimura, Faculty of Economics

Ministry of Economy, Trade & Industry, Mr Kazuhiko Akashi, Director, Office of Economic Development & Integration in East Asia; Mr Masamichi Ito, Deputy Director; Mr Masayuki Nakayama, Deputy Director; Mr Katsuhiro Inoue, Assistant Director, Economic Partnership Division, Trade Policy Bureau; and Mr Yukio Ishibiki, Assistant Director and Senior Analyst (Investment & Services Trade), FTA/EPA Division

Ministry of Internal Affairs & Communications, Mr Koji Ouichi, Deputy Director, Multilateral Economic Affairs Office, and Mr Takahiro Yamada, Assistant Director, International Economic Affairs Division, Telecommunications Bureau

Mitsubishi UFJ Research & Consulting Co, Ltd., Associate Professor Maki Kunimatsu F, Senior Analyst, Economic & Social Policy Department, Policy Research & Consulting Division

Waseda University, Professor Shujiro Urata, Prime Minister's Special Economic Advisory Group, Graduate School of Asia-Pacific Studies

### **Malaysia**

Australian High Commission, Ian Dickson, First Secretary (Trade Policy)

Institute of Management Consultants, Mei-Nien Bien Vice President, and S M Wong, Executive Committee Member

Institute of Strategic & International Studies, Stephen C M Wong, Assistant Director-General, Bureau of Economic Policy Studies and Director East Asia Economic Centre, Centre of China Studies

Dr Tan Siew Hoey, ex-Institute of Strategic & International Studies researcher

Malaysian Institute of Economic Research, Prof Mohamed Ariff, Executive Director, and Gregore Lopez, Senior Research Officer

Ministry of International Trade & Industry, Suriani Ahmad, Principal Assistant Director, Services Negotiations Unit 1, Multilateral Trade Policy & Negotiations Division, WTO; Zukri Zakaria, ASEAN; Fabzilah Abu Hasan, Assistant Director; and another from Services

Monash University, Wan Leong Fee, Senior Lecturer

Malaysian Institute of Accountants, Hoo Foong Moi

Price Waterhouse Coopers, Haniz Taufik, Partner

Malaysian University of Science & Technology, Associate Professor Leong Choon Heng, Transport & Logistics

### **New Zealand**

Auckland University of Technology, Dr Rahul Sen, Lecturer, Economics, Business School

University of Auckland, Professor Rob Scollay, Director of APEC Study Centre, Business & Economics, Business School

### **The Philippines**

Department of Trade & Industry, Mr Ramon Vicente T. Kabigting, Assistant Secretary; Mr Angelo Salvador M. Benedictos, Assistant Director, Bureau of International Trade Relations; and Ms Lala C. Castro, Bureau of Export Trade Promotion

National Economic Development Authority (NEDA), Ms Brenda Mendoza, Director, Trade, Industries & Utilities Staff

Mr Jose S. Conception, ASEAN Business Council; Mr William S Co, Chairman, Permanent House, Philippine Chamber of Commerce & Industry; and Mr Ryan Patrick G. Egvangelists, Executive Director, Universal Access to Competitiveness & Trade

Center for the Advancement of Trade Integration & Facilitation (CATIF), Dr Ma Joy V. Abrenica, and Ms Aitkin Rose Tafgir

### **Singapore**

APEC, Park Yung-Suh, Director (Program)

Australian High Commission, Singapore, Penny Burt, Deputy High Commissioner, and Kirsty Dodsworth, Third Secretary

Institute of Southeast Asian Studies, K. Kesavapany, Director, and Dr Denis Hew, Senior Fellow and Coordinator, Regional Economic Studies

Ministry of Trade & Industry, Mary Elizabeth Chelliah, Deputy-Director, APEC & Americas; Denise Pereira, Assistant Director; Jacqueline Lam, Assistant Director, Trade Division ASEAN; Liz Tan, Assistant Director, Trade Division WTO & International Trade Negotiations; plus two others (all female)

National University of Singapore, Teng Siow Song, Research Officer, East Asian Institute



Pacific Economic Cooperation Council, Eduardo Pedrosa, Secretary-General

Singapore International Chamber of Commerce, Cindy Lim, Trade Services Officer

### **Republic of Korea**

Australian Embassy, H.E. Mr Peter Rowe, Ambassador; Dr Evanor Palac-McMiken, Counsellor (Economic); Mr Lachlan Crews, First Secretary (Economic); and Mr Martin Walsh, Senior Trade Commissioner

Korea Institute for International Economic Policy, Dr Kim Sang-Kyom, Director of Planning & Research Coordination/Senior Research Fellow; Dr Kim Sang-Yom, Senior Research Fellow and Executive Director Korea National Center for APEC Studies; and Dr Kim Han-Sung, Research Fellow Center for Regional Economic Studies

Korea Institute for International Trade, Dr Ahn Sun-Young, Senior Researcher WTO & FTA Department

Korea International Trade Association, Dr Lee Dong-Bok, General Manager, and Dr Jeong Jae-Hwa, Director WTO & FTA Department

Ministry of Finance & Economy, Mr Lee Bok-Won, Director, Financial Cooperation Division, and Ms Park So-Eun, Deputy Director, International Economic Cooperation Division, International Finance Bureau

Ministry of Foreign Affairs & Trade, Mr Lee Sung-Bum, Deputy Director FTA & Services & Investment Division, and Ms Klara Ji-Hyeong Lee, Deputy Director, Office for Free Trade Agreements, FTA Implementation Division

### **Thailand**

ESCAP, Tiziana Bonapace

Ministry of Commerce, Piraporn Kijpaitoon (Head Regional Services), and Jirawat Poomsrikaew, Bureau of Negotiations on Trade in Services, Department of Trade Negotiation

Ministry of Finance, Dr Deunden Nikomborirak (ex-TDRI)

Thai Chamber of Commerce (Chair Services Chatchai Mongkolvisadhkaiwan; Dr Bunluasak Pussarungsri Bank Thai; Tim Chatasakda See World; Dr Jutamas (May)

Arunanondhai Siam Bank; plus non-bank finance, construction, insurance, tourism, IT, and 3 staff

### **Vietnam**

Central Institute for Economic Management, Dr Vo Tri Thanh, Director, and Dr Pham Lan Huong, Deputy Director, Department for Trade Policy & International Integration Studies

IMF, Ben Bingham, Head of Vietnam/Laos Office

Institute for Policy & Strategy for Agricultural & Rural Development, Dr Donna Brennan, Economist

Mekong Economics, Dr Adam McArty, Chief Economist; Ray Mallon, Economist; Tran Thi Ngoc Diep, Economist & Projects Manager; and Nguyen Bich Ngoc, Business Development Officer

Ministry of Trade and Industry, Ms Hoang Thi Lien, Senior Official

Ministry of Planning & Investment, Phan Thanh Ha, Deputy Director, Department of Monetary & Financial Policy, and one other female

UWA, Sally Marsh, Senior Research Office

World Bank, Martin Rama, Lead Economist, and Julian Clarke, Technical Adviser,  
Beyond WTO

### **APPENDIX 3: WORKSHOP PROGRAM/ATTENDEES**

#### **WORKSHOP ON “EAST ASIAN FREE TRADE AGREEMENTS IN SERVICES: FACILITATING FREE FLOW OF SERVICES IN ASEAN?”**

**BANGKOK, 29 APRIL 2008**

##### **Background**

In 2000 the only trade agreement in services in East Asia was the ASEAN Framework Agreement on Trade in Services (AFAS). Since then at least nineteen agreements have been signed with trading partners inside and outside of East Asia. Additionally, there are forty or so agreements under negotiations involving at least one party in East Asia. Analysis of these FTAs reveal that the ambition of liberalization undertakings varies considerably - ranging from agreements with broad sectoral coverage and deep liberalization undertakings to agreements that add only limited value to existing GATS commitments.

The proliferation of services agreements in East Asia poses an important challenge for ASEAN and its goal to create the ASEAN Economic Community (AEC). Will East Asian FTAs lead to greater or faster liberalization of services trade in ASEAN over other approaches? What are the implications on economic community building in East Asia and ASEAN centrality?

In this workshop, participants will gain a better picture of the web of services agreements and a deeper understanding of the factors at play in services liberalization across the region. The implications of the various services agreements on the regional integration agenda will be discussed and ways to realize the AEC and community building in East Asia will be considered.

<b>TIME</b>	<b>PROGRAMME</b>
08.30–09.00	<b>Registration</b>
09.00–09.30	<b>Introduction and Welcome Remarks</b> <ul style="list-style-type: none"><li>- <i>ASEAN Secretariat</i></li><li>- <i>ANU</i></li></ul>
09.30-10:30	<b>Session One: Comparative analysis of services agreements in the East Asia</b> <ul style="list-style-type: none"><li>- <i>Institute for International Trade</i></li></ul> <p>In this session, a comparative analysis of services agreements in the East Asian countries will be provided by reviewing key architectural elements and evaluating the liberalizing impact of FTAs relative to multilateral and unilateral approaches.</p>

TIME	PROGRAMME
10.30–10.45	<i>Coffee break</i>
10.45–11.45	<b>Session Two: Factors explaining differences in services agreements and commitments</b> <i>- Australian National University</i> <p>In this session, an overview of possible factors explaining identified differences in the various commitments, in particular political economy and architectural factors, will be provided along with an evaluation of the earlier comparative analysis that helps identify the most likely explanators.</p>
11.45–13.00	<i>Lunch</i>
13.00–14.30	<b>Session Three: Impact of differing commitments on ASEAN integration &amp; features of agreements that promote or distract from the creation of the ASEAN Economic Community</b> <i>- Centre for Strategic International Studies/Australian National University</i> <p>In this session there will first be a discussion of economic integration of the AEC into a single market, its drivers and objectives that suggest a broad interpretation, which is then used to analyse whether differing commitments will drag all ASEAN countries to an integrated position or to a fundamental breakdown in arrangements. The second part will outline features of service agreements that could promote or distract from the creation of the AEC.</p>
14.30–14.45	<i>Coffee break</i>
14.45–16.00	<b>Session Four: Group Discussions</b> <p>Building on the findings from earlier sessions, the following questions will be considered:</p> <ul style="list-style-type: none"><li>▪ <i>How do you see services integration evolving in ASEAN?</i></li><li>▪ <i>How can we bring about the vision of the AEC in services?</i></li><li>▪ <i>What do you think are the constraints to realizing the AEC in services?</i></li><li>▪ <i>Can FTAs be “building blocks” or are they “stumbling blocks” for ASEAN integration?</i></li></ul>
16.00–17.00	<b>Session Five: Putting The Results Together</b> <p>In this final session, the group will discuss how ASEAN integration and East Asia community building can be promoted under a variety of services trade strategies. Recommendations will be formulated to ensure that the creation of the ASEAN Economic Community is not</p>

**TIME**

**PROGRAMME**

undermined even as member countries pursue their unilateral, bilateral, and plurilateral trade policies and strategies under various agreements.

17.00–17.30 **Closing Remarks**

- *ASEAN Secretariat*

**List of Participants**

**Brunei Darussalam**

Mr. Abdul Nafee' Idris, Second Secretary, Department of Trade Development, Ministry of Foreign Affairs & Trade

Hajah Dayang Suzana Binti Haji Awang Adenan, Engineer, Construction Planning & Research Unit, Ministry of Development

Mr. Ak Mohd Ruzaini bin Pg Hj Md Yakub, Marketing Officer, Department of Civil Aviation

Hajah Ani Artika Masfazida Hj Salim, Ports Officer, Ministry of Communications

**Cambodia**

Mr. Chraloeung Somethea, Deputy Director of International Cooperation, Ministry of Tourism

Mrs. Lim Vicheth, Deputy Director of Notifications & Compliance Department, Ministry of Commerce

Mr. Ngorn Viseth, Deputy Bureau Chief, Department of Economic Integration & ASEAN, Ministry of Economy & Finance

Mr. Vat Vanvireak, Official, International Cooperation Department, Ministry of Tourism

**Indonesia**

Mr. Irwanda Wisnu Wardhana, Member of Coordinating Team on Services, Center for International Cooperation, Fiscal Policy Office, Ministry of Finance

Dra. Titin Supenti, Deputy Director of Ministry of Labor & Transmigration, Director of Ministry of Labor and Transmigration

Drs. Mohammad Hindarsin, Deputy Director of DG of Immigration, Ministry of Law & Human Rights, Direktorat General of Immigration

Mr. Pudjo Hestu. W, Head of Sub Directorate of Spatial Planning, National Land Agency

Mr. Binsar Simbolon, Director of Land Management & Land Acquisition for Government Institution, National Land Authority

Ms. Editha Manurung, Head Bilateral Cooperation, Ministry of Manpower & Transmigration

#### **Lao PDR**

Mr. Kiengkhammanh Khottavong, Acting Director of Regional Trade Division, Foreign Trade Policy Department, Ministry of Industry & Commerce

Ms. Chanthanom Soulingo, Deputy Director of Cooperation & Foreign Investment Div., Department of Planning & Cooperation, Ministry of Public Works & Transports

Mr. Syvongxay Thavisack, Technical Officer, Investment Promotion Div., Investment Promotion Department, Ministry of Planning & Investment

#### **Malaysia**

Ms. Dinatra Mohd Saat, Assistant Director, Multilateral Trade Policy & Negotiations Division, Ministry of International Trade & Industry

Mr. Muhammad Zulhilmi B. Ahmad, Principal Assistant Director, Services Sector Development Division, Ministry of International Trade & Industry

Mrs. Susila Devi A/P K. Kumaran, Senior Director, Product & Services Development Division, Malaysia External Trade Development Corporation

Mrs. Radha Menon, Director, Business & Other Services Division, Malaysian Industrial Development Authority

### **Myanmar**

Mr. Win Khant, Head of Office, Ministry of Transport

Mr. Kyaw Soe Thein, Assistant Director, National AFTA Unit, Ministry of National Planning & Economic Development

Ms. Tin Moe Moe, Researcher, Central Bank of Myanmar, Ministry of Finance & Revenue

Ms. Ni Ni Han, Staff Officer, Posts & Telecommunications Department, Ministry of Posts & Telecommunications

### **Philippines**

Ms. Irene Salonga de Roma, Senior Economic Development Specialist, National Economic Development Authority

Ma. Millicent Joy Nolasco Urgel, Senior Economic Development Specialist, National Economic Development Authority

### **Thailand**

Miss Wiwan Srirubsukha, Bureau of Trade in Services & Investment Negotiations, Department of Trade Negotiations, Ministry of Commerce

Miss Sunita Kultanan, Bureau of Trade in Services & Investment Negotiations, Department of Trade Negotiations

M.L. Nathasit Diskul, Bureau of Trade in Services & Investment Negotiations, Department of Trade Negotiations

Miss Pornphan Pirompanich, Bureau of Trade in Services & Investment Negotiations, Department of Trade Negotiations

Miss Pornpunnin Tepigun, Bureau of Trade in Services & Investment Negotiations, Department of Trade Negotiations

Ms. Patcharakarn Whanchid, Trade Officer, Department of Trade Negotiations, Ministry of Commerce

**Vietnam**

Mr. Nguyen Hong Thanh, Senior Official, Multilateral Trade Policy Department, ASEAN Division, Ministry of Industry & Trade

Mrs. Nguyen Anh Thu, Official, Trade & Services Department Ministry of Planning & Investment (MPI)

Mr. Vu Hai Son, East Asia Affairs, Asia-Pacific Markets Department, Ministry of Industry & Trade of Vietnam

**ASEAN Secretariat**

Ms. Glenda T. Reyes, Bureau for Economic Integration & Finance

Ms. Nurul Imlati, Technical Officer

**REPSF**

Ms. Ramonette, Team Leader/Research Manager

Mr. Mohammad Faisal, Research Officer

Mr. Aaron Franky Situmorang, Research Assistant



## **APPENDIX 4: ABOUT THE AUTHOR(S)**

Ray Trewin is a Visiting Fellow at the Crawford School of Economics and Government, Australian National University (ANU), where he was previously a Fellow and undertook a PhD. Prior to his current position, Dr Trewin was a Research Program Manager of the Agricultural Development Policy program at the Australian Centre of International Agricultural Research and before first joining the ANU, a senior officer in the Australian Bureau of Agricultural and Resource Economics. He has worked substantially on trade policy analysis, including of services trade. Dr Trewin has consulted to a number of international and domestic agencies like the World Bank and Department of Foreign Affairs and Trade, and led several large project teams. He has more than 100 research publications to his name.

Malcolm Bosworth is a Visiting Fellow at the Crawford School of Economics and Government, ANU. He was for many years a trade policy economist in the Australian Government, working for the Productivity Commission and its predecessors, and currently is a WTO consultant, preparing Trade Policy Reviews including on several ASEAN Member countries such as Indonesia, the Philippines and Thailand. He has also conducted numerous consulting assignments in Asia and the Pacific for international institutions, such as the Asian Development Bank and the World Bank. Mr Bosworth has worked substantially on trade, including services, liberalisation both regionally and multilaterally, and has several publications on this and related topics.

Dionisius A. Narjoko is a senior researcher at the Economics Department, Centre for Strategic and International Studies, Jakarta. He graduated from the ANU from where he holds a PhD. Dr Narjoko has worked on a wide range of research topics but mostly specialises in trade, industry and applied economics. Included in this work are several major ASEAN research topics, such as the development gap within ASEAN, services liberalisation in ASEAN, and the prospects of an ASEAN Economic Community. He has consulted for international institutions such as the World Bank and UNESCAP.

Dr Mukherjee is a Senior Fellow at Indian Council for Research on International Economic Relations with a PhD in Economics from the University of Portsmouth. She has over ten years of experience in policy-oriented research in India and the United Kingdom. Her research interest includes trade, investment and regulatory issues in services and bilateral/regional agreements. She has undertaken projects for Indian and United Kingdom governments, international and Indian organisations. Her research is a key contributor to India's negotiating strategy in services in the Doha Round. She has over 40 publications including books, refereed journal articles and government reports.

Andrew Stoler is currently Executive Director of the Institute for International Trade (IIT) of the University of Adelaide. Prior to his current position he was a Deputy Director-General of the WTO and earlier the Principal US negotiator on WTO trade negotiations. He has worked in a large number of countries including EAS countries such as Australia, Cambodia, China, Indonesia, Laos, Malaysia, New Zealand, Thailand, and Vietnam. He has had extensive experience in project management including on services trade and FTAs, and for agencies such as DFAT, USAID, UNDP and the WTO.

James Redden is currently Director, International Programs and Senior Lecturer, IIT. Prior to this he was a consultant in trade and development issues. His research expertise includes that on trade policy and sustainable development and he has undertaken work for the Australian, Fiji and Singapore governments through agencies

such as AusAID and USAID. He has been involved in a number of research projects and training programs in these areas and has publications associated with this work.

Victoria Donaldson is the current Visiting WTO Fellow at the IIT. She has taken a six-month leave of absence from her job as a Counsellor at the WTO's Appellate Body Secretariat, where she has worked since 1999. From 1996-1999 she practiced law with the Brussels office of Cleary, Gottlieb, Steen and Hamilton, and from 1995-1996 with Russell & DuMoulin in Vancouver. Ms. Donaldson obtained Bachelors' degrees in Law from the University of Oxford and the University of British Columbia, and a Master of Laws degree from Harvard Law School. She served as a law clerk to Mr. Justice Peter de Carteret Cory at the Supreme Court of Canada in 1993-94. Ms. Donaldson has contributed to books on WTO dispute settlement, writing in particular on dispute settlement procedures in international trade.

Graeme Thomson is currently the Principal of Graeme Thomson and Associates and Associate Expert with IIT. He was previously a Principal Advisor in the Australian Department of Foreign Affairs and Trade and his duties included being the Chief Negotiator for a number of trade negotiations. In his current work he provides strategic and detailed advice to governments, companies and interest groups on trade impediments and development issues, Including on trade in services and FTAs. He has published a number of articles including on trade in services.

**ANNEX****East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments**

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
Australia  SAFTA	GATS/SC/6 & Supplements	Revised Offer TN/S/O/AUS/Rev.1 31 May 2005	Singapore – Australia Free Trade Agreement, signed 17 February 2003, entered into force 28 July 2003

**PART I - Comparison of Scheduled Commitments**

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Foreign Investment Review conditions mode 3 market access.</p> <p>-- National treatment limitations for mode 3 relating to (a) foreign investment policy guidelines, (b) directorships of public companies, (c) indigenous peoples measures, and no national treatment mode 3 commitments for research and development.</p> <p>-- Typical developed country mode 4 provisions allowing temporary entry of (a) executives and senior managers, (b) independent executives, (c) service sellers as</p>	<p>-- The original definitions in the schedule for certain categories of mode 4 services suppliers have been supplemented and further clarified, however, in general, the periods of stay allowed for each category remains as in the original GATS schedule.</p> <p>-- A new category of "contractual services suppliers" has been added to the horizontal section, which is not tied to specific sectors as in some other EAS members' horizontal</p>	<p>-same as GATS on two resident directors of public companies, application of foreign investment guidelines to foreign investment, and measures on behalf indigenous people unbound.</p> <p>Mode 4 dealt with in Chapter 11, same provisions for both parties, but in general are an improvement on Australia's GATS commitments but not necessarily on DDA (a few differences) Business visitors, who may come for short term stays: may come for one month and extend up to 3 months. (DDA is 6 months or 3 months for business negotiations or meetings) Narrower category of professional service suppliers than</p>

	business visitors, and (d) specialists (albeit possibly subject to labour market testing).	schedules.  -- Spouses of temporary entrants covered by the most important mode 4 categories are also accorded working rights under the Australian proposal.	DDA category of contractual service supplier (not limited to specific sectors). For long term stays, initial length of stay (4 years) is longer than DDA for sub-categories of specialists and independent executives (2 years), but DDA allows extension without express limit, whereas FTA allows renewal for further 4 year terms up to a maximum of 14 years. DDA already adds employment rights for accompanying spouses of intra-corporate transferees. Arguably goes beyond GATS/DDA with inclusion of rights for permanent residents.  -general reservations for measures affecting public law enforcement, social services, marketing boards, foreign investment in media, broadcasting and audiovisual and cultural services, gambling and betting, maritime cabotage and offshore transport services, investment in federal leased airports
<b>Comment</b>			
<p>Australian mode 4 horizontal commitments in SAFTA are definitely a big improvement on the country's GATS schedule. Many of the same improvements are now reflected in the Australian Doha Round offer which is potentially nearly as liberalising as the SAFTA provisions, certain of which (e.g. rights for permanent residents) may be more liberalising than the Doha offer.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	<p><u>Professional services</u></p> <p>commitments on (a) legal services (home country law only), (b) accounting, (c) taxation, (d) architectural, (e) engineering, (f) integrated engineering, (g) urban planning, (h) dental services, (i) veterinary services.</p> <p>-- <u>Computer and related Services</u></p> <p>-- <u>R&amp;D services on social sciences and humanities</u></p> <p>-- <u>Real Estate Services</u></p> <p>-- <u>Rental/Leasing Services without Operators</u></p> <p>-- <u>Other Business Services</u> including (a) advertising, (b) market research, (c) management consulting, (d) services related to management consulting, (e) services incidental to agriculture, hunting and forestry, (f) service incidental to fishing, (g) services incidental to mining, (h) services incidental to energy distribution, (i) placement and supply services of</p>	<p><u>Legal Services:</u></p> <p>-- The new offer of additional commitments in respect of two legal licenses (limited license and full license) offers foreigners the potential to establish and provide legal advisory and representational services on domestic (Australian) law if they elect to obtain a full license or to offer a more limited range of legal services (foreign law and international law) in the case of lawyers obtaining only a limited license.</p> <p><u>Other Business Services:</u></p> <p>-- A new commitment is offered, with full commitments in all modes, on technical testing and analysis services (relating also to the freight logistics services additional commitment).</p> <p>-- A new commitment is offered, with full commitments in all modes, on services</p>	<p><u>Professional Services:</u></p> <p>-for legal services: any Singapore citizen or permanent resident with an accredited Australian law degree shall qualify for admission upon completion prescribed pupillage/exams required by relevant Australian jurisdiction, and same for Australian or Singaporean graduates of National University of Singapore with an LL.B (Hons) degree (plus exams or other qualifications that state may impose). General reservation regarding regional measures governing practice of Australian law. Patent attorneys must be ordinarily resident in Australia and have an address for service and a place of business in Australia. South Australia imposes Australian residency requirement for practice of Australian law and prohibits partnership with local lawyers for persons practising foreign law—may only join a local law firm as a consultant. No practising certificate to a company that is a subsidiary of a foreign law firm (for SA).</p> <p>-commitments on</p>

	<p>personnel, (j) investigation and security services, (j) related scientific and technical consulting services, (k) building cleaning services, (l) photographic services, (m) convention services, (n) other services, including answering services, translation services, mailing list services, interior design services.</p>	<p>incidental to manufacturing.</p> <p>-- A new commitment is offered, with full commitments in all modes, on maintenance and repair of equipment services (excluding maritime vessels, aircraft and other transport equipment).</p>	<p>remaining professional services would appear to be same as already liberal GATS commitments, where all committed except medical services and services provided by midwives, nurses (both of which are covered by specific reservations in FTA for regional measures, and some existing specific state measures concerning residency requirements)</p> <p><u>Computer and Related Services</u></p> <p>- GATS/DDA excludes two sub-sectors, FTA makes a reservation for regional level measures in respect of same two sub-sectors</p> <p><u>Research and Development Services:</u></p> <p>-reservation for regional measures in respect of same two sub-sectors not committed in GATS</p> <p><u>Real Estate Services:</u></p> <p>-reservation in respect of legislation requiring commercial presence in 3 states and Northern Territory. Query if this means no commercial presence requirement (as in GATS) for remaining states: Victoria, South Australia, Tasmania?</p> <p><u>Rental / Leasing Services without</u></p>
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			<p><u>operator:</u></p> <p>-same as GATS</p> <p><u>Other Business</u></p> <p><u>Services:</u></p> <p>-reservation for state measures regarding technical testing and analysis services; regarding services incidental to manufacturing; and regarding maintenance and repair of equipment (vs. DDA makes new commitments for all three)</p> <p>-appears to add a binding in mode 1 for placement and supply services of personnel</p>
<b>Comment</b>			
<p>For legal services (which was a very special issue in the SAFTA negotiations), SAFTA provisions are probably more liberalising than what is on offer in the Doha Round by Australia. In most other areas, the SAFTA Liberalisation and Doha offer by Australia appear comparable.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communications Services	<u>Telecommunications Services</u> (with GATS reference Paper) with coverage of a full range of voice and value-added services. At the time of the GATS Schedule's formulation, foreign equity in Telstra was limited to 11.7 percent of total equity in the incumbent telecom company.	-The original telecom reference paper is supplemented by a new set of pro-competitive additional commitments that build upon the reference paper.  -On offer is an improvement to the original commitment in respect of foreign equity limits in Telstra, now relaxed to permit ownership of up to five percent of shares not held by the Government.	-postal services not committed under GATS/DDA. Reservations in FTA, but appears limited exception for specified heavier letters at minimum rates, as specified in legislation, and subject to reservation for all regional measures.  -no federal reservation for courier services, but is a reservation for state measures (no GATS/DDA commitment)  -for telecommunications service, additional commitments beyond reference paper
<b>Comment</b>			
SAFTA commitments by Australia appear to be slightly more liberalising than those potentially on offer in the Australian Doha Round offer.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	<u>Good commitments on Construction and Related Services</u> including (a) general construction work for buildings, (b) general construction work for civil engineering, (c) installation and assembly work, and (d) building completion and	-A new commitment is offered on "other" construction and engineering services.	-reservation for state measures regarding other construction services (vs. DDA makes new commitment)



	finishing work.		
<b>Comment</b>			
It is difficult to tell how significant the "other construction services" sector is, but is all likelihood the SAFTA and post-Doha offer situations would be equally liberalising in the construction sector which is already largely committed in the Australian GATS schedule.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	Good commitments on <u>Distribution Services</u> , including (a) commission agents' services, (b) wholesale trade services, (c) retailing services, and (d) franchising.	-- Additional commitments in respect of freight logistics services are offered to apply to Australia's existing commitments on distribution services.  - Re retailing services, the existing commitment is clarified as applying as well to a number of activities not separately listed in relevant CPC classifications.	-commitments in respect of wholesaling and commission agents' services seem to include some sub-sectors not covered in GATS, namely with respect to agricultural products and food products (but not alcoholic beverages or tobacco)  -reservation for regional measure concerning certain retail services (e.g. motor vehicles, motorcycles, parts and accessories) that are not covered by GATS but are covered by DDA offer
<b>Comment</b>			
The additional Liberalisation potentially on offer in the Australian Doha Round offer appears roughly comparable to what has been realized in the SAFTA.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	Generally good commitments on <u>Financial Services</u> , including (a) insurance and insurance-related services (with certain state and territory-related restrictions on operations through mode 3), (b) banking and other financial services (with RBA-imposed restrictions on investment at interest of foreign reserves, a requirement to establish locally as a bank to raise funds from the deposit market, and a range of other restrictions at federal and state level on banking activity in Australia).	<p>-- An offer is made to delete two previously-applied conditions to mode 3 supply of insurance services.</p> <p>-- For banking and other financial services, a RBA limitation on investment at interest of official reserves is offered for deletion.</p> <p>-- Australia offers to delete requirements that only RBA authorised dealers can deal in foreign exchange and a requirement that foreign banks must demonstrate their potential contribution to competition in Australia.</p> <p>-- Requirements for participation in the stock market are revised and requirements for a registered management investment scheme are clarified.</p>	<p>An additional chapter and annex clarify or elaborates upon more general provisions in the PTA for trade in financial services.</p> <p>Commitment to allow foreign life insurers to operate branches.</p> <p>A number of reservations govern operations of non-life and life insurance operators.</p> <p>For banking, in order to take deposits, a bank must be approved as an authorized deposit-taking institution (ADI) and additional limitations apply in the case for foreign ADIs.</p>
<b>Comment</b>			
The SAFTA commitments - supplemented by the SAFTA chapter on financial services rules - seems to be more liberalising than what is potentially on offer in Australia's Doha Round financial services offer.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Education Services	Generally good commitments on <u>Education Services</u> (Unbound national treatment in mode 3) including (a) secondary education services, (b) higher education services, (c) other education services.	No offers made	- primary education unbound, for other education services, unbound for the supply of educational services through commercial presence. Also reservations for state measures on adult education and other education services (other than English language tuition)
<b>Comment</b>			
The SAFTA reservations probably mean that the FTA does not go meaningfully beyond Australia's GATS schedule in the education sector.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	Commitments made in a number of areas, including (a) sewerage services, (b) refuse disposal services and (c) sanitation and similar services.	-- Potentially significant fully bound commitments are offered for services relating to (a) protection of ambient air and climate, (b) remediation and cleanup of soil and water, (c) noise and vibration abatement, (d) protection of biodiversity and landscape, and (e) other environmental and ancillary services.	-no reservations, therefore broadens both GATS and DDA commitments.
<b>Comment</b>			

SAFTA commitments appear to be more liberalising than what is potentially on offer in the Doha Round.

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Health & Social Services	Commitments made only on "other human health services" like podiatry and chiropody".	No offers	-as GATS, only commitments in podiatry and chiropody

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Tourism & Related Services	Good commitments on (a) hotels and restaurants, (b) travel agencies, and (c) tourist guide services.	No offers	-appears slight relaxation of commercial presence requirement for travel agencies and tour operators in that reservation limited to legislation of three states that maintain such a requirement (rather than across the board)

**Comment**

SAFTA appears to go marginally beyond the Australian GATS schedule in its liberalisation of the sector (v. no new offers in the Doha Round).

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	<p>Good commitments in a number of areas, including:</p> <p><u>Maritime Transport Services</u> for international freight and passenger transport, but with requirement that liner services be represented by person resident in Australia for mode 1 and a requirement for local establishment to operate under the national flag.</p> <p>-- <u>Maritime Auxiliary Services</u>, including (a) international rental of vessels with crew, (b) storage and warehousing services, (c) preshipment inspection services.</p> <p>-- <u>Air Transport Services</u>, including (a) maintenance and repair of aircraft services and (b) computer reservation services.</p> <p>-- <u>Road transport services</u>, including (a) passenger transportation (not including regular</p>	<p><u>Maritime Transport Services</u>:</p> <p>-- A newly offered additional commitment lists services at Australian ports that are made available to international maritime transport suppliers on reasonable and non-discriminatory terms.</p> <p>-- The offer provides for the elimination of previously stated conditions limiting market access and national treatment in liner shipping (mode 1) trade.</p> <p>-- A new commitment is offered on maritime cargo handling services.</p> <p>-- New commitments are offered for (a) customs clearance services and (b) maritime agency services.</p> <p><u>Air Transport Services</u>:</p> <p>-- New commitments are offered for (a)</p>	<p>Full market access and national treatment except as conditioned by reservations on:</p> <p>-- for a ship to be registered in Australia, it must be majority Australian owned;</p> <p>-- ocean carriers providing liner cargo service to/from Australia must be represented by an individual resident in Australia;</p> <p>-- air traffic control services are monopoly service of Australian Government;</p> <p>-- total foreign ownership in Australian international airlines restricted to 49%;</p> <p>-- citizenship requirements for board members of Australian international airlines</p> <p>-- restrictive foreign ownership and restrictive operating rules govern Qantas.</p>

	<p>urban bus service) and (b) freight transportation.</p> <p>-- <u>Pipeline transportation services</u>, including (a) transportation of fuels and (b) transportation of other goods.</p> <p>-- <u>Services auxiliary to all modes of transport</u>, including (non-maritime) (a) storage and warehousing services, (b) freight forwarding and (c) pre-shipment inspection.</p>	<p>airport operation services, (b) air transport sector cargo handling, and (c) other supporting services for air transport (excluding airport and terminal fire fighting services).</p> <p><u>Rail Transport Services:</u></p> <p>-- A new commitment is offered for railroad (a) freight transportation, (b) pushing and towing services, and (c) supporting services for rail transport - with a distinction in mode 3 market access drawn for "below track" and "above track" services.</p> <p><u>Road Transport Services:</u></p> <p>-- Mode one bindings are offered for freight transport services.</p> <p>-- A new commitment is offered for rental of commercial vehicles with operator.</p> <p><u>Services Auxiliary to All Modes of Transport:</u></p> <p>-- In line with the Freight</p>	
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		<p>Logistics Service additional commitments clarifications, a number of existing Australian commitments in this sector are clarified as extending to related areas beyond those specifically tied to the relevant CPC.</p> <p><u>Freight Logistics Services:</u></p> <p>-- This section of the schedule is made up not of new separate commitments but groups existing commitments from other parts of the schedule and spells out a series of additional commitments that apply to the logistics services aspect of the service. For example, in the case of the commitment offered on wholesale trade services, the new additional commitment specifies that <i>inter alia</i> Australia will accept electronic versions of trade administration documents where indicated on the website of the Australian Government</p>	
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		agency responsible for customs.	
<b>Comment</b>			
Although Australia's Doha Round offer on transportation services is potentially considerably further liberalising relative to the GATS schedule, we believe that the same reservations reflected in the SAFTA would likely also apply to commitments made in GATS so that the negative list approach of SAFTA is likely more liberalising overall than what is potentially on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, cultural & sporting services	Commitments made on (a) news agency services, (b) sporting and other recreational services.	No offers made	-although no reservation specifically for entertainment services or library, archive, museum and cultural services, probably covered by general cultural services exception and therefore same as GATS.

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
MFN Exemptions	<u>Audiovisual services</u> : Two MFN exemptions are listed in the GATS schedule (a) a co-production scheme exemption addressed to schemes with Italy, UK, Canada and France and (b) an exemption designed to deal with unreasonable measures imposed on Australian audiovisual suppliers.	No modifications to Australia's list of MFN exemptions (for audiovisual services) are listed in the Australian offer.	

## PART II – FTA Provisions / Architecture

<p><b>I. General Comments</b></p>
<p>-Negative list approach: Agreement covers all modes of supply subject to the reservations expressed in Annex 4-I (existing measures) and Annex 4-II (in respect of existing or future measures) of the Agreement and the exception of certain Air Transport Services as defined in Article 7.22.</p> <p>-Market access and national treatment are afforded to the service providers of the Parties, except as covered by specific reservations.</p> <p>-Chapter 11 of the Agreement on Movement of Business People applies to measures affecting the movement of natural persons of a Party who enter the territory of another Party for business purposes, subject to the reservations expressed in Annex 4-I and Annex 4-II of the Agreement.</p> <p>-Article 7.20 also provides for the Parties to consult on the incorporation in the Agreement of any future unilateral liberalisation, or any more favourable treatment that either Party gives in an agreement with a non-party. Any such incorporation should maintain the overall balance of benefits under the Agreement.</p> <p>-Agreement also contains provisions, <i>inter alia</i>, on competition, and government procurement.</p>
<p><b>II. Main Relevant Provisions</b></p>
<p>Chapter 6 – “Government Procurement”</p> <p>Chapter 7 – “Services”, including reservations set-out in Annex 4-I and Annex 4-II, and additional commitments provided for in Annex 4-III.</p> <p>Chapter 8 – “Investment”</p> <p>Chapter 9 – “Financial Services”</p> <p>Chapter 10 – “Telecommunications Services”</p> <p>Chapter 11 – “Movement of Business People”</p> <p>Chapter 14 – “Electronic Commerce”</p> <p>Chapter 16 – “Dispute Settlement”</p>
<p><b>III. Rules of Origin / Denial of Benefits</b></p>
<p>The benefits of the Agreement apply to a natural person of a Party, i.e. someone who is a national of that Party or has the right of permanent residence in it, as well as to a legal person of a Party, i.e. any legal entity duly constituted or otherwise organised under its law, or, in the case of supply of a service through commercial presence, owned or controlled by natural persons of that Party or by a legal entity organised under its law.</p> <p>Article 7.17 provides that, subject to prior notification and consultation, a Party may deny the benefit of the Agreement where “the Party establishes that the service supplier is owned or controlled by persons of a non-Party and that it has no substantive business operations in the territory of the other Party”.</p>

<b>IV. Sector Specific Provisions</b>
Chapters 9 and 10 contain additional specific provisions covering Financial Services and Telecommunication Services respectively.
<b>V. Recognition</b>
<p>Article 7.11 on domestic regulation builds on the relevant provisions of GATS Article VI. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. In addition, Parties shall jointly review the development of disciplines pursuant to GATS Article VI.4, with a view to incorporating such disciplines into the Agreement. Article 7.11.6 also adopts the GATS interim disciplines which apply pending the development of the above mentioned disciplines. Article 7.11.8 sets out various transparency obligations, such as making publicly available information on requirements and procedures to obtain, renew or retain any licences or professional qualifications, and information on technical standards; explaining, on request, the policy rationale of a measure, and providing the opportunity to comment on proposed measures affecting trade in services prior to their adoption. Provision is also made for the recognition of the education or experience obtained, requirements met, or licenses or certifications granted in the other Party, and negotiations on recognition of professional qualifications and/or registration procedures are encouraged.</p> <p>According to the website of the Australian Department of Foreign Affairs, the Architects Accreditation Council of Australia (AACA) and the Board of Architects (BOA) of Singapore have already concluded negotiations on the text of the MRA on registration of architects, which is to be signed shortly. Under the MRA, Australian architects with ten years of post-graduate experience will be able to register with BOA and practise in Singapore, and the MRA extends reciprocal benefits to Singapore architects. DFAT also refers to ongoing negotiations on MRAs for engineers, accountants and pharmacists.</p>
<b>VI. Government Procurement</b>
<p>Article 7.16 states that Articles 7.3 (Market Access) and 7.4 (National Treatment) in the Chapter on services shall not apply to government procurement.</p> <p>Chapter 6 prescribes government procurement obligations in goods and services for various government entities listed in Annex 3A (Australian entities) and 3B (Singaporean entities) of the Agreement and their successors, but excluding those subsequently commercialized or privatized. Chapter 6 imposes National Treatment obligations in respect of procurement of goods and services by listed entities and prohibits technical specifications being prepared, adopted or applied with a view to creating unnecessary obstacles to trade. The principles and procedures to be applied to tendering are set out, and there are obligations to protect Intellectual property and confidential information supplied in tender processes. Publication obligations are designed to enhance transparency, and parties are encouraged to use electronic tendering processes.</p>
<b>VII. Other, including subsidies, safeguards</b>
<p>Article 7.13 provides that neither Party shall take safeguard action against services nor service supplies of the other Party, with an express exception for balance-of-payments purposes (Article 7.15).</p> <p>Article 7.2.2 states that the Services Chapter (Chapter 7) does not apply to subsidies</p>

or grants provided by a Party. However, Article 7.21 provides that the Parties shall review the treatment of subsidies in the context of developments in international fora of which both Parties are Members. It also provides that the Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidies issues arise under the Chapter on services

### East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
Australia  TAFTA	GATS/SC/6 & Supplements	Revised Offer TN/S/O/AUS/Rev.1 31 May 2005	Free Trade Agreement between Thailand and Australia (TAFTA), signed on 5 July 2004; entered into force on 1 January 2005.

#### PART I - Comparison of Scheduled Commitments

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Foreign Investment Review conditions mode 3 market access.</p> <p>-- National treatment limitations for mode 3 relating to (a) foreign investment policy guidelines, (b) directorships of public companies, (c) indigenous peoples measures, and no national treatment mode 3 commitments for research and development.</p> <p>-- Typical developed country mode 4 provisions allowing temporary entry of (a) executives and senior managers, (b) independent executives, (c) service sellers as business visitors, and</p>	<p>-- The original definitions in the schedule for certain categories of mode 4 services suppliers have been supplemented and further clarified, however, in general, the periods of stay allowed for each category remains as in the original GATS schedule.</p> <p>-- A new category of "contractual services suppliers" has been added to the horizontal section, which is not tied to specific sectors as in some other EAS members' horizontal</p>	<p>Foreign Direct Investment, including commercial presence: for committed sectors and sub-sectors, including already established foreign enterprises, Thai investment activities representing a "foreign interest" of a given type and size require prior government approval. The definitions of "foreign interest" and other relevant terms are included in the schedule. Under GATS, prior government approval required for all foreign investments pursuant to Australia's foreign investment policy guidelines and the Foreign Acquisitions and Takeovers Act 1975 (therefore query whether threshold is different and lower than specified in</p>

	<p>(d) specialists (albeit possibly subject to labour market testing.</p>	<p>schedules.</p> <p>-- Spouses of temporary entrants covered by the most important mode 4 categories are also accorded working rights under the Australian proposal.</p>	<p>FTA Schedule); Prior government approval also required for direct investments by Thai government, irrespective of size. Proposals may be approved or refused subject to certain conditions, based on Australian foreign investment policy and/or particular regulation pertaining to those sectors. Foreign investment proposals in some sectors (media, newspapers, banking, broadcasting, domestic and international airlines, airports) are also subject to notification and approval.</p> <p>Movement of Natural Persons, Thai Nationals:</p> <ul style="list-style-type: none"> <li>-adds the category of Business Visitor, not in GATS, permitted to enter and stay for up to 3 months</li> <li>-extends the possible maximum stay for intra-corporate transferees. Under GATS one stay of up to four years, under FTA initial stay of up to four years, maximum total up to 10 years.</li> <li>-GATS allowed independent executives with head office in another Member seeking to establish new business in Australia initial stay up to two years; FTA modifies category and extends time: executives and managers of a business with its head of operations in Thailand</li> </ul>
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			<p>seeking to establish a subsidiary in Australia permitted to enter and stay initially for up to four years.</p> <p>-new category of contractual service supplier permitted to enter and stay for up to three years, except for qualified Thai chefs, who may stay up to four years.</p> <p>-new commitment for service sellers, who may enter and stay initially for six months, with a maximum stay of 12 months.</p> <p>-commitment to support discussions with a view to establishing a standard for recognition of Thai qualifications for traditional Thai massage therapists.</p> <p>-reservation of right to provide preferential treatment to any indigenous person or organization in relation to the acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.</p>
<b>Comment</b>			
<p>The FTA with Thailand is notable for its provisions on movement of natural persons where Australia has made provision for the temporary entry of qualified Thai Chefs and agreed to work toward similar provisions for qualified Thai massage therapists. In nearly all other horizontal commitments addressed to mode 4 entry, access to the market is limited to senior executives and or managers/specialists.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	<p><u>Professional services</u></p> <p>commitments on (a) legal services (home country law only), (b) accounting, (c) taxation, (d) architectural, (e) engineering, (f) integrated engineering, (g) urban planning, (h) dental services, (i) veterinary services.</p> <p>-- <u>Computer and related Services</u></p> <p>-- <u>R&amp;D services on social sciences and humanities</u></p> <p>-- <u>Real Estate Services</u></p> <p>-- <u>Rental/Leasing Services without Operators</u></p> <p>-- <u>Other Business Services</u> including (a) advertising, (b) market research, (c) management consulting, (d) services related to management consulting, (e) services incidental to agriculture, hunting and forestry, (f) service incidental to fishing, (g) services incidental to mining, (h) services incidental to energy distribution, (i) placement and supply services of</p>	<p><u>Legal Services:</u></p> <p>-- The new offer of additional commitments in respect of two legal licenses (limited license and full license) offers foreigners the potential to establish and provide legal advisory and representational services on domestic (Australian) law if they elect to obtain a full license or to offer a more limited range of legal services (foreign law and international law) in the case of lawyers obtaining only a limited license.</p> <p><u>Other Business Services:</u></p> <p>-- A new commitment is offered, with full commitments in all modes, on technical testing and analysis services (relating also to the freight logistics services additional commitment).</p> <p>-- A new commitment is offered, with full commitments in all modes, on services</p>	<p>--For professional services: Legal services: supply permitted for third-country law, international commercial arbitration services and other alternative dispute resolution services, Thai nationals can join an Australian firm as a consultant, enter into partnership and employ local lawyers everywhere in Australia except in Western Australia and South Australia.</p> <p>-Landscape architectural services: supply permitted</p> <p>-For computer and related services, data base services and other computer services: supply permitted excluding measures relating to content</p> <p>-for other business services: Site preparation work for mining: supply permitted; maintenance and repair service of transport machinery and equipment: supply permitted</p>



	<p>personnel, (j) investigation and security services, (j) related scientific and technical consulting services, (k) building cleaning services, (l) photographic services, (m) convention services, (n) other services, including answering services, translation services, mailing list services, interior design services.</p>	<p>incidental to manufacturing.</p> <p>-- A new commitment is offered, with full commitments in all modes, on maintenance and repair of equipment services (excluding maritime vessels, aircraft and other transport equipment).</p>	
<b>Comment</b>			
<p>Australia's Doha Round offer in the business services sector (see legal services) is potentially more generous than the commitments made in TAFTA.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communications Services	<u>Telecommunications Services</u> (with GATS reference Paper) with coverage of a full range of voice and value-added services. At the time of the GATS Schedule's formulation, foreign equity in Telstra was limited to 11.7 percent of total equity in the incumbent telecom company.	-- The original telecom reference paper is supplemented by a new set of pro-competitive additional commitments that build upon the reference paper.  -- On offer is an improvement to the original commitment in respect of foreign equity limits in Telstra, now relaxed to permit ownership of up to five percent of shares not held by the Government.	- Telecommunications services: No restrictions on Thai ownership in Optus and Vodafone.
<b>Comment</b>			
Australia's Doha Round offer in the telecommunications sector is potentially more liberalising than the commitments made in TAFTA.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	<u>Good commitments on Construction and Related Services</u> including (a) general construction work for buildings, (b) general construction work for civil engineering, (c) installation and assembly work, and (d) building completion and finishing work.	-- A new commitment is offered on "other" construction and engineering services.	-no commitments additional to GATS

<b>Comment</b>
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Australia's Doha Round offer in the construction services sector is potentially more liberalising than TAFTA which includes no commitments additional to GATS.
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Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	Good commitments on <u>Distribution Services</u> , including (a) commission agents' services, (b) wholesale trade services, (c) retailing services, and (d) franchising.	-- Additional commitments in respect of freight logistics services are offered to apply to Australia's existing commitments on distribution services.  - Re retailing services, the existing commitment is clarified as applying as well to a number of activities not separately listed in relevant CPC classifications.	-no commitments additional to GATS
<b>Comment</b>			
Australia's Doha Round offer on distribution services is potentially more liberalising than TAFTA which contains no commitments additional to GATS.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	Generally good commitments on <u>Financial Services</u> , including (a) insurance and insurance-related services (with certain state and territory-related restrictions on operations through mode 3), (b) banking and other financial services (with RBA-imposed restrictions on investment at interest of foreign reserves, a requirement to establish locally as a bank to raise funds from the deposit market, and a range of other restrictions at federal and state level on banking activity in Australia).	<p>-- An offer is made to delete two previously-applied conditions to mode 3 supply of insurance services.</p> <p>-- For banking and other financial services, a RBA limitation on investment at interest of official reserves is offered for deletion.</p> <p>-- Australia offers to delete requirements that only RBA authorised dealers can deal in foreign exchange and a requirement that foreign banks must demonstrate their potential contribution to competition in Australia.</p> <p>-- Requirements for participation in the stock market are revised and requirements for a registered management investment scheme are clarified.</p>	<p>-No restrictions for Thai Central Bank and government monetary institutions for investment at interest</p> <p>-No nationality restrictions on stock-broking organizations participating in the Australian Stock Exchange</p> <p>-No specific limitations on the Trust Bank of Tasmania</p>
<b>Comment</b>			
Australia's Doha Round offer on financial services is potentially more liberalising than TAFTA where the GATS+ commitments reflect only a part of what is on offer in the Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Education Services	Generally good commitments on <u>Education Services</u> (Unbound national treatment in mode 3) including (a) secondary education services, (b) higher education services, (c) other education services.	No offers made	-Other education services: Access permitted for tuition in Thai cuisine, Thai language and Thai traditional massage.
<b>Comment</b>			
For education services, the commitments made in TAFTA -tied to traditional Thai specialties - are more interesting than the Doha Round offer where Australian has not offered any new commitments.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	Commitments made in a number of areas, including (a) sewerage services, (b) refuse disposal services and (c) sanitation and similar services.	-- Potentially significant fully bound commitments are offered for services relating to (a) protection of ambient air and climate, (b) remediation and cleanup of soil and water, (c) noise and vibration abatement, (d) protection of biodiversity and landscape, and (e) other environmental and ancillary services.	-For: (a) protection of ambient and air climate; (b) remediation and cleanup of soil and water; (c) noise and vibration abatement; and (d) protection of biodiversity and landscape; and (e) other environmental and ancillary services, access is permitted.

<b>Comment</b>
Australia's Doha Round offer is essentially the same as what has already been incorporated in the TAFTA.

<b>Section</b>	<b>Pre-Doha Schedule of Commitments</b>	<b>Doha Round Offer</b>	<b>Commitments in FTA</b>
Health & Social Services	Commitments made only on "other human health services" like podiatry and chiropody".	No offers	No commitments additional to GATS

<b>Section</b>	<b>Pre-Doha Schedule of Commitments</b>	<b>Doha Round Offer</b>	<b>Commitments in FTA</b>
Tourism & Related Services	Good commitments on (a) hotels and restaurants, (b) travel agencies, and (c) tourist guide services.	No offers	No commitments additional to GATS



Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	<p>Good commitments in a number of areas, including:</p> <p><u>Maritime Transport Services</u> for international freight and passenger transport, but with requirement that liner services be represented by person resident in Australia for mode 1 and a requirement for local establishment to operate under the national flag.</p> <p>-- <u>Maritime Auxiliary Services</u>, including (a) international rental of vessels with crew, (b) storage and warehousing services, (c) preshipment inspection services.</p> <p>-- <u>Air Transport Services</u>, including (a) maintenance and repair of aircraft services and (b) computer reservation services.</p> <p>-- <u>Road transport services</u>, including (a) passenger transportation (not including regular</p>	<p><u>Maritime Transport Services</u>:</p> <p>-- A newly offered additional commitment lists services at Australian ports that are made available to international maritime transport suppliers on reasonable and non-discriminatory terms.</p> <p>-- The offer provides for the elimination of previously stated conditions limiting market access and national treatment in liner shipping (mode 1) trade.</p> <p>-- A new commitment is offered on maritime cargo handling services.</p> <p>-- New commitments are offered for (a) customs clearance services and (b) maritime agency services.</p> <p><u>Air Transport Services</u>:</p> <p>-- New commitments are offered for (a)</p>	<p>- for <u>maritime transport services</u>: Maritime cargo handling: access permitted subject to licensing by Australian port authorities. Custom clearance services: Commercial presence permitted subject to provide the services in and from Australia. Maritime agency services: access permitted.</p> <p>-for <u>air transport services</u>: Access permitted for: ground handling operations (Airport operation services, cargo handling and other supporting services for air transport except airport and terminal fire-fighting services)</p>

	<p>urban bus service) and (b) freight transportation.</p> <p>-- <u>Pipeline transportation services</u>, including (a) transportation of fuels and (b) transportation of other goods.</p> <p>-- <u>Services auxiliary to all modes of transport</u>, including (non-maritime) (a) storage and warehousing services, (b) freight forwarding and (c) pre-shipment inspection.</p>	<p>airport operation services, (b) air transport sector cargo handling, and (c) other supporting services for air transport (excluding airport and terminal fire fighting services).</p> <p><u>Rail Transport Services:</u></p> <p>-- A new commitment is offered for railroad (a) freight transportation, (b) pushing and towing services, and (c) supporting services for rail transport - with a distinction in mode 3 market access drawn for "below track" and "above track" services.</p> <p><u>Road Transport Services:</u></p> <p>-- Mode one bindings are offered for freight transport services.</p> <p>-- A new commitment is offered for rental of commercial vehicles with operator.</p> <p><u>Services Auxiliary to All Modes of Transport:</u></p> <p>-- In line with the Freight</p>	
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		<p>Logistics Service additional commitments clarifications, a number of existing Australian commitments in this sector are clarified as extending to related areas beyond those specifically tied to the relevant CPC.</p> <p><u>Freight Logistics Services:</u></p> <p>-- This section of the schedule is made up not of new separate commitments but groups existing commitments from other parts of the schedule and spells out a series of additional commitments that apply to the logistics services aspect of the service. For example, in the case of the commitment offered on wholesale trade services, the new additional commitment specifies that <i>inter alia</i> Australia will accept electronic versions of trade administration documents where indicated on the website of the Australian Government</p>	
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		agency responsible for customs.	
<b>Comment</b>			
Australia's Doha Round offer on transportation services is potentially considerably more liberalising than what has been agreed in the TAFTA			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, cultural & sporting services	Commitments made on (a) news agency services, (b) sporting and other recreational services.	No offers made	No commitments beyond GATS

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
MFN Exemptions	<u>Audiovisual services</u> : Two MFN exemptions are listed in the GATS schedule (a) a co-production scheme exemption addressed to schemes with Italy, UK, Canada and France and (b) an exemption designed to deal with unreasonable measures imposed on Australian audiovisual suppliers.	No modifications to Australia's list of MFN exemptions (for audiovisual services) are listed in the Australian offer.	No explicit MFN requirement, only "soft" obligation, in Article 812:3, that if a Party enters into any agreement on trade in services with any non-Party, it agrees to consider a request by the other Party to obtain treatment no less favourable than that granted to non-Parties.

## PART II – FTA Provisions / Architecture

I. General Comments
<p>Australian officials do not consider the TAFTA to be a completed agreement insofar as its services coverage is concerned and the fact that Australia's Doha Round offer frequently exceeds the liberalisation found in TAFTA shows that Australian negotiators probably held back potential concessions in the face of Thai unwillingness to go further at the time of TAFTA's negotiation. This is reflected in the TAFTA commitment to further negotiations (see below).</p> <p>The Agreement adopts a "positive list" approach, i.e, the relevant provisions of the Agreement do not apply to non-listed sectors, except for the movement of natural persons.</p>
II. Main Relevant Provisions
<p>Chapter 8 Trade in Services</p> <p>Chapter 9 Investment</p> <p>Chapter 10 Movement of Natural Persons</p> <p>Chapter 18 Consultations and Dispute Settlement</p> <p>Annex 8 contains each country's schedule of commitments but, unlike in the GATS, commitments in respect to the type of limitation and the different modes of supply are not listed separately.</p> <p>Side letters relating to services are also an integral part of the Agreement. They propose negotiations on financial and telecommunications services as part of the review of commitments provided for in the Agreement, along with negotiations on emergency safeguard measures. Thailand commits to explore the possibility of eliminating management needs test requirements for intra-corporate transferees: of extending the initial period for intra-corporate transferees from one to three years and total maximum stay from 5 to 10 years; and of extending the period for Australian visitors business visitors who do not hold an APEC Business Travel Card to perform specified activities from 15 to 90 days. Australia commits to explore ways to develop a qualification evaluation scheme for Thai masseurs and Thai massage therapists. All to be discussed at first meeting of FTA Joint Commission, which agreement foresees for start of 2008.</p> <p>The Parties agree to enter into negotiations on trade in services within three years from the entry into force of the Agreement, i.e. on 1 January 2008.</p> <p>Should one of the Parties sign another RTA with a third party, upon request from the other Party it should consider granting it treatment no less favourable than that granted to the third party for both trade in services and investment.</p> <p>The Parties reserve their right to maintain or impose measures to regulate service sectors, provided they do so in a non-discriminatory manner and do not intend to lessen the benefits of this Chapter.</p> <p>Where the commitments are included in both Annex 8 and the GATS, the Parties accept certain rights and obligations regarding domestic regulation, monopolies and exclusive service suppliers, air transport, financial and telecommunication services as</p>

contained in GATS Articles VI:1-6, VIII:1,2 and 5, in the Annex on Financial Services, the Annex on Air Transport Services, paras. 1-6 and in the Annex on Telecommunications paras. 1-5.
<b>III. Rules of Origin / Denial of Benefits</b>
Article 804 establishes that a Party may deny the benefits under that Chapter to service suppliers of the other Party that are owned or controlled by persons of a non-Party, whether or not they conduct substantive business operations in the territory of that Party. This provision is subject to prior notification and consultation. The definition of a natural person under the TAFTA is confined to natural persons who are nationals of the Parties.
<b>IV. Sector Specific Provisions</b>
See comparison chart above. The Parties agree in side letters to enter into negotiations on financial services and telecommunications.
<b>V. Recognition</b>
The Parties lay down the possibility to recognize the education, experience obtained, requirements met, or licences or certifications granted in the other Party and to conclude agreements in this respect. Australia's schedule of horizontal commitments identifies the Thai qualifications and experience required to qualify as a "specialist Thai chef" and thereby be eligible for entry into Australia as a contractual service supplier. In addition, Australia's schedule of commitments specifically refers to the objective of establishing a standard for recognition of Thai qualifications for traditional Thai massage therapists. In addition, the Parties are called upon to encourage their relevant bodies to enter into negotiations in this regard. Any commitments agreed upon would then be scheduled as additional commitments in Annex 8.
<b>VI. Government Procurement</b>
Government procurement is excluded from the scope of the services chapter, although in a separate chapter the Parties agree to establish a Working Group on government procurement with a view to commencing bilateral negotiations to bring government procurement under the Agreement. The Parties also undertake to exchange information on, and to promote and apply transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination in their government procurement procedures.
<b>VII. Other, including subsidies, safeguards</b>
The provisions of Chapters 8 and 9 do not apply to: subsidies granted by the Parties, services supplied in the exercise of governmental authority, procurement by governmental agencies of services for governmental purposes, measures affecting job seekers and to measures regarding citizenship, residence or employment on a permanent basis. However, the parties have undertaken a commitment to negotiations on safeguards in side letters.

### East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
India	GATS/SC/42 & Supplements	Revised Offer TN/S/O/IND/Rev.1 24 August 2005	India - Singapore Comprehensive Economic Cooperation Agreement (CECA)

#### PART I - Comparison of Scheduled Commitments

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Market access and national treatment limitations for modes 3 and 4 in case of access to "scheduled areas" and "tribal areas".</p> <p>-- Mode 3 collaboration with public sector enterprises affords preference to partners with best terms of technology transfer.</p> <p>-- Acquisition of Indian companies subject to FIPB approval.</p> <p>-- Subsidies available only to domestic service suppliers.</p> <p>-- Potentially differential taxation of domestic and foreign services suppliers.</p> <p>-- Mode 4 temporary movement of business persons scheduled for (a) business visitors (90</p>	<p>-- A new category of <u>contractual services suppliers</u> is introduced to permit entry of personnel to perform services pursuant to a contract between a foreign-based company and a client in India. Stay in India is limited to one year and service contracts must be in one of several enumerated sectors (e.g., integrated engineering services).</p> <p>-- A new category of <u>independent professionals</u> in introduced to permit entry of independent services contractors entry to perform services pursuant to a contract</p>	<p>-similar to GATS with a few differences: mode 3 MA requires prior government approval where a joint venture or technology/trademark agreement existed in the 'same' field; transfer equity subject to regulations (vs. subject to FIPB approval restriction in individual GATS/DDA commitments),</p> <p>-plus mode 4: unbound except as per commitments in Chapter 9 on movement of persons, overall limited improvement on GATS (e.g. intra-corporate transferees (GATS up to 5 years, FTA up to 2 years, renewable up to three years at a time to maximum 8 years)), but some exceptions (e.g. business visitors allowed up to 90 days under GATS, 180 in DDA offer, only 2 months plus one month extension under FTA);</p> <ul style="list-style-type: none"> <li>• Business visitors, up to two months with Multiple</li> </ul>



	days), (b) intra-corporate transferees (max. 5 years), (c) professionals (one year with possible 3 month extension).	between them and a client in India. Stay in India is limited to one year and service contracts must be in one of several enumerated sectors (e.g., integrated engineering services).	<p>Journey Visa (MJV) that lasts 5 years. Extensions of up to a month may be permitted.</p> <ul style="list-style-type: none"> <li>• Short-term service suppliers are allowed up to 90 days (with possible extension up to a maximum of 90 days), as long as total stay period does not exceed 180 days.</li> <li>• Intra corporate transferees are permitted either a maximum of two years or their contract extension, whichever is shorter. Extensions (maximum three years per extension) are possible as long as total stay period does not exceed eight years.</li> <li>• Professionals are given either a maximum of one year or their contract duration, whichever is shorter. (Annexed List of Professionals) (DDA replaces GATS professionals category with independent professional and allows minor extensions of 3 months after 1year, plus adds new category of contractual service</li> </ul>
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			suppliers)  Benefits apply to only Singapore citizens and PRs. Benefits apply only in committed sectors (but excludes Singapore's commitments on legal services, see Article 9.2.3)
<b>Comment</b>			
India's commitments in the FTA with Singapore appear to be marginally more liberalising than those in the GATS schedule or potentially on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	<p>-- <u>Professional services</u>. Commitment only for engineering services, with no bindings in modes 1 and 2 and local incorporation requirement for mode 3 (max 51% foreign equity).</p> <p>-- <u>Computer and related Services</u>: Commitments for (a) hardware installation consultancy services, (b) software implementation services, (c) data processing services, (d) database services, and (e) maintenance and repair services, with no bindings in modes 1 and 2 and local incorporation requirement for mode 3 (max 51% foreign equity).</p> <p>-- <u>Research and Development Services</u> only for enumerated natural sciences (heat, light, electromagnetism &amp; astronomy), with no bindings in modes 1 and 2 and a local incorporation requirement for mode 3 (max 51% foreign equity).</p> <p>-- <u>Technical testing and analysis services</u> with no</p>	<p><u>Professional Services</u>:</p> <p>-- A commitment is offered for accounting and book-keeping services (excluding auditing), but unbound in mode 3 and tied to horizontal commitments in mode 4 (see above).</p> <p>-- Commitments are offered for (a) architectural services and (b) urban planning and landscape architect services, with more or less full commitments in all sectors but subject to mode 3 market access conditioned on incorporation as an Architects partnership and FIPB approval.</p> <p>-- Commitments are offered for (a) engineering services and (b) integrated engineering services, with more or less full commitments in all sectors but subject to mode 3 market access conditioned on incorporation and FIPB approval.</p> <p>-- Commitments are offered for (a) medical and dental services and (b)</p>	<p>-- <u>Professional Services</u>:</p> <p>-accounting and booking services: minimal mode 4 improvement over GATS due to Natural Persons chapter, but subject to registration with Indian body and insurance</p> <p>-advisory taxation services: <b>additional commitment</b> in modes 1 and 2, MA and NT, but appearance before tax authorities confined to Indian nationals</p> <p>-architectural services: <b>additional commitment</b>, modes 1, 2 3, MA and NT, with restrictions, like DDA but a bit more restricted, both require commercial presence through incorporation and FIPB approval if prior collaboration in India</p> <p>-engineering services: <b>expanded commitment</b> (same as DDA) in that binds modes 1 and 2 MA and NT, and removes 51% foreign equity ceiling (although incorporation still required)</p> <p>-<b>additional commitments</b> in modes 1, 2 and 3 MA and NT in following</p>

	<p>bindings in modes 1 and 2 and a local incorporation requirement for mode 3 (max 51% foreign equity).</p>	<p>services provided by midwives, nurses, physiotherapists and paramedics, subject to mode 1 market access being limited to transactions between established medical institutions covering areas of second opinion, and mode 3 market access limited to 74 percent foreign equity, the latest technology being brought in to India and potential FIPB approval. Public-funded services may be available only to Indians and at reduced prices.</p> <p>-- A new commitment is offered for veterinary services, with mode 3 market access potentially subject to FIPB approval.</p> <p><u>Computer and Related Services:</u></p> <p>-- The Indian offer would make very significant improvements to the existing commitment in this sector, with full commitments in all modes of delivery (except mode 4 where the horizontal schedule governs) and removal of earlier foreign equity limitations and FIPB approvals.</p> <p><u>Research and Development</u></p>	<p>sub-sectors (all also offered in DDA, although some minor differences in the restrictions on commitments): integrated engineering services; urban planning services; medical and dental services; veterinary services; services provided by midwives, nurses, physiotherapists and para-medical personnel.</p> <p><u>Computer Services:</u></p> <p><b>-additional sub-sector committed</b> (other computer services—same as DDA), plus <b>expanded commitment</b> for already committed services: binds modes 1 and 2 MA and NT and removes requirement of incorporation for mode 3 MA, along with foreign equity limit (vs. DDA which removes foreign equity limit but still requires incorporation)</p> <p><u>Research and Development Services:</u></p> <p><b>- expanded commitments</b> for specified natural sciences : binds modes 1 and 2 MA and NT and removes requirement of incorporation for mode 3 MA, along with foreign equity limit (vs. DDA which removes</p>
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		<p><u>Services:</u></p> <p>-- Very limited new commitment offered for R&amp;D services into (a) heat, light, electromagnetism and astronomy, and (b) agricultural sciences R&amp;D.</p> <p>-- A good commitment offered, with full bindings in all modes (except mode 4 where the horizontal schedule governs) for R&amp;D services on social sciences and humanities.</p> <p><u>Real Estate Services:</u></p> <p>-- A good commitment offered for fee or contract basis real estate services, with commercial presence market access subject to potential FIPB approval.</p> <p><u>Rental / Leasing Services:</u></p> <p>-- Reasonably forthcoming offers on a range of rental and leasing services including (a) rental/leasing of ships without operators, (b) rental/leasing of aircraft without operators, (c) rental/leasing of other transport equipment without</p>	<p>foreign equity limit but still requires incorporation)</p> <p><b>-additional commitment</b> for biotechnology, excluding medical biotechnology: full 1, 2 and 3 MA and NT commitments (not in DDA)</p> <p>- <b>additional commitment</b> for agricultural sciences: full 1, and 2 MA and NT commitments (vs DDA mode 1 only)</p> <p>-doesn't include commitment in social sciences and humanities that is in DDA</p> <p><u>Real Estate Services</u></p> <p>- <b>additional commitment</b> for real estate services on a fee or contract basis, but limited mode 3 MA only (DDA offer includes, as well, full modes 1, 2 commitments, and 3 NT)</p> <p><u>Rental / Leasing Services without operator:</u></p> <p><b>--additional commitments in several sub-sectors</b> including (a) rental/leasing of ships without operators, (b) rental/leasing of aircraft without operators, (c) rental/leasing of other transport equipment</p>
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		<p>operators, (d) rental/leasing of other machinery and equipment without operators and (e) rental/leasing of personal and household goods. Only restrictions on mode 3 pertain to possible FIPB approval and need in most cases to adhere to prescribed minimum capitalisation requirements.</p> <p><u>Other Business Services:</u></p> <p>-- Good commitments on offer in respect of (a) management consulting services (exc. Legal) and (b) services related to management consulting, with possible FIPB approval only listed limitation on mode 3 delivery.</p> <p>-- Improved commitment on offer for technical testing and analysis services with full commitments in modes 1,2 &amp; 3 and removal of foreign equity limitations (although potential FIPB approval in mode 3 is signalled).</p> <p>-- New commitment on offer for services incidental to fishing, with possible FIPB</p>	<p>without operators, (d) rental/leasing of other machinery and equipment without operators and (e) rental/leasing of personal and household goods. All commit in mode 3, with only restrictions pertaining to possible FIPB approval (horizontal limitation) and need in most cases to adhere to prescribed minimum capitalisation requirements. Some sub-sectors also commit modes 1 and 2, others remain unbound (all essentially same as DDA)</p> <p><u>Other Business Services:</u></p> <p><b>-additional commitment</b> (not in DDA) on sale of leasing services of advertising, and planning, creating and placement of advertising, in modes 1, 2 and 3 with limits including that mode 3 commercial presence subject to incorporation and foreign equity ceiling of 49%, and mode 1 NT majority content must be created locally by Indian nationals.</p> <p><b>-additional commitments in several sub-sectors</b> (same as DDA) including (a) management consulting services</p>
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		<p>approval required for mode 3 market access.</p> <p>-- New commitments on offer for a range of other business services, with full commitments, subject only to potential FIPB approval of mode 3 market access for (a) services incidental to energy distribution, (b) placement and supply services of personnel, (c) maintenance and repair of equipment services, (d) building cleaning services, (e) packaging services, (f) convention services, (g) specialty design services, and (h) photographic services.</p>	<p>(exc. Legal) and (b) services related to management consulting,</p> <p><b>additional commitment</b> (not in DDA) on services incidental to mining in modes 1, 2 and 3 with requirement that mode 3 commercial presence subject to incorporation.</p> <p><b>-additional commitments in several sub-sectors</b> (same as DDA) including (a) services incidental to fishing; (b) services incidental to energy distribution, (b) placement and supply services of personnel, (c) maintenance and repair of equipment services, (d) building cleaning services, (e) packaging services, (f) convention services, (g) specialty design services, and (h) photographic services. Mostly full commitments modes 1, 2, 3 (subject to horizontal) and same as DDA with three exceptions: (1) narrower than DDA on maintenance and repair of equipment services because modes 1 and 2 are not bound and because mode 3 MA is subjected to incorporation requirement and 51% foreign equity limit; (2) broader than DDA in photographic services</p>
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			<p>because DDA offer subjects mode 3 MA to requirement of incorporation and 49% equity limit: (3) narrower than DDA on speciality design services because mode 3 commercial presence imposes 51% foreign equity cap</p> <p>-- <b>expanded commitment</b> (same as DDA) for technical testing and analysis services with full commitments in modes 1,2 &amp; 3 and removal of foreign equity limitations</p>
<b>Comment</b>			
<p>Both India's Doha Round offer and the commitments made in its FTA with Singapore expand considerably on what is found in this sector in India's pre-Doha Round schedule. The FTA commitments on business services appear to go marginally beyond what is potentially on offer in the Doha Round with commitments in advertising and services incidental to mining not found in the Doha Round offer.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communications Services	-- <u>Telecommunications Services:</u> (with slightly amended GATS telecoms reference paper) (a) voice telephone service limited to local/long distance over wire-based public network, with no commitments in modes 1 and 2	<u>Telecommunications Services:</u> -- Improved or new commitments on offer for a range of telecommunications-related services where India has offered to make full commitments on mode 2 market access and national treatment and allow foreign participation in	<u>Telecommunications Services</u> <b>-expanded commitments</b> for a range of telecommunications-related services where full commitments on mode 2 market access and national treatment and foreign participation allowed through mode 3



	<p>and no national treatment commitment in mode 3 and with the private Indian operator partner limited to no more than 25 percent foreign equity; (b) commitments on circuit switched data transmission services, facsimile services and private leased circuits but with no commitments in modes 1 and 2 and no national treatment commitment in mode 3 and with market access in mode 3 limited to working through licensed voice telephone service operators; and, (c) a commitment on data and message transmission services, bound in modes 1 and 3 only and with a local incorporation requirement for mode 3 (max 51% foreign equity). The GATS schedule also has a largely meaningless commitment for cellular mobile telephone service, unbound in modes 1 and 2 and mode 3 national treatment and permitting participation in</p>	<p>the market through mode 3 provided it takes place through an Indian company with total foreign equity of less than 49 percent and where FIPB approval may be required. Services covered by the improved or new commitments on offer include (a) voice telephone services, (b) packet switched data transmission services, and (c) radio paging services.</p> <p>-- In an offer of improved commitments, India offers full commitments now in mode 2 for (a) circuit switched data transmission services, (b) facsimile services, and (c) private leased circuit services, with license-related conditions on mode 3 services market access and no commitments on national treatment except for in mode 2.</p> <p>-- For data and message transmission services, full commitments are offered in mode 2 and foreign equity ceilings in mode 3 are raised from 51 to 74% (subject to FIPB approval).</p> <p>-- For V-Sat services and for cellular mobile</p>	<p>provided it takes place through an Indian company with total foreign equity of less than 49 percent (and horizontal restriction may mean FIPB approval required). Services covered (a) voice telephone services, (b) packet switched data transmission services, and (c) radio paging services. Similar to DDA with additional commitment in FTA in mode 3 NT, which remains unbound in DDA offer.</p> <p>-- <b>expanded commitments</b>, notably addition of mode 2 commitments in several sub-sectors for (a) circuit switched data transmission services, (b) facsimile services (plus broader category covered), and (c) private leased circuit services, with license-related conditions on mode 3 services market access. Similar to DDA with additional commitment in FTA in mode 3 NT, which remains unbound in DDA offer.</p> <p>-- <b>expanded commitments</b>, for data and message transmission services, full commitments are offered in mode 2 and mode 3 NT. (all same as DDA) For mode 3</p>
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	<p>mode 3 market access only through an Indian company in which foreign investment may not exceed 25% and which may not be granted a license due to a needs test requirement.</p> <p>-- <u>Audiovisual Services:</u> A commitment offering very limited commercial presence in motion picture or video distribution services, limited to import of no more than 100 titles a year and subject to the film having won awards, been in film festivals or having received a favourable review from Indian Ministry officials.</p>	<p>telephone services, India offers full commitments in mode 2, participation in the Indian market through mode 3 through a licensed private Indian company where total foreign equity does not exceed 49% (up from a former level of just 25%), and subject to possible FIPB approval.</p> <p><u>Audiovisual Services:</u></p> <p>-- An improved commitment on offer for motion picture or video distribution removes former limitations on national treatment for mode 3 (although market access limitations remain for these services).</p>	<p>MA foreign equity ceilings remains at 51% (like GATS), vs. DDA which raises it to 74% (subject to FIPB approval).</p> <p>-- <b>additional</b> commitment for V-Sat services, full mode 2, plus participation in the Indian market through mode 3 through a licensed private Indian company where total foreign equity does not exceed 49%, same as DDA except that also includes a mode 3 NT commitment, whereas DDA is unbound.</p> <p>-<b>additional commitment</b> (not in DDA) for internet and infrastructure services, full mode 2, plus participation in the Indian market through mode 3 through a licensed registered Indian company where total foreign equity does not exceed 74%, and also mode 3 NT commitment.</p> <p><u>Audiovisual Services</u></p> <p>-same as GATS for motion picture or video distribution (vs. DDA limited improvement, which removes limitations on national treatment for mode 3)</p>
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<b>Comment</b>
Both India's Doha Round offer and the commitments made in its FTA with Singapore expand considerably on what is found in this sector in India's pre-Doha Round schedule. The FTA commitments on communications services appear to go marginally beyond what is potentially on offer in the Doha Round with commitments for internet and internet infrastructure services not found in the Doha Round offer.

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	A limited commitment on construction work for civil engineering offering mode three access through local incorporation and subject to a foreign equity ceiling of 51%.	-- India offers an improved commitment with full commitments on modes 1, 2 and 3 (except for a mode 3 incorporation requirement and possible FIPB approval) for (a) general construction work for buildings, (b) general construction work for civil engineering, (c) installation and assembly work, (d) building completion and finishing work, and (e) "other" construction services.	<b>-expanded commitments</b> general construction work for civil engineering, plus seems to be <b>additional commitments/broader categories of services committed:</b> for (a) general construction work for buildings, (b) installation and assembly work, (c) building completion and finishing work, and (d) "other" construction services. For all, binds modes 2 and 3 MA and NT, mode 3 commercial presence subject to requirement of incorporation in India (vs. GATS also has foreign equity limit of 51%), and same as DDA offer except that FTA also adds minimum capitalisation norms to mode 3 NT commitment
<b>Comment</b>			
India's commitments in the FTA with Singapore appear roughly comparable to those on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	No GATS commitments in sector.	<p>-- A new commitment offered for commissioned agents' services covering sales on a fee or contract basis and applying to agricultural raw materials, food products, machinery, industrial equipment and certain vehicles and to furniture, household goods and hardware, offers full commitments across all modes subject to mode 3 market access approvals from RBI and FIPB and conformity with FEMA regulations.</p> <p>-- A new commitment offered for wholesale trade services covering wholesale activities dealing with agricultural raw materials, food products, textiles, clothing and footwear, household appliances, miscellaneous consumer goods and machinery, equipment and supplies offers full commitments across all modes subject to mode 3 market access approvals from RBI and FIPB and conformity with</p>	<p><b>-additional commitment</b> for commissioned agents' full commitments across modes 1, 2, 3 subject to mode 3 market access approvals from RBI and FIPB and conformity with FEMA regulations (like DDA but appears to cover a larger range of services, DDA offer specifies only some areas where these services covered)</p> <p>-- <b>additional commitment</b> for wholesale trade services full commitments modes 1, 2, 3 subject to mode 3 market access approvals from RBI and FIPB and conformity with FEMA regulations (like DDA but appears to cover a larger range of services, DDA offer specifies only some areas where these services covered)</p>

		FEMA regulations.	
<b>Comment</b>			
India's commitments in the FTA with Singapore and its offer of potential liberalisation in the Doha Round appear roughly comparable.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	<p>(a) a mode 1, market access only commitment for insurance of freight only when the insurance is taken by buyer or seller in accordance with contract terms, (b) a commitment in modes 1 and 2 allowing reinsurance and retrocession to the extent of the residual risk after obligatory placements domestically with Indian insurance companies, (c) a commitment on insurance intermediation limited to reinsurance, limiting intermediation by foreign insurers to coverage of the residual risk after obligatory placements domestically with Indian insurance companies, (d) a commitment on banking and other financial services, limited to mode 3 through branch operations of a bank licensed and supervised in its home country, with no more than twelve licenses to be issued each year and with each branch limited to no more than twelve ATMs. Such bank</p>	<p>-- A new commitment offered for life insurance provides binding market access and national treatment only for mode 3 and only through Indian companies where foreign equity participation is limited to 26 percent and potential FIPB approval.</p> <p>-- An offer of an improved commitment for non-life insurance binds national treatment in mode 3 but requires mode 3 market access only through Indian companies where foreign equity participation is limited to 26 percent and potential FIPB approval.</p> <p>-- An offer of an improved commitment for reinsurance and retrocession leaves all modes unbound for national treatment and now binds mode 3 market access but only through Indian companies where</p>	<p>Insurance:</p> <p><b>-additional commitment</b> for life insurance provides only for mode 3 market access and only through Indian companies where foreign equity participation is limited to 26 percent and potential FIPB approval. Similar to DDA but differs in that: (1) FTA has no mode 3 NT commitment: (2) FTA contains an additional mode 3 MA commitment to allow 3 named Singapore banks to incorporate one insurance company in India, so long as none of them own, individually or collectively, 26% or more of an Indian-incorporated insurance company.</p> <p><b>--improved commitment</b> for non-life insurance binds national treatment in mode 3 but requires mode 3 market access only through Indian companies where foreign equity participation is limited to 26 percent and potential FIPB approval. As with above commitment, similar to DDA but differs in that: (1) FTA has no mode 3 NT commitment: (2) FTA contains an additional mode 3 MA commitment to allow 3 named Singapore banks to incorporate one</p>

	<p>operations very limited in their possibility to invest in other financial services companies and India retaining the possibility of denying new licenses if the share of foreign banks' holdings in India exceed 15 percent of the total. (e) a commitment permitting participation in stock broking through a joint venture with no more than 49% foreign equity. (f) limited commitments permitting mode 3 market access in factoring services, venture capital services and financial leasing, but requiring local incorporation and foreign equity limited to 51%. (g) a limited commitment on mode 3 asset management. (h) a mode 3 commitment allowing participating in securities underwriting but only through local incorporation with foreign equity limited to 51%. (i) financial consultancy and advisory services permitted in mode 3 only by banks licensed to do business in India and foreign financial services companies locally incorporated.</p>	<p>foreign equity participation is limited to 26 percent and potential FIPB approval. Note - this appears to deny national treatment to "Indian" companies.</p> <p>-- For services auxiliary to insurance, a new offer proposes commitments in mode 1 and mode 2 (national treatment only), and for mode 3 (market access only) subject to a limit on foreign ownership of 51 percent, FIPB approval, and, where applicable, formal certification by the Actuarial Society of India.</p> <p>-- For banking and other financial services (excluding insurance), mode 3 operations would be permitted though wholly owned subsidiaries as well as through branch operations, with a yearly limit of twenty licenses (up from the current limit of twelve). Foreign banks would also be permitted to invest in Indian private sector banks up to a foreign equity</p>	<p>insurance company in India, so long as none of them own, individually or collectively, 26% or more of an Indian-incorporated insurance company.</p> <p>-same as GATS for reinsurance and retrocession I(vs. limited DDA improvement that would conditionally bind mode 3 market access but only through Indian companies where foreign equity participation is limited to 26 percent and potential FIPB approval)</p> <p>-same as GATS for insurance intermediation, DDA no change either</p> <p>-omits DDA offer on services auxiliary to insurance</p> <p>Banking and other financial services (excluding insurance):</p> <p><b>-improved mode 3 commitments</b> (similar to DDA but not exactly the same, in particular one mode of presence stipulation different). Allows each of three named Singapore banks to choose "one mode of presence" for committed services (except factoring and venture capital), namely (a) one wholly owned subsidiary or (b) operating branches in India: or (c) establishing a joint venture company. For branches, limit of 15 branches over 4 years for three named banks. For Singapore banks that</p>
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		<p>limit of 49 percent and subject to FIPB approval.</p> <p>-- An improvement to an existing commitment would raise foreign equity limits to 74 percent from 49 percent in bank joint ventures for stock broking.</p> <p>-- Improved commitments on offer for (a) factoring, (b) venture capital services, and (c) financial leasing, still require local incorporation for mode 3 market access but now remove former limits on foreign equity participation - although FIPB approval remains as a requirement.</p> <p>-- An improved commitment on offer for asset management services binds market access and national treatment subject to FIPB approval and a foreign equity participation in local establishment of not more than 26 percent.</p> <p>-- An improved commitment on offer for participation in issues of securities would allow foreign</p>	<p>choose FDI route, permitted to invest in Indian private sector banks up to a foreign equity limit of 74% (vs 49% for GATS). Plus allows Indian-regulated funds owned by Singapore or Indian persons to trade on SGX, to offer funds and investments to investors in India without requirement that company have a stake in an Indian company. Also allows asset management companies established in India and controlled by Indian or Singapore to invest US\$250 million in SGX listed instruments and equities above otherwise applicable cap: and allows Indian Depository Receipts to be offered in India with underlying Singapore listed shares. Another improvement (same as DDA) to an existing commitment would raise foreign equity limits to 74 percent from 49 percent in bank joint ventures for stock broking.</p> <p>-mode 3 National Treatment limits investment of public sector enterprises to scheduled commercial banks incorporated in India, and specifies that unbound for wholly owned subsidiaries except in the case of branching.</p> <p>- Improved commitments for (a)</p>
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		<p>equity participation in non-bank financial services companies up to 74 percent, subject to FIPB approval.</p> <p>-- A new commitment offered for services relating to the provision and transfer of financial information would provide full commitments in modes 1, 2 and 3.</p> <p>-- An improved commitment offered for financial consultancy services would remove the 51 percent foreign equity limitation (subject to FIPB approval) and bind national treatment for mode 3.</p>	<p>factoring, (b) venture capital services, and (c) financial leasing, and (d) financial consultancy services still require local incorporation for mode 3 market access but raise maximum equity limit for foreign financial services companies to 74% (vs. GATS 51%, DDA removes altogether), for banks limit remains at GATS level of 51% (DDA removes).</p> <p>-omits DDA offer for asset management services</p> <p>-improved commitment for participation in issues of securities would allow foreign equity participation in non-bank financial services companies up to 74 percent, for banks remains at 51%.</p> <p>-like DDA, new listed commitment for money broking services, but nothing seems to be committed</p> <p>-new commitment offered for services relating to the provision and transfer of financial information, modes 1 and 2 (DDA also includes mode 3).</p>
<b>Comment</b>			
India's commitments in the FTA with Singapore and its offer of potential liberalisation in the Doha Round appear roughly comparable.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Educational Services	No commitments in sector.	<u>Higher Education Services:</u> -- A new commitment offered for higher education services would provide for full commitments across all modes (except for mode 4 governed by the horizontal section) subject to mode 1 providers being subject to country of origin regulations and mode 3 providers having to respect fees set by Indian authorities and potentially subject to FIPB approval.	-like GATS, no commitments (vs DDA new commitment offered for higher education services)
<b>Comment</b>			
In this sector, India appears to have offered greater potential liberalisation in the Doha Round than it has committed to in its FTA with Singapore.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	No commitments in sector.	-- For (a) refuse disposal services and (b) sanitation and similar services full commitments are on offer subject to potential FIPB approval for	-like GATS, no commitments (vs DDA commitments offered on (a) refuse disposal services and (b) sanitation and similar services)

		market access in mode 3	
<b>Comment</b>			
In this sector, India appears to have offered greater potential liberalisation in the Doha Round than it has committed to in its FTA with Singapore.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Health & Social Services	A mode 3 commitment permitting market access through local incorporation with a foreign equity ceiling of 51%.	<u>Hospital Services:</u> -- An improved offer would fully bind modes 1 and 2, subject to mode 1 access being in the form of a transaction between two established medical institutions covering the area of second opinion, and with mode 3 market access conditioned on local incorporation with not more than 74 percent foreign equity, the latest technology for treatment being brought into India and FIPB approval. Publicly funded services may be available only to Indians.	<b>-improved commitment</b> on hospital services includes full commitments modes 1 and 2, for provider to provider (e.g. second opinion type services), removes mode 3 market access condition on local incorporation with foreign equity limit (51% GATS, 74% DDA), but like DDA conditions on the latest technology for treatment being brought into India and publicly funded services may be available only to Indians
<b>Comment</b>			
The FTA commitment appears to be slightly more liberalising (through apparent removal of foreign equity limitation) than what is on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Tourism & Related Services	(a) for hotels and lodging services, a mode 3 commitment permitting incorporation with a foreign equity ceiling of 51% and (b) for travel agency and tour operators services, a mode 3 commitment permitting incorporation with a foreign equity ceiling of 51%.	<p>-- For hotels and lodging services, an improved commitment offer, fully binds modes 1, 2 and 3, removing foreign equity restrictions in mode 3 market access, but retaining a requirement for FIPB approval.</p> <p>-- For travel agency and tour operator services, an improved commitment offer, fully binds modes 1, 2 and 3, removing foreign equity restrictions in mode 3 market access, but retaining a requirement for FIPB approval.</p> <p>-- A new commitment offered for tourist guide services binds mode 3 market access for locally incorporated services (subject to FIPB approval) for up to a total of 500 guides conversant in Chinese, Spanish, Portuguese, French and Japanese and overrides mode 4 horizontal section</p>	<p><b>-improved and expanded commitments</b> on hotels and restaurants (GATS/DDA do not include restaurants and catering) , adds full commitments in modes 1 and 2 and removes requirement of incorporation and foreign equity restrictions in mode 3 market access (DDA removes latter not former)</p> <p><b>-improved commitment</b> on travel agency and tour operator services, adds full commitments in modes 1, 2 and removes requirement of incorporation and foreign equity restrictions in mode 3 market access (DDA removes latter not former)</p> <p>-omits limited DDA commitment on tourist guide services</p>

		limitations for guides meeting these language requirements.	
<b>Comment</b>			
India's commitments in the FTA with Singapore appear to be marginally more liberalising than what is potentially on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	No commitments in sector.	<p><u>Maritime Transport Services:</u></p> <p>-- A new commitment is offered for international transportation of freight and passengers, subject to a 40 percent cargo preference for Indian flag ships on liner shipping and preferences for Indian flag shipping for dry, liquid and gas shipments other than for LNG but providing fairly unrestricted access for transport of passengers.</p> <p><u>Maritime Auxiliary Services:</u></p> <p>-- Fairly extensive and liberal commitments are offered in an offer of new commitments for (a) maritime cargo handling services, (b) storage and warehousing services in ports, (c) customs</p>	<p>Maritime Transport Services:</p> <p>-- <b>additional commitment</b> for international transportation of freight and passengers, but more limited than DDA offer because modes 1 and 2 are unbound, like DDA is less restricted access for transport of passengers.</p> <p><u>Maritime Auxiliary Services:</u></p> <p>--fairly extensive and liberal <b>additional commitments</b>, same as in DDA, for (a) maritime cargo handling services, (b) maritime agency services, (c) maritime freight forwarding services, (d) maintenance and repairs of seagoing vessels, and (e) ship broking services.</p> <p>-<b>additional commitment</b> not included in DDA offer for classification societies (except for</p>

		<p>clearance services, (d) container station and depot services, (e) maritime agency services, (f) maritime freight forwarding services, (g) international rental/charter of vessels, (h) maintenance and repairs of seagoing vessels, and (i) ship broking services.</p> <p><u>Maintenance and Repair of Aircraft Services:</u></p> <p>-- A very liberal and full commitment is on offer for aircraft repair and maintenance services subject only to mode 3 market access requiring potential FIPB approval.</p>	<p>statutory services for Indian flagships) full commitments in modes 1, 2, and 3</p> <p>-omits DDA-offered commitments in (a) storage and warehousing services in ports, (b) customs clearance services, (c) container station and depot services, (d) international rental/charter of vessels</p> <p><u>Maintenance and Repair of Aircraft Services:</u></p> <p>-- <b>additional commitment</b>, like DDA, for aircraft repair and maintenance services, full commitments in modes 1, 2 and 3 MA and NT</p> <p><b>-additional commitment</b> not included in DDA offer for international freight transport, full commitment mode 3 only MA and NT.</p>
<b>Comment</b>			
India's commitments in the FTA with Singapore appear to be marginally more liberalising than what is potentially on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, Cultural & Sporting Services	No commitments in sector.	-- New commitments are offered for (a) entertainment	<b>-additional commitments</b> (not in DDA) in library services and archive services,



		services (modes 2 and 3 and subject to FIPB approval) and (b) sporting and recreational services (modes 1, 2 and 3) and subject to FIPB approval.	both are full commitments in modes 1, 2, and 3 MA and NT.  <b>-additional commitment</b> (same as DDA) in modes 1, 2 and 3 in sporting and recreational services  -omits DDA offer of a commitment in entertainment services
<b>Comment</b>			
India's commitments in the FTA with Singapore appear to be marginally more liberalising than what is potentially on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
List of MFN Exemptions		-- India offers to drop the MFN exemption relating to cargo reservations (40:40:20) under the UN Liner Code.	

## PART II – FTA Provisions / Architecture

I. General Comments
<p>The FTA takes a positive list approach to services liberalisation. It also provides for negotiations on the liberalisation of trade in (a) “new services, including new financial services” and (b) services, the supply of which is not technically or technologically possible at the time of entry into force of the Agreement but which later becomes so. Such negotiations are to take place either during periodic reviews of the Agreement or immediately upon request by one of the parties.</p> <p>The chapter on the movement of natural persons defines various categories of visitors and affords them specified rights of temporary entry. These rights are extended only to suppliers of services that are committed in the Parties’ annexes of specific commitments relating to investment and services (except that they do not apply to suppliers of legal services in the case of Singapore)</p> <p>A Party is to give consideration to a request from the other Party incorporate into the Agreement treatment no less favourable than the treatment provided for in another agreement signed by the Party with a non-Party, provided that such incorporation should</p>

<p>maintain the overall balance of commitments between the Parties.</p> <p>Article 7.24 outlines the relationship between obligations under the Investment and Services Chapters of the Agreement.</p>
<p><b>II. Main Relevant Provisions</b></p>
<p>Chapter 6 - Investment</p> <p>Chapter 7 – Services</p> <p>Chapter 8 – Air Services</p> <p>Chapter 9 - Movement of Natural Persons</p> <p>Chapter 15 – Dispute Settlement</p> <p>Annex 7A: India's schedule of specific commitments</p> <p>Annex 7B: Singapore's schedule of specific commitments</p> <p>Annex 7C: Financial Services</p> <p>Annex 7D: Telecommunications Services</p> <p>Annex 9A: List of professionals</p> <p>Annexes 8 and 9 to the Exchange of Letters between the Parties, relating to the security exception for services and financial services, respectively.</p>
<p><b>III. Rules of Origin/ Denial of Benefits</b></p>
<p>Chapter 7 on services specifies that it does not apply to a “shell company”, i.e. a juridical person established and located in the territory of either Party with negligible or nil business operations or with no real and continuous business activities carried out in the territory of either Party. A natural person is defined to include nationals of the Parties as well as persons holding rights of permanent residence in a Party.</p> <p>In addition, Article 7.23 establishes that, subject to prior notification and consultation, a Party may deny benefits: (a) to a service that supplied from or in the territory of a non-Party; (b) in the case of a maritime transport service, when the vessel is registered in a non-Party or is operated or used by persons of a non-Party; (c) to a service supplied through a commercial presence if it is established that a person of a non-Party owns or controls or has acquired ownership or control of that service supplier; and (d) to the supply of a service from or in the territory of the other Party if it is established that the service supplier is owned or controlled by a person of the denying Party.</p>
<p><b>IV. Sector Specific Provisions</b></p>
<p>In the Chapter on Air Services the Parties essentially confirm their obligations under the GATS (which excludes air transport services to the extent they are measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights) and their existing bilateral Air Services Agreement, and commit to review the latter with a view to enhancing it.</p> <p>With respect to Financial Services, the Parties modify the definition of a service supplied in the exercise of governmental authority, confirm the right of the Parties to adopt prudential regulations and to protect personal data and confidential information, impose certain requirements of transparency, and prohibit measures restricting the</p>

transfer of financial information, subject to certain conditions. In an annex to their Exchange of Letters, the Parties commit to encourage cooperation in their respect securities and futures markets, and in the investigation and prosecution of money laundering offences.
<b>V. Recognition</b>
Article 7.11.2 calls for the Parties to “ensure” that their relevant professional bodies in architecture, accounting and auditing, medicine, dentistry and nursing negotiate and conclude mutual recognition agreements within 12 months of the entry into force of the agreement. Parties are to monitor the situation if this goal is not achieved. In addition, upon request by the other Party regarding other professional sectors, each Party is to encourage its relevant professional body to enter into negotiations on an MRA according to the website of the Government of Singapore, mutual recognition negotiations are ongoing.
<b>VI. Government Procurement</b>
Not included for services.
<b>VII. Other, including subsidies, safeguards</b>
<p>The Parties commit to review the issue of subsidies in the context of developments in international fora to which they are both parties. If one Party considers that its interests have been adversely affected by a subsidy or grant provided by the other Party then the other Party must, upon request, enter into consultations. The other Party is also to consider any request for information on the subsidy scheme or programme. However, the dispute settlement provisions of the Agreement do not otherwise apply with respect to subsidies.</p> <p>Each Party is prohibited from maintaining or imposing safeguard measures on the services and service suppliers of the other, and the Parties commit to review the issue of safeguard measures in the context of developments in international fora to which they are both parties.</p>

### East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
Japan	GATS/SC/46 & Supplements	Revised Offer TN/S/O/JPN/Rev.1 24 June 2005	Agreement between Japan and the Republic of Indonesia for an Economic Partnership, signed 20 August 2007, <b>not yet in force</b>

#### Part I - Comparison of Scheduled Commitments

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Mode 3 National Treatment: unbound for research and development subsidies.</p> <p>-- Mode 4 Movement of Persons: (a) intra-corporate transferees, incl. executives, managers and specialists, for a period not to exceed 5 years, (b) independent professionals for a period not to exceed 5 years, and (c) business visitors for a period not to exceed 90 days.</p>	<p>-- Mode 4 movement of persons provisions are updated to use newer classification descriptions and to add new category of contractual services suppliers.</p> <p>-- Periods of stay are changed... for example intra-corporate transferees and independent professionals now get an initial stay of one to three years with extension, with no set limit on extensions.</p> <p>-- The</p>	<p>-Business visitors to be granted entry for a period not to exceed 90 days (like GATS) and may be extended (like DDA).</p> <p>-Intra-corporate transferees, definition is similar to that in DDA/GATS, incl. executives, managers and specialists, initial period of 1 or 3 years, may be extended, no maximum period specified. (same as DDA)</p> <p>Independent professionals: initial period of 1 or 3 years, may be extended, no maximum period specified. (same as DDA) List of eligible professional categories is same as DDA, adds 4 categories to GATS list but remains restricted to</p>

		<p>situation with regard to various categories of legal services professionals is clarified.</p> <p>-- The period of time allotted to business visitors is now capable of extension.</p>	<p>legal and accountancy fields.</p> <p>-Category of natural persons of Indonesia who engage in business activities on the basis of a personal contract with an organization in Japan goes beyond GATS and resembles DDA category of contractual service supplier. Initial period of 1 or 3 years, may be extended, no maximum period specified. (same as DDA)</p> <p><b>Additional commitments,</b> not in GATS or DDA, for natural persons who engage in supplying services as nurses or certified careworkers or related activities on the basis of a personal contract with a public or private organization in Japan. For qualifying persons notified to Government of Japan by Government of Indonesia, may come for one year, which may be extended by same amount, not more than three times, for training purposes, including language training and supervised professional training. Entitled to take qualifying exams for "kangoshi", "kaigofukushishi" (no more than three times) and, if pass, may be granted entry and stay up to three years, which may be extended. Various safeguards and</p>
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			numeric limitations may be imposed by Government of Japan.
<b>Comment</b>			
<p>The horizontal commitments on mode 4 issues found in the EPA with Indonesia largely resemble those potentially on offer in the Japanese Doha Round offer. However, in another case where a bilateral FTA contains unique liberalising features not generally found in the GATS, Japan has agreed in the EPA with Indonesia to commitments permitting the temporary entry of persons who engage in supplying services as nurses or certified care workers.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	<p>-- <u>Professional Services:</u></p> <p>For "Bengoshi" lawyers, full commitments across modes provided the services are supplied by a natural person.</p> <p>For legal services on the law where the service supplier is a qualified lawyer and for international law legal services, full commitments across modes of supply, provided the services are supplied by a natural person who must reside in Japan not less than 180 days in a year for delivery under modes 1 or 2.</p> <p>For legal services applying to (a) patent questions [Benrishi] or (b) maritime procedures [Kaijidairishi], full commitments apply across modes but services must be supplied by a natural person.</p> <p>For accounting/auditing services, commitments in all modes of delivery except that market access is in all cases conditioned on commercial presence in Japan and services must be performed by a natural person or by an</p>	<p>-- <u>Professional Services:</u></p> <p>For legal services, "bengoshi" legal services are offered the possibility of being supplied not just by a natural person but also by a legal professional corporation.</p> <p>For legal services, "benrishi" legal services are offered the possibility of being supplied not just by a natural person but also by a Patent Business corporation.</p> <p>New legal services commitments are on offer for legal services addressed to (a) judicial scriveners, (b) administrative scriveners, (c) social insurance and labour consultants and (d) land and house surveyors.</p> <p>For taxation services, the offer provides the possibility of services provided</p>	<p>-- <u>Professional Services:</u></p> <p>-for legal services: in essence same as DDA, with <b>improvements and additional commitments</b> over GATS. For "bengoshi" legal services, improvement is that services may be supplied not just by a natural person but also by a legal professional corporation. Similarly, "benrishi" legal services may be supplied not just by a natural person but also by a Patent Business corporation. <b>Additional commitments</b> for: (a) judicial scriveners, (b) administrative scriveners, (c) social insurance and labour consultants and (d) land and house surveyors. For all categories, commitments across modes 1, 2 and 3, and commercial presence is required.</p> <p>-accounting/auditing services, essentially same as DDA, with only minor changes from GATS, namely removal of commercial presence requirement for supply of specified services "other" than those required to be supplied by a qualified</p>

	<p>Audit Corporation.</p> <p>For taxation services, commitments in all modes of delivery except that market access is in all cases conditioned on commercial presence in Japan and services must be performed by a natural person or by an Certified Tax Accountant Corporation.</p> <p>For architectural services, commitments in all modes but a requirement for commercial presence and services being supplied by a Japanese-recognised architect/building engineer.</p> <p>For engineering services, commitments in all modes but a requirement for commercial presence and services being supplied by a Japanese-recognised architect/building engineer.</p> <p>-- <u>Computer and Related Services:</u></p> <p>For all categories of computer and related services, full commitments across all modes of supply.</p> <p>-- <u>Research and Development Services:</u></p> <p>Full commitments across all modes for R&amp;D services on social sciences and</p>	<p>through a certified tax accountant corporation in addition to through natural persons.</p> <p>A new commitment is offered for rental and leasing services, without operators, of ships.</p> <p>A new commitment is offered for technical testing and analysis services for manufactured goods (with full commitments in all modes).</p> <p>A new commitment is offered for technical testing and analysis services covered by the measurement law in prescribed areas of testing, with full commitments across modes but with a requirement of commercial presence in Japan.</p> <p>A new commitment is offered to replace earlier commitments on placement services of personnel which removes possible needs testing and</p>	<p>“Koninkaikeishi” or Audit Corporation.</p> <p>-taxation services, , essentially same as DDA, with only minor changes from GATS, namely removal of commercial presence requirement for supply of specified services “other” than those required to be supplied by certified public tax accountant</p> <p>-architectural services, like GATS. Does not make DDA-type commitment in respect of slightly broader category of committed architectural services (CP 8671). Does however remove GATS requirement of commercial presence, but only for services which may be supplied by a supplier not qualified as a “Kenchikushi”</p> <p>-engineering services, <b>broader category of committed services</b> than GATS (removes exclusion of petroleum, petroleum products gas and mineral, as does DDA) but not quite as broad as DDA (which commits all architectural services and civil engineering consulting services in CP8672 and 8673, rather than only some sub-categories of them, commitments in all modes same as GATS (but unlike DDA does</p>
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	<p>humanities.</p> <p>-- <u>Real Estate Services:</u></p> <p>For real estate services involving property in Japan, commercial presence is required, otherwise full commitments across modes.</p> <p>For real estate services involving property outside of Japan, full commitments across modes.</p> <p>-- <u>Rental and Leasing Services without Operators:</u></p> <p>For rental and leasing of (a) transport equipment other than vessels and aircraft and (b) machineries and equipment other than transport equipment, full commitments across all modes of supply.</p> <p>-- <u>Other Business Services:</u></p> <p>For other business services, including (a) advertising, (b) market research and public opinion polling, (c) management consulting services, (d) services related to management consulting services, full commitments across all modes of supply.</p> <p>For placement services within Japan for a specified 29 categories of personnel, a market access commitment in mode 3</p>	<p>commits in mode 1 market access, provided commercial presence is satisfied.</p> <p>A new commitment is offered for investigation services, with full commitments in all modes.</p> <p>For convention services, an improved commitment now commits mode 1 supply.</p> <p>New commitments will full coverage of all modes are offered for (a) telephone answering services, (b) duplicating services, and (c) mailing list compilation and mailing services.</p>	<p>not require commercial presence for services supplied by an architect and/or building engineer qualified as a “kenchikushi” or supplier employing the same.))</p> <p><b>-additional commitment</b> on urban planning services, like DDA commits modes 1, 2 and 3, but unlike DDA does not require commercial presence for services supplied by an architect and/or building engineer qualified as or employing “kenchikushi”</p> <p><b>-additional commitments</b> (not in DDA) on (a) medical and dental services; and (b) veterinary services; (c) services provided by midwives, nurses, and para-medical personnel; and (d) physiotherapists qualified as “rigaku-ryohoushi” or dieticians qualified as Eiyoushi. All committed in mode two, veterinary services also in modes 3 and 4, and (a), (c) and (d) mode 3 unbound except that there is no limitation on the participation of foreign capital</p> <p><u>Computer Services:</u></p> <p>-same as GATS</p> <p><u>Research and Development Services:</u></p> <p>-contains same commitment as GATS, plus <b>additional</b></p>
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	<p>conditioned on needs testing and a commitment to mode 3 national treatment.</p> <p>For scientific and technical consulting services (excluding petroleum, gas, mineral and surveying) full commitments across all modes of supply.</p> <p>For surveying services within Japan, full commitments apply except that commercial presence is a requirement.</p> <p>For surveying services outside of Japan, full commitments apply across modes.</p> <p>Except where technically not feasible, full commitments across all modes of delivery apply in the case of (a) maintenance and repair services of equipment (excluding vessels, aircraft and transport equipment), (b) building cleaning services, (c) photographic services, (d) packaging services, (e) printing and publishing services, (f) convention services (unbound in mode 1),</p> <p>(g) translation and interpretation services, and (h) specialty design services.</p>	<p><b>commitments</b> (not in DDA) in respect of (a) natural sciences: and (b) interdisciplinary research and development, commitments in modes 1, 2, 3</p> <p><u>Real Estate Services</u></p> <p>-same as GATS</p> <p><u>Rental / Leasing Services without operator:</u></p> <p>-same 2 committed service categories as GATS, plus <b>2 additional</b> commitments. One (also in DDA) on rental and leasing services, without operators, of ships. Second (not in DDA) in respect of rental and leasing services, without operators, relating to aircraft.</p> <p><u>Other Business Services:</u></p> <p>-many committed services are same as GATS</p> <p>-several <b>additional or improved commitments</b> that match those in DDA, notably: (a) technical testing and analysis services for manufactured goods except where covered by measurement law (with full commitments in modes 1, 2, 3): (b) technical testing and</p>
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			<p>analysis services covered by the measurement law in prescribed areas of testing, (with a requirement of commercial presence); (c) improved commitment on placement services of personnel which removes possible needs testing (but mode 1 requires commercial presence) (d) improved commitments on supply services of personnel which removes possible needs testing (mode 1 market access requires commercial presence.): (e) investigation services, with full commitments across all modes; (f) for convention services, an improved commitment now commits modes 1 and 4 supply (GATS already committed 2 and 3, DDA adds 1) (g) telephone answering services full commitments in all modes (DDA modes 1, 2 3), (b) duplicating services full commitments in all modes (DDA modes 1, 2 3), and (c) mailing list compilation and mailing services full commitments in all modes (DDA modes 1, 2 3)</p> <p>-some <b>additional commitments</b> that go beyond those in DDA: (a) services incidental to agriculture, hunting and</p>
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			<p>forestry (modes 2, 3, 4); (b) services incidental to mining (modes 2, 3, 4 subject to compliance with domestic regulation) (c) services incidental to manufacturing: relating to aircraft industry, explosives manufacturing, leather and leather products manufacturing, arms industry, space industry and biological preparation manufacturing industry, commitments in modes 2 and 3, mode 3 MA subject to needs test and mode 3 NT subject to compliance with legislation; (d) other services incidental to manufacturing: full modes 2 and 3 commitments; (e) services incidental to energy distribution (electricity), commitments across modes 2 and 3, mode 3 MA subject to needs test and mode 3 NT subject to compliance with legislation (f) services incidental to energy distribution (steam and hot water), commitments across all four modes, mode 3 NT subject to compliance with legislation; (g) security guard services, modes 1 (commercial presence required), 2 and 3; (h) related scientific and technical consulting services related to petroleum, petroleum products, gas and</p>
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			<p>mineral, full commitments across modes 2, 3, 4; (i) credit reporting services, fully committed all four modes; (j) collection agency services which do not constitute the practice of law, fully committed in all four modes; (k) collection agency services which constitute the practice of law, committed in all four modes but with commercial presence and qualified bengoshi or similar requirements.</p>
<b>Comment</b>			
<p>While many of the commitments made in the EPA are also on offer by Japan in the Doha Round, there are a number of business and professional services which have been committed in the FTA but are not on offer in the Doha Round, including those on (a) medical and dental services: and (b) veterinary services: (c) services provided by midwives, nurses, and para-medical personnel: and (d) physiotherapists qualified as “rigaku-ryohoushi” or dieticians qualified as Eiyoushi. Committed Liberalisation of research and development services seems broader in the EPA and a large number of commitments in the EPA relating to “services incidental to...[other activities] appear to be more liberalising than what is on offer in the Doha Round.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communication Services	<p>-- <u>Telecommunications Services</u> (with GATS reference paper):</p> <p>For basic telecom services, full commitments in modes 1 and 2, but market access in mode 3 qualified by limitations on foreign capital in NTT/KDD and requirement that NTT/KDD Board of Directors members and auditors hold Japanese nationality.</p> <p>For value added services supplied by a company considered a "type II" telecommunications business, full commitments across all modes of supply.</p> <p>-- <u>Audiovisual Services</u>:</p> <p>For (a) motion picture and video tape production and distribution services and for (b) sound recording services, full commitments across all modes of supply.</p> <p>For motion picture projection services, unbound in mode 1 and full commitments in modes 2 and 3.</p>	<p>-- <u>Communication Services</u>:</p> <p>A new commitment with coverage across all modes is offered for postal/courier services.</p> <p>-- <u>Audiovisual Services</u>:</p> <p>The earlier commitment on motion picture projection services is offered for commitment in mode 1.</p>	<p><u>Postal/Courier Services</u></p> <p><b>-additional commitment</b>, same as DDA, with coverage across modes 1, 2 and 3. (and 4)</p> <p><u>Telecommunications Services</u></p> <p>-like DDA, main <b>improvement</b> is raising the foreign equity ceiling for investment in NTT to one-third (from GATS one-fifth). Also replaces requirement that KDD Board members and auditors be Japanese with same requirement for Regional Companies (and same remains for NTT).</p> <p><b>-additional commitment</b> (not in DDA) in respect of telegraph services, full mode 2 only</p> <p><u>Audiovisual Services</u></p> <p><b>-improved commitment</b> in motion picture projection (same as DDA) adds full mode 1 (and 4) commitments to GATS modes 2 and 3 commitments.</p> <p><b>-additional commitments</b> (not in DDA) for radio and television services and radio and television transmission services, both full mode 2 only.</p>

<b>Comment</b>
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Japan's liberalisation in the EPA in this sector goes beyond what is potentially on offer in the Doha Round, with commitments on telegraph services and radio and television transmission services.
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Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	For the full range of construction and related services, no commitments in mode 1 and full commitments across other modes of supply.	No new offers in sector	<b>-additional commitments</b> (not in DDA) for several services insofar as they relate to mining (GATS commitments exclude mining-related components) (a) general construction work for buildings relating to mining: (b) general construction work for civil engineering relating to mining: (c) installation and assembly work: (d) building completion and finishing work relating to mining: and (e) other relating to mining, all across modes 2, 3 and 4, subject to compliance with domestic regulation on mining rights, prior notification in accordance with laws, and commercial presence required for mode 4.
<b>Comment</b>			
Japan has a very forthcoming GATS schedule of commitments in construction services so the sector is probably fairly open. Nevertheless the absence of any offers in the Doha Round and the incorporation in the EPA of a considerable number of explicit commitments in respect mainly of mining-related construction services implies that the EPA is more liberalising.			



Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	For (a) commission agent's services, (b) wholesale trade services, (c) retailing services and (d) franchising services (except those distribution services relating to petroleum, petroleum products, rice, tobacco, salt and alcoholic beverages, full commitments across all modes.	<p>A new commitment is offered with full bindings for franchising services in the petroleum distribution sector.</p> <p>A very limited new commitment is offered for franchising services supplied at the public wholesale market (with needs testing possibilities).</p>	<p>-GATS commitments for commission agents' services, wholesale trade services, retailing services and franchising services exclude services related to specific products as well as services supplied at Public Wholesale Market. <b>Broader</b> commitment than GATS/DDA because the list of excluded services is shorter and, notably, does not include services related to rice, tobacco, salt. With regard to the excluded services, like DDA, this FTA makes <b>additional commitments</b> for (a) services related to petroleum and petroleum products, in modes 1, 2 and 3 for all four types of services as they relate to (subject to compliance with domestic law in mode 3 NT); and (b) services supplied at the public wholesale market, limited new commitment in modes 3 and 4 (with needs testing and compliance with applicable law requirement).</p> <p>Furthermore, <b>additional commitments</b> not contained in DDA offer are made for all four types of services as they relate to alcoholic beverages (across all four modes with needs testing in modes 3 and 4</p>

			market testing).
<b>Comment</b>			
The commitments made in the EPA for distribution services relating to alcoholic beverages means that the EPA is broader in its scope than the GATS and Doha offer by Japan.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	<p>For <u>insurance and related services</u>, full commitments across modes of supply except that commercial presence is required for insurance on goods transported within Japan and for ships of Japanese registry and 60 percent of the amount of reinsurance on compulsory third party liability automobile insurance is subject to compulsory coverage by the government</p> <p>For <u>Banking and other Financial services</u>, full commitments in modes 1 and 2, except that commercial presence is required for discretionary investment management services and that this presence must be in the form of a juridical person established in Japan. Mode 3 national treatment is qualified by the fact that the deposit insurance system does not cover deposits taken by branches of foreign banks.</p>	<p>For <u>insurance services</u>, the former requirement that 60 percent of reinsurance on 3<sup>rd</sup> Party auto insurance be covered by the government is offered for removal.</p>	<p>For insurance services, essentially same as GATS and DDA (minus GATS requirement that 60 percent of reinsurance on 3<sup>rd</sup> Party auto insurance be covered by the government)</p>
<b>Comment</b>			
EPA and GATS + Doha Offer appear relatively equal.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Educational Services	<p>For (a) primary and (b) secondary education services, commitments in mode 3 with the stipulation that education institutions must be established by school juridical persons.</p> <p>For higher education services, commitments in mode 3 with the stipulation that education institutions must be established by school juridical persons.</p> <p>For adult education services and "other education services", full commitments across all modes.</p>	An improved commitment to binding commitments in mode 2 is offered for higher education services.	<p><b>-additional commitments</b> (not in DDA) in pre-school education services supplied by nursery schools and child day-care services, full mode 2 and mode 3.</p> <p><b>- additional commitment</b> in modes 1(not in DDA) and 2 (same as DDA) for higher education services</p> <p>-same commitments as GATS for primary and secondary education.</p>
<b>Comment</b>			
The EPA commitments go marginally beyond the Doha Round offer in terms of liberalisation in this sector.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	For the following categories of environmental services, unbound in mode 1 (feasibility) and full commitments across other modes of supply: (a) sewage services, (b)	No offers in sector.	-essentially same as GATS except <b>limited improvement</b> in mode 3 market access for refuse disposal services, where needs test for disposal at sea removed.

	<p>cleaning services of exhaust gas, (c) noise abatement services, (d) nature and landscape protection services and (e) other environmental services.</p> <p>For (a) refuse disposal services, and (b) sanitation and similar services, no commitments in mode 1 (feasibility) and full commitments in other modes except for mode 3 market access where limitations may be placed on the number of licenses for suppliers of disposal of waste oil at sea.</p>		
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Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Health and Social Services	There are no commitments on hospital services other than to indicate that there is no limitation on participation of foreign capital in hospital services in Japan.	No offers in sector.	<p>-health services: <b>additional commitments</b> (not in GATS) on (a) medical services delivered in the ambulance, mode 2, and mode 3 unbound but no limit on participation of foreign capital: and (b) blood collection services as stipulated in law, bound across mode 2. Also <b>limited additional commitment</b> for residential health facilities services (mode 4 NT only).</p> <p>-social services, <b>additional commitment</b></p>

			not in GATS on Social services (excluding child day-care), mode 2 and mode 3 unbound but no limit on participation of foreign capital.
<b>Comment</b>			
The EPA commitments go considerably beyond those in the GATS schedule of Japan and given the absence of a Doha Round offer in this sector, the EPA must be considered as more liberalising than the GATS route.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Tourism and Related Services	For (a) hotels and restaurants, (b) catering services, (c) travel agencies and tour operators and (d) tourist guide services, wherever technically feasible, full commitments across all modes.	No offers in sector	-same as GATS (N.B. only slight change, is that category of services covered by commitment on hotels and restaurant services is broadened slightly). Also full mode 4 commitments for all committed services.

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	<p>-- <u>Maritime Transport Services:</u></p> <p>For international maritime services (passenger and freight), unbound in all modes. An additional commitment lists port services available on a non-discriminatory basis.</p> <p>For (a) maritime agency services, (b) pushing and towing services and (c) salvaging and refloating services, full commitments across all modes where feasible technically.</p> <p>-- <u>Air Transport Services:</u></p> <p>For aircraft repair and maintenance, full commitments where feasible but subject in mode 3 market access to possible needs testing.</p> <p>For (a) selling and marketing of air transport services and (b) for computer reservations systems, full commitments across all modes of supply.</p> <p>-- <u>Rail Transport Services:</u></p>	<p>-- <u>Maritime Services:</u></p> <p>For international maritime transportation services (freight and passengers), commitments are offered in modes 1, 2 and 3, with the mode 3 commitment on establishing a Japanese flag fleet unbound.</p> <p>A new commitment is offered on maintenance and repair of vessels with full commitments in mode 2.</p> <p>A new commitment is offered on maritime cargo handling with commitments in mode 2.</p> <p>A new commitment is offered in respect of container storage and depot services, with full commitments in modes 2 and 3.</p> <p>A new commitment is offered for maritime freight</p>	<p>-for international maritime transportation services (freight and passengers):</p> <p><b>additional commitment</b>, same as DDA commits in modes 1, 2 and 3, with the mode 3 commitment on establishing a Japanese flag fleet unbound, includes DDA reciprocity limitation for liner shipping. Adds mode 4 limited commitments.</p> <p><b>-additional commitments</b>, same services as DDA: (a) maintenance and repair of vessels (mode 2 and DDA+ adds modes 3 and 4, mode 3 market access subject to economic needs test for dock/berth extensions); (b) maritime cargo handling (modes 2 and 3, market access subject to licence limitations, adds mode 4 with same limitations); and (c) container storage and depot services, (modes 2 and 3, market access subject to licence limitations, adds mode 4 with same limitations)</p> <p><b>-additional commitment</b>, not in DDA, on rental of vessels with crew (excluding vessels flying flag of Japan), full</p>

	<p>Where technically feasible, full commitments across all modes for (a) maintenance and repair of rail transport equipment and (b) rental services of rail transport equipment with operators.</p> <p>-- <u>Road Transport Services:</u></p> <p>For (a) freight transport services and (b) maintenance and repair services of road transport equipment, commitments where technically feasible across all modes, but the possibility of temporary limitations on the number of suppliers in mode 3 market access for freight transport services.</p> <p>-- <u>Pipeline Transport Services:</u></p> <p>Full commitments across all modes for transport of goods other than fuels.</p> <p>-- <u>Services Auxiliary to All Modes of Transport:</u></p> <p>Full commitments across all modes of supply where technically feasible for (a) storage and warehouse services (except in petroleum sector) and (b)</p>	<p>forwarding services, with commitments across all modes but the grant of a license conditioned on reciprocity (see MFN exemptions).</p> <p>A new commitment with full commitments in mode 2 only is offered for maintenance and repair of vessels involved in inland waterways transport services.</p>	<p>commitments across all modes.</p> <p><b>-additional commitment</b> on maritime freight forwarding services like DDA commits across modes 1, 2, 3 (adds 4) and conditions the grant of a license on reciprocity, but more restrictive than DDA because also requires commercial presence (rather than just office registration) for modes 1 and 4.</p> <p>--for inland waterways transport services, <b>additional commitment</b>, like DDA, on maintenance and repair of vessels involved in inland waterway transport, (mode 2 plus DDA+ adds modes 3 and 4, mode 3 market access subject to economic needs test for dock/berth extensions):</p> <p><b>-additional commitment</b>, not in DDA, on space transport, across mode 2</p> <p><b>-additional commitments</b>, not in DDA, on rail transport services for: (a) passenger transportation: (b) freight transportation: (c) pushing and towing services: and (d) supporting services for rail transport, all across modes 2, 3 and 4, mode 3 national</p>
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	customs clearance agent services in Japan.		<p>treatment subject to prior notification in accordance with domestic laws for (except for pushing and towing)</p> <p>-for road transport services, <b>additional commitments</b>, not in DDA, on: (a) passenger transportation (modes 2, 3 (subject to needs test for MA and prior notification required NT) and 4 (needs test plus commercial presence required for MA); (b) rental of commercial vehicles with operator (full commitments all four modes) (c) supporting services for road transport services (commitments across all across all four modes, with modes 3 and 4 market access conditioned on needs for motorway businesses).</p> <p>-for pipeline transport, <b>additional commitments</b>, not in DDA, on transportation of fuels, natural gas and petroleum, for natural gas in mode 2 and in mode 3 but subject to needs test and prior notification in accordance with legislation, and for petroleum full commitments across all four modes.</p> <p>-for services auxiliary to all modes of transport, <b>three</b></p>
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			<p><b>additional commitments</b> (not in DDA), (a) cargo-handling services (excluding relating to maritime transport), (full commitments modes 2, 3 and 4); (b) storage and warehouse services relating to petroleum and petroleum products (full commitments modes 2, 3 and 4, mode 3 national treatment requires prior notification under applicable law); and (c) freight transport agency services (excluding relating to maritime transport), (commitments across all four modes with modes 1 and 4 market access requiring commercial presence).</p> <p><b>-possibly broadened commitment</b> (not in DDA) for customs clearance agent services related to Japanese Customs, adds commitments in modes 1, 2 and 4, market access for all three modes requires commercial presence.</p>
<b>Comment</b>			
<p>In its EPA with Indonesia, Japan goes considerably beyond what it has committed in GATS and placed on offer in the Doha Round. Examples include commitments on rental of vessels with crew, space transport, rail transport services, a certain number of road transport services and pipeline transport services for fuels, natural gas and petroleum</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, cultural and sporting services	For (a) news agency services, full commitments in all modes; for (b) entertainment services, (c) library services, (d) sporting and parks services, unbound where not feasible in mode 1, otherwise full commitments across modes of delivery.	No new offers in sector	<p><b>-possibly improved</b> commitment on entertainment services, binds mode 1 (and mode 4) in addition to GATS commitments in modes 2 and 3</p> <p><b>--additional commitments</b> (not in DDA) full commitments across all for modes for two types library, archive, museum and other services: (a) museum services including preservation services: (b) other cultural services</p> <p><b>-additional commitment</b> (not in DDA) for other recreational services not already committed, full commitments in modes 1, 2, 3 and 4</p>
<b>Comment</b>			
While it is difficult to be certain, the EPA appears to be marginally more liberalising than what is found in Japan's GATS schedule of commitments.			

Section	Pre-Doha Schedule Commitments	of Doha Round Offer	Commitments in FTA
Other Services	No commitments in GATS schedule	No offers in sector	<b>--4 new commitments</b> , not in DDA, for (a) washing, cleaning and dyeing services (excluding laundry collection services), full modes 2 and 3: (b) laundry collection services, full modes 2, 3, and 4; (c) hairdressing and other beauty services, full modes 2, 3 and 4: (d) Indonesian spa services (excluding medical related ones), full commitments modes 2, 3 and 4.
<b>Comment</b>			
Japan makes a number of commitments in the EPA which it has not made in GATS nor offered in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
List of MFN Exemptions	<p>-- Maritime Cabotage Services: Limited access to cabotage services by certain countries on the basis of FCN treaties with Japan.</p> <p>-- International freight forwarding services: Permits granted only to firms of those countries that offer reciprocal privileges to Japanese firms.</p> <p>-- International shipping services: Preservation of the right of possible countermeasures against shipping from those countries that may take action against Japanese shipping interests.</p>	The offer does not offer changes to the Japanese list of MFN exemptions.	<p>Annex 9</p> <p>--Maritime freight forwarding services: Permits granted only to firms of those countries that offer reciprocal privileges to Japanese firms. (narrower than GATS exemption, which applies to international freight forwarding services including multimodal)</p> <p>-- International shipping services: same as GATS (Preservation of the right of possible countermeasures against shipping from those countries that may take action against Japanese shipping interests)</p> <p>-Energy services (not in GATS): supply of services in electricity, gas and nuclear energy utilities: preferential treatment may be accorded to the service suppliers of a non-Party</p> <p>-Fisheries related services (not in GATS) preferential treatment may be accorded to service suppliers of a non-Party for: (a) investigation of aquatic resources without taking such resources; (b) luring of aquatic resources; (c) preservation and processing of fish catches; (c) transportation of fish</p>

			catches and fish products; and (e) provision of supplies to other vessels used for fisheries.
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## PART II – FTA Provisions / Architecture

<b>I. General Comments</b>
<p>-Agreement adopts a positive list approach to services liberalization. Covers both services and investment</p> <p>-Note that Japan's schedule contains no horizontal limitations and contains many services for which mode 4 is committed, "None". These must, however, be read together with separate Chapter 7 and Annex 10 which set out limitations on movement of natural persons.</p>
<b>II. Main Relevant Provisions</b>
<p>Chapter 5, Investment</p> <p>Chapter 6, Trade in Services</p> <p>Chapter 7 Movement of Natural Persons</p> <p>Chapter 14, Dispute Settlement</p> <p>Annex 7, Financial Services</p> <p>Annex 8, Specific Commitments</p> <p>Annex 9 MFN Exemptions</p> <p>Annex 10 on Movement of Natural Persons</p>
<b>III. Rules of Origin / Denial of Benefits</b>
<p>Article 90 establishes that a Party may deny the benefits under that Chapter to service suppliers of the other Party that are owned or controlled by persons of a non-Party when the denying Party (1) does not maintain diplomatic relations with the non-Party; or (2) has measures in place that prohibit transactions with the service supplier which would be violated or circumvented if the service supplier were afforded benefits under the Chapter. In addition, and subject to prior notification and consultation a Party may deny the benefits under that Chapter to service suppliers of the other Party that are owned or controlled by persons of a non-Party and has no substantial business activities in the territory of that Party.</p> <p>Article 93 defines natural persons as nationals of the Parties.</p>
<b>IV. Sector Specific Provisions</b>
<p>Air transport services are excluded from scope to the extent they are measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights. Maritime transport cabotage is also excluded.</p> <p>Annex 7 contains specific provisions on financial services.</p>
<b>V. Recognition</b>

Article 84. Recognition may be through harmonization, unilateral recognition or agreement. No obligation to include other Party in any agreement reached with a non-Party, but obligation to afford the other Party adequate opportunity to demonstrate that its education, experience, certifications etc. should also be recognized. Annex 10 specifies Indonesian qualifications and experience that nurses and certified careworkers must have for purposes of entering Japan in order to commence additional training for purposes of obtaining Japanese qualification in those disciplines.

#### **VI. Government Procurement**

Article 76.2(f) excludes government procurement from the services chapter. However, Chapter 10 aims to improve transparency and cooperation in government procurement through the exchange of information and the creation of a Sub-Committee on government procurement.

#### **VII. Other, including subsidies, safeguards**

Subsidies are excluded from the services chapter. Article 89 provides that the Parties shall take note of multilateral negotiations on an emergency safeguard measure pursuant to Article X of the GATS. It also provides that the Parties shall consult on appropriate amendments to their agreement once those negotiations have been concluded. In the meantime, one Party may request consultations with the other if it wants to take appropriate measures in the event that the implementation of the agreement causes substantial adverse impact in a specific service sector.

### East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
Malaysia	GATS/SC/52 & Supplements	Revised Offer TN/S/O/MYS/Rev.1 31 January 2006	ASEAN Framework Agreement on Services (2003), Sixth Package of Commitments (November 2007)

#### PART I - Comparison of Scheduled Commitments

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Mode 3 Market Access: the acquisition of assets or interests of Malaysian companies, mergers and takeovers requires government approval.</p> <p>-- Mode 3 National Treatment: Speculative or non-productive acquisition of land or real estate may be denied by government authorities.</p> <p>-- Mode 3 National Treatment: Incentives and Preferences - (a) incentives limited to Malaysian companies, (b) Bumiputera preferences unbound, (c) government to give first preference to</p>	-- No changes indicated in the offer to the Horizontal Schedule.	--horizontal commitments same as in the GATS



	<p>supply of services from companies in which the government has an interest.</p> <p>-- Mode 4 Movement of Persons: temporary residence in Malaysia for up to five years permitted for (a) intra-corporate transferees, (b) specialists with proprietary knowledge and (c) professionals with qualifications recognised by professional bodies in Malaysia and registered with those bodies. (d) business visitors receiving no remuneration from within Malaysia may stay for periods of up to 90 days.</p>		
<b>Comment</b>			
GATS Schedule horizontal commitments unchanged by Doha Round offer or commitments made within ASEAN Framework Agreement.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	-- <u>Professional Services:</u> Commitments on (a) legal services (home country, international and overseas incorporation law only) with commitments in modes 1 and 2 and	<u>Architectural Services:</u> -- A new commitment offered for mode 3 (market access) would permit foreign equity not to exceed 10 percent in multidisciplinary	-- <u>Professional Services:</u> (a) legal services: same as GATS, (b) accounting services: commitments in modes 1, 2 and 3 same as GATS except that requirement that mode 3 commercial presence by only through a locally registered partnership with Malaysian

	<p>in mode 3 only in Labuan, (b) accounting services, with commitments in modes 1, 2 and 3 but a requirement that mode 3 commercial presence by only through a locally registered partnership with Malaysian accountants with foreign interests below 30%, (c) taxation services, with commitments in modes 1, 2 and 3 but a requirement that mode 3 commercial presence by only through a locally registered partnership with Malaysian accountants with foreign interests below 30%, (d) architectural services with commitments in modes 1, 2 and 3 but a limit on mode 3 commercial presence to supply only by natural persons, (e) engineering services with commitments in modes 1, 2 and 3 but a limit on mode 3 commercial presence to supply only by natural persons, (f) integrated engineering services, with</p>	<p>practice joint ventures (but no foreign directorship). National Treatment is unbound for this commitment.</p> <p><u>Engineering Services:</u></p> <p>-- A new commitment offered for mode 3 (market access) would permit foreign equity not to exceed 10 percent in multidisciplinary practice joint ventures (but no foreign directorship). National Treatment is unbound for this commitment.</p> <p><u>Urban Planning Services:</u></p> <p>-- An offer of a mode 4 only, market access only commitment to permit independent professionals to work on urban planning when contracted by a Malaysian company and consultants on wholly public funded projects in collaboration with a Malaysian company. Commitment also refers to a qualification examination. No national treatment</p>	<p>accountants with foreign interests below <b>45%</b> (GATS is 30%), plus <b>additional mode 4 commitment</b> allowing entry for 5 specialists/experts for each institution, for up to two years, subject to registration with MIA (Malaysian Institute Accountancy), residency requirements and domestic regulations), but no NT commitment; (c) taxation services: commitments in modes 1, 2 and 3 same as GATS except that requirement that mode 3 commercial presence be only through a locally registered partnership with Malaysian accountants <b>or private limited company</b> with foreign interests in the partnership below <b>45%</b>(GATS is 30%), plus <b>additional mode 4 commitment</b> allowing entry for 2 specialists/experts for each institution, for up to two years, subject to registration under applicable legislation, residency requirements and domestic regulations, but no NT commitment; (d) architectural services: <b>additional market access commitments in mode 3:</b> would permit foreign equity not to exceed <b>30%</b> (DDA offer 10%) in multidisciplinary practice joint ventures (but no foreign directorship): and <b>mode 4:</b> allowing entry for 2 specialists/experts per country, subject to qualification of registration</p>
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	<p>commitments in modes 1 and 2 and with mode 3 commercial presence access required through a local representative office or joint venture with Malaysians, (g) medical specialty services with commitments in modes 1, 2 and 3 but a limit on mode 3 commercial presence to supply only by natural persons.</p> <p>-- <u>Computer and Related Services:</u> Commitments for modes 1 and 2, but a requirement to work through a joint venture of local Malaysian company with foreign equity below 30% for market access for (a) consultancy services on hardware installation, (b) consultancy services for software implementation, and (c) database services. Full commitments in all modes with no limitations for (d) computer software development services.</p> <p>-- <u>Research and Development Services:</u> Commitments for</p>	<p>bindings.</p> <p><u>Computer and Related Services:</u></p> <p>-- A new and potentially interesting commitment is offered in data processing services with bindings on both market access and national treatment.</p> <p>-- Formerly imposed requirement to work through Malaysian Joint Venture with foreign equity lower than 30 percent is offered to be removed for (a) computer hardware installation services, (b) consultancy services relating to software implementation and (c) database services.</p>	<p>and domestic regulations, registration on an annual basis and renewal subject to domestic regulations, but no NT commitment; (e) engineering services: <b>additional mode 3 commitment</b> (market access) would permit foreign equity not to exceed 30% (DDA offer 10%) in multidisciplinary practice joint ventures (but no foreign directorship)(N.B., unlike DDA offer, does not exclude quantity surveyors from multidisciplinary practices covered). National Treatment commitments in modes 1, 2 and 3 (vs. limit in DDA offer where NT unbound on above mode 3 commitment), (f) integrated engineering services: same as GATS; (g) Urban planning services: no commitments (although DDA offer includes a limited mode 4 commitment); (h) <b>new commitment in Landscape architectural services</b>, with commitments in modes 1 and 2 and with mode 3 commercial presence access required through locally registered partnership or Malaysian controlled corporations or both and aggregate foreign shareholding no more than 40%, and mode 4 allowing entry for 2 specialists/experts per institutions, subject to qualification of registration and domestic regulations, temporary registration for a</p>
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	<p>modes 1 and 2, but a requirement to work through a joint venture of local Malaysian company with foreign equity below 30% for market access for research and experimental development services on social sciences and humanities.</p> <p>-- <u>Rental / Leasing Services without Operators:</u> Full commitments on modes 1 and 2 but a requirement that mode 3 commercial presence be through a representative office or Malaysian corporation acting as agent for rental leasing services relating to (a) ships, (b) aircraft, and (c) construction and mining equipment / industrial plant and equipment.</p> <p>-- <u>Other business services:</u> Full commitments in modes 1 and 2 and a commitment to national treatment in mode 3, but with mode 3 market access conditioned on working through a locally incorporated joint venture with</p>		<p>maximum of one year and entry subject to domestic regulations, NT commitment in modes 1, 2 (subject to domestic regulation), 3, but not 4:</p> <p>(i) <b>new commitment in landscaping services</b>, (same as DDA offer) commitments in modes 1, 2 and 3 but a requirement that mode 3 commercial presence by only through a locally registered partnership with Malaysian individuals or corporations and aggregate foreign interests no more than 30%, NT commitments in modes 1,2,3, no mode 4 commitments of either type: (j) <b>new commitment in subsurface surveying services</b> (seismic site surveys), mode 2 market access only: (k) <b>new commitment in surface surveying services</b> (quantity surveying, specialist services in provision arbitration/litigation, tax depreciation etc), modes 1 and 2 market access only: (l) <b>new commitment in surface surveying services</b> (building surveying services, as specified) mode 2 market access only: (m) medical specialty services: <b>no</b> commitments (although GATS includes modes 1, 2 and 3 with a limit on mode 3 commercial presence to supply only by natural persons)</p> <p><u>Computer Services:</u> --same as DDA offer, including: new and</p>
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	<p>Malaysians and Bumiputera shareholding in the joint venture of at least 30 percent for the following services: (a) management consulting affecting transmission of non-conventional energy, (b) management consulting affecting environmental management, (c) management consulting services in the field of pharmacy, (d) management consulting services affecting value-added network services, (e) specified services incidental to agriculture and fisheries, (f) services incidental to manufacturing, and (g) technical testing and analysis services, (h) market research and public opinion polling, (i) convention and exhibition management services.</p> <p>Full commitments in all modes on student placement services.</p> <p>Full commitments in all modes on translation and interpretation services, but with a</p>		<p>potentially interesting commitment in data processing services with bindings on both market access and national treatment, and does not include GATS mode 3 requirement to work through Malaysian Joint Venture with foreign equity lower than 30 percent is offered to be removed for (a) computer hardware installation services, (b) consultancy services relating to software implementation and (c) database services. (? Slight discrepancies between GATS (8440) and FTA (844/84400) in CPC numbers for database services commitment, plus wording in GATS under CPC 842 and 842* seems more limited than FTA 842)</p> <p><u>Research and Development Services:</u></p> <p>-- same as GATS for social sciences and humanities, <b>additional commitment</b> for economics: MA and NT commitments for modes 1 and 2, but mode 3 MA commitment subject to requirement to work through a joint venture of local Malaysian company with foreign equity below 35%</p> <p><u>Rental / Leasing Services without operator:</u></p> <p>-- same as GATS regarding ships: does not include GATS commitment relating to aircraft (?dealt with separately?); as regards construction</p>
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	<p>requirement that mode 3 market access may only be in the form of supply by a natural person.</p> <p>For advertising services, market access is permitted only through mode 3 and conditioned on joint venture with Malaysians with foreign shareholding below 30%. In addition, electronic media advertising must be made in Malaysia with at least 80 percent local content.</p> <p>A commitment for operational headquarters services for certain sectors, must be through mode 3 and be found to operate independently and to the benefit of the Malaysian economy.</p>	<p>machinery and equipment without operator, scope FTA commitment slightly different (?broader), plus <b>more liberal</b> mode 3 MA restriction: instead of requirement that commercial presence be through a representative office or Malaysian corporation acting as agent for rental leasing services (GATS), requirement that it be through a joint venture with Malaysian individual/corporation with foreign equity below 30%.</p> <p><u>Other Business Services:</u></p> <p>-- advertising: same as GATS except that mode 3 market access requirement of commercial presence through a joint venture of local Malaysian company with foreign equity below <b>49%</b> vs. GATS 30%)</p> <p>- market research services: <b>additional commitment</b> in MA and NT, modes 1, 2 and 3 except that mode 3 MA subject to requirement that commercial presence be through a joint venture of local Malaysian company with foreign equity below 35%.</p> <p>-management consulting: same as GATS</p> <p>-services incidental to agriculture, fishing, manufacturing: FTA does not include any commitment, GATS does</p> <p>-technical testing and</p>
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			<p>analysis: same as GATS</p> <p>-Convention Centre: planning, marketing management conventions: same as GATS (in MA and NT, modes 1, 2 and 3 except that mode 3 MA subject to requirement that commercial presence be through a joint venture of local Malaysian company with foreign equity below 30% for convention centres of up to 3000 seating capacity,) with <b>more liberal restriction: foreign equity below 49%</b> for centres with more than 5000 seating capacity.</p> <p>-translation and interpretation services: same as GATS in MA and NT for modes 1, 2 and 3, but <b>additional mode 4</b> commitments: MA and NT both no limitation except subject to domestic limitation (vs. GATS, unbound, plus translation/interpretation English/Malay or vice versa not permitted)</p> <p>-student placement centres: same as GATS</p> <p>-operational Headquarters Services: similar to GATS except that: scope of FTA commitment is broader (all OHQ services vs. services related to sea and air, communication, tourism, professional and consulting services) and MA and NT commitments in modes 1 and 2 (vs GATS where unbound due to lack of technical feasibility)</p>
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			-International Procurement Centre (IPC) and Regional Distribution Centre (RDC): <b>additional commitments</b> for each in modes 1, 2, 3, 4 MA and NT, except that mode 3 MA must be locally incorporated, conduct its business in Malaysia, and fulfil the criteria of an IPC or RDC
<b>Comment</b>			
<p>Malaysia already has generally good commitments on business services in its GATS schedule of commitments, so the base starting point for liberalisation is fairly high. In the Doha Round, a relatively large number of additional and/or improved offers are put forward on business services. However, Malaysia's commitments on business services Liberalisation in the ASEAN context are even more extensive and go beyond GATS and the Doha Round offer in a considerable number of areas, including: architectural services; sub-surface and surface surveying services; market research services, convention centre planning; and services related to a regional distribution centre's operation.</p>			



Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communications Services	<p>-- <u>Telecommunications Services</u> (with a customised version of the GATS reference paper):</p> <p>A commitment on basic telecommunications services in modes 1 and 2 and in mode 3 only through acquisition of shares of existing public telecommunications operators (with foreign shareholding limited to 30%).</p> <p>Commitments on specified value-added telecommunications services in modes 1 and 2 and in mode 3 only through acquisition of shares of existing public telecommunications operators (with foreign shareholding limited to 30%).</p> <p>-- <u>Audiovisual Services</u>: A commitment in mode 2 on motion picture, video tape and audio</p>	<p>-- For <u>basic telecommunications services</u>, a new commitment is offered to permit foreign participation in services provision through (a) acquisition of up to 30% of stock in a network facilities provider or network services provider or up to 49% interest in an application services provider - with either (a) and (b) controlled by Malaysians.</p> <p>-- For <u>value added telecommunications services</u>, a new commitment is offered to permit foreign participation in services provision through (a) acquisition of up to 30% of stock in a network facilities provider or network services provider or up to 49% interest in an application services provider - with either (a) and (b) controlled by Malaysians.</p>	<p><u>Telecommunications Services</u>:</p> <p>Basic telecommunications: like GATS except mode 3 limit to acquisition of shares of existing public telecommunications operators up to <b>49%</b> (vs. GATS 30% limit), except for telex services, where mode 3 foreign ownership limit is <b>35%</b> (vs. GATS 30%)</p> <p>Value-added telecommunications services commitments in modes 1 and 2 and 3 similar to GATS except mode 3 limit to joint venture or acquisition of shares of existing public telecommunications operators up to <b>49%</b> (vs. GATS 30% limit), plus <b>limited additional mode 4 commitments</b>: for data and message transmission services, and for mobile data services: NT commitment and MA commitment for two specialists/experts for each institution, for a maximum period of two years, subject to domestic regulations.</p> <p><u>Audiovisual Services</u></p> <p>-same as GATS</p>

	recording distribution services and in mode 3 only through a Malaysian controlled company with less than 30 percent foreign equity.	<u>Audiovisual Services:</u> offer	No	
<b>Comment</b>				
Malaysian commitments made in the ASEAN context additional to those included in the GATS schedule do not appear to be materially more liberalising than those potentially on offer in the Doha Round.				

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	-- <u>Construction Services</u> : A commitment on construction work in mode 3 requiring access only through a representative office or through a Malaysian controlled company / joint venture with less than 30 percent foreign equity.	-- In commercial presence mode, a market access commitment is offered to permit project-by-project construction work by foreign construction companies, subject to compulsory sub-contracting to local contractors, on projects (a) financed by foreign investment or grants, (b) financed by loans of international tendering, (c) projects financed at least 50% by foreign investment and where local expertise is not available, and (d) Malaysian funded projects where local expertise is not available. Unbound on national treatment.	-like GATS but more relaxed mode 3 limitation allows higher foreign shareholding, <b>broad commitment that allows majority foreign ownership</b> , up to 51% (vs. GATS 30%).
<b>Comment</b>			
Malaysia's FTA-related commitments may be marginally more liberalising than what is potentially on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	No commitments	No commitments	-- <b>commitment</b> (none in GATS or DDA) for wholesale and retail trade businesses: in modes 2 (MA and NT) and 3 market access (subject to requirements of: local incorporation: no more than 30% foreign equity (plus Malaysian holdings must include at least 30% Bumiputeras), and minimum capital requirements) and mode 4: 1 key post and up to 10 time posts per company, subject to certain conditions including training of Malaysians to take over time posts.
<b>Comment</b>			
With no commitments in GATS and none on offer in the Doha Round, Malaysia's ASEAN-related commitments are far more liberalising than GATS.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	<p>A commitment on offshore banks where modes 1 and 2 are unbound and mode 3 access is confined to Labuan and limited to the establishment of a branch registered or subsidiary incorporated in Malaysia.</p> <p>A commitment on commercial banks and merchant banks where modes 1 and 2 are unbound and mode 3</p>	No new offers	<p>Commitments on advisory, intermediation and other auxiliary financial services in the third package of ASEAN commitments:</p> <p>-- provision of investment or portfolio advice requires local presence;</p> <p>-- services other than investment or portfolio advice must be undertaken in joint venture with Malaysian</p>

	<p>access is (1) grandfathered for existing 13 wholly owned foreign banks and where (2) new entrants are required to access the market through Malaysian-controlled institutions having foreign shareholding not above 30 percent, with no single foreign individual holding more than 20% of shares. The horizontal schedule rules on temporary entry are clarified somewhat for specialists in financial services (e.g. trade financing specialists).</p> <p>Direct insurance companies limited to mode 3 access through companies with not more than 51% foreign equity and new entrants (post 1998) limited to not more than 30% foreign equity.</p> <p>For banking services, such as acceptance of deposits, activities are only permitted through a commercial, merchant or offshore bank, with offshore banks limited to acceptance of foreign currency deposits.</p> <p>A range of other financial services activities are subject to commitments at varying levels including (a) lending, (b) financial leasing, (c) payment and money transmission services, (d) charge card services, (e) guarantees and commitments, (f)</p>		<p>commercial or merchant banks.</p> <p>Entry as non-bank is limited to establishment of locally controlled joint venture with foreign shareholding below 30% or a representative office limited to research activities where research output may not be published or circulated in Malaysia.</p> <p>Commitments on direct insurance companies require local incorporation with foreign shareholding of not more than 51%.</p> <p>New entry of direct insurance companies (post June 1998) is limited to equity participation by foreign insurance companies in locally incorporated insurance companies, with aggregate foreign shareholding not to exceed 30%.</p>
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	money and foreign exchange broking, (g) trading for own account of for account of customers, (h) underwriting, (i) asset management, (j) securities broking services and (k) commodities futures trading services.		
<b>Comment</b>			
With no new offers of liberalisation in the Doha Round, Malaysia has clearly gone further through its commitments made in ASEAN than it has in the GATS.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Educational Services	No commitments	<p>-- A new commitment offered would commit to mode 1 market access for franchise and twinning arrangements between foreign and Malaysian institutions (but no national treatment);</p> <p>-- Malaysia offers a binding commitment on mode 2 market access for students moving abroad, including students under franchise and twinning arrangements.</p> <p>-- A higher education commitment offered in respect of mode 3 is limited to foreign equity not to exceed 49% and an economic needs test (although a higher level of equity participation may be considered where the courses and research are considered critical to Malaysia.</p>	<p><b>-additional commitments</b> for primary and general secondary education, NT and MA commitments in modes 2 and 3 with mode 3 MA limitation on commercial presence only through a joint venture with foreign equity no more than 49%, plus all such commitments <u>only for international schools</u></p> <p><b>-additional commitment</b> for other education services, NT and MA commitments in modes 2 and 3 with mode 3 MA limitation on commercial presence only through a joint venture with foreign equity no more than 49%</p> <p><b>-additional commitment</b> for technical and vocational secondary educational services (including for handicapped students) as above plus requirement to use national curriculum.</p> <p><b>-additional commitments</b> for other higher education services and adult education services by privately funded institutions, MA modes 2, 3, mode 3 subject to maximum 49% foreign equity plus needs test if</p>

			necessary (but may be up to 51% foreign equity subject to additional criteria including courses to attain Malaysia-s educational objectives or to generate export revenues), mode 4, MA and NT unbound except for detailed provisions on entry and temporary stay of: intra-corporate transferees, lecturers and experts, professionals, business visitors, and contractual service suppliers.
<b>Comment</b>			
Commitments made by Malaysia in the ASEAN FTA context appear to be more liberalising and across a greater range of education services than are affected by the potential liberalisation offered in the Doha Round.			



Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	No commitments	No commitments	<b>commitment</b> on wastewater management services, MA and NT, modes 1, 2 and 3, 3 subject to joint venture requirement with maximum foreign equity of 30%.
<b>Comment</b>			
Liberalisation commitments in the FTA context are clearly more significant. No WTO commitments or offers in this sector.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Health & Social Services	For private hospital services, full commitments in modes 1 and 2, with mode 3 market access limited to joint venture operations with not more than 30% foreign equity, a facility with at least 100 beds and satisfaction of an economic needs test.	No offers	<p>--<b>additional commitment</b> on medical speciality services (services listed), MA modes 1, 2 and 3 (last subject to requirement that services supplied only by a natural person), and NT mode 4 with limitation to practice in hospitals of at least 50 beds, no change of location without approval, and no individual or joint group practices, plus qualifying exam in English.</p> <p>-<b>additional commitment</b> on veterinary services for equine animals in equestrian or turf clubs, in modes 1 (MA only), 2, and 3 (MA only), and mode 3 commitment subject to requirement of a joint venture with no more than</p>

			<p>49% foreign equity and ownership restricted to veterinarian professionals with qualifications recognised by</p> <p>and registered with professional bodies</p> <p>-commitment on private hospital services same as GATS except that foreign equity limit in mode 3 is <b>49%</b> (vs GATS 30% and DDA 40%)</p>
<b>Comment</b>			
<p>Malaysian commitments made in the FTA context are clearly more liberalising than what is potentially on offer through the Doha Round where no new commitments have been offered.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Tourism & Related Services	Commitments on mode 3 only through joint venture with foreign equity less than 30 percent for (a) hotel, tourist resort and restaurant services and (b) travel agency and tour operators' services.	No offers	<p>-commitment on hotel, tourist resort and restaurant services is both narrower and broader than GATS. Narrower because commitment made in respect of only specified sub-sub-sectors of 641 (vs. GATS 641 commitments at a more aggregated level) and no commitment for CPC 87909, as is in GATS: broader because includes mode 3 MA foreign equity limit of <b>49%</b> (vs. GATS 30%)</p> <p><b>-broader commitment</b> on travel agencies and tour operator services because includes mode 1 NT and MA commitments and because includes 3</p>

			<p>MA foreign equity limit of <b>49%</b> (vs. GATS 30%), and does not include GATS requirement of additional licences for additional offices</p> <p><b>-additional commitment</b> on tourist guide services, in modes 1, 2 and 4, MA and NT</p> <p><b>-additional commitment</b> on Theme Parks, MA and NT modes 1, 2, 3 subject to mode 3 MA requirement that commercial presence be through local joint venture with no more than 49% foreign equity.</p>
<b>Comment</b>			
<p>Malaysian commitments made in the FTA context are clearly more liberalising than what is potentially on offer through the Doha Round where no new commitments have been offered.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	Full commitments in modes 1 and 2 for (a) international maritime transportation services (b) maritime agency services and (c) vessel salvage and re-floating services but with mode 3 access in these sectors limited to working through a representative office or locally incorporated joint venture with Bumiputera shareholding of at least 30 percent.	No offers	<p>GATS-like full commitments in modes 1 and 2 for (a) international maritime transportation services (b) maritime agency services but mode 3 MA commitment for former a bit broader (maximum foreign equity <b>40%</b> vs. GATS 30%) and for latter a bit narrower (joint venture must have Bumiputera shareholding of at least <b>40%</b>, vs GATS 30%)</p> <p>-unlike GATS, <b><u>no commitment</u></b> on vessel salvage and re-floating services</p> <p><b>-additional commitments</b> for rental of cargo vessels with and without crew and rental and leasing services of seagoing vessels with operator in all four modes for MA, modes 1 and 2 for NT, except that mode 3 MA subject to requirement of working through a representative office or locally incorporated joint venture with Bumiputera shareholding of at least 40%, and mode 4 only allows ship crews to disembark for duration berth, subject to domestic regulation.</p> <p><b>-narrower commitment</b> on vessel salvage, because mode</p>

			<p>3 MA requires working through a representative office or locally incorporated joint venture with Bumiputera shareholding of at least <b>40%</b>, (vs GATS 30%)</p> <p><b>-additional commitment</b> on maritime freight forwarding services, in modes 1, 2, and 3 NT and MA, except that mode 3 MA requires working through a representative office or locally incorporated joint venture with maximum foreign equity of 49%.</p> <p><b>-additional commitment</b> on maintenance and repair vessels, in mode 2, NT and MA, and mode 3 MA except that requires working through a representative office or locally incorporated joint venture with maximum foreign equity of 40%.</p>
<b>Comment</b>			
<p>Malaysian commitments made in the FTA context are clearly more liberalising than what is potentially on offer through the Doha Round where no new commitments have been offered.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, Cultural and Sporting Services	A commitment to allow (a) mode 3 market access only through natural persons for "other entertainment services" and a commitment to permit	No offers	Same as GATS

	mode 3 market access for sports event management services only through a Malaysian controlled sponsor.		
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Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Other Services	-- Skills Training Services: Full commitments in modes 1 and 2, with mode 3 market access conditioned on joint venture with Malaysian controlled interests and foreign equity of not more than 30 percent.	No offers	Same as GATS

## PART II – FTA Provisions / Architecture

<b>I. General Comments</b>
<p>AFAS adopts a positive list approach to services liberalisation, with multiple rounds of negotiations for progressive liberalisation.</p> <p>The ASEAN Economic Community Blueprint adopted by the ASEAN Leaders at the 13th ASEAN Summit on 20 November 2007 in Singapore sets out concrete steps to be taken to achieve a free flow of services by 2015. In addition, certain priority sectors have been identified as targets for accelerated integration.</p> <p>The Protocol to Amend the ASEAN Framework Agreement on Services signed on 2 September 2003 in Phnom Penh, Cambodia provides for the application of “ASEAN Minus X” formula in the implementation of Member Countries’ services commitments. Under this formula, countries that are ready to liberalise a certain service sector may proceed do so without having to extend the concessions to non-participating countries.</p> <p>Disputes are subject to the Protocol on Dispute Settlement Mechanism for ASEAN unless and until a special mechanism is adopted for AFAS.</p>
<b>II. Main Relevant Provisions</b>
<p>AFAS, Protocol to Amend AFAS, and six packages of specific commitments by Member States, as follows:</p> <p>ASEAN Framework Agreement On Services, Bangkok, 15 December 1995</p> <p>Protocol to Amend the ASEAN Framework Agreement on Services, Phnom Penh, Cambodia, 2 September 2003</p> <p>Initial Package (1997)</p>

<p>Second Package (1998)</p> <p>Third Package (2001)</p> <p>Fourth Package(2004)</p> <p>Fifth Package (2006)</p> <p>Sixth Package (2007)</p>
<b>III. Rules of Origin / Denial of Benefits</b>
<p>Article VI of AFAS provides for the denial of benefits to a service supplier who is a natural person of a non-Member State or a juridical person owned or controlled by persons of a non-Member State constituted under the laws of a member State, but not engaged in substantive business operations in the territory of member State(s). In the absence any express provision in AFAS or the Protocol, the GATS definition of a natural person applies.</p>
<b>IV. Sector Specific Provisions</b>
<p>Two additional packages of commitments in financial services signed by the ASEAN Finance Ministers (the second and third Package of Commitments of Financial Services under the AFAS) and two additional packages of commitments in air transport signed by the ASEAN Transport Ministers (the Fourth and Fifth Packages of Commitments on Air Transport Services under the AFAS).</p> <p>ASEAN Members have identified 12 priority sectors for integration, including the following services sectors: air travel, health care, tourism, e-ASEAN (information and communications technology), and logistics. Members adopted the ASEAN Sectoral Integration Protocol for the Logistics Services Sector in 2007, along with a roadmap setting out integration measures and a timetable. Members are to take the indicated measures “on a priority basis so as to enable the progressive, expeditious and systematic integration of the logistics services sector”, with the objective of achieving integration by 2012. For other priority sectors the aim is integration by 2010.</p>
<b>V. Recognition</b>
<p>At present, ASEAN has concluded 4 (four) MRAs:</p> <ul style="list-style-type: none"> <li>▪ MRA on Engineering Services signed on 9 December 2005 in Kuala Lumpur, Malaysia;</li> <li>▪ MRA on Nursing Services signed on 8 December 2006 in Cebu, the Philippines;</li> <li>▪ MRA on Architectural Services and Framework Arrangement for the Mutual Recognition of Surveying Qualifications both signed on 19 November 2006 in Singapore.</li> </ul> <p>Other MRAs in other areas are currently in different stages of negotiation, including Accountancy, Medical Practitioners, Dental Practitioners, and Tourism.</p>
<b>VI. Government Procurement</b>
<p>Excluded by virtue of cross-reference to GATS, see below.</p>
<b>VII. Other, including subsidies, safeguards</b>
<p>Article XIV.1 of the AFAS provides that for matters in respect of which no specific provision is made, the terms, definitions and other provisions of the GATS shall be applied.</p>

### East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
Singapore  JSEPA	GATS/SC/76 & Supplements	Revised Offer TN/S/O/SGP/Rev.1 6 June 2005	Agreement Between Japan and Singapore for a New-Age Economic Partnership (JSEPA), signed 13 January 2002, entered into force 30 November 2002

#### PART I - Comparison of Scheduled Commitments

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Mode 3 National Treatment: Local (Singaporean) managers required for foreigners who wish to establish a business in Singapore.</p> <p>-- Mode 3 National Treatment: At least one director of a company established by a foreigner must be locally resident.</p> <p>-- Mode 3 National Treatment: All branches of foreign companies registered in Singapore must have at least two locally resident agents.</p> <p>-- Mode 4 Movement of Persons: Unbound except for intra-</p>	<p>-- Intra-corporate transferees would see a possible three year extension (to 8 years) of current commitment to permit stay in Singapore for up to five years.</p>	<p>-- Mode 4 Movement of Persons: dealt with in Annex VI. Same reservation as above on treatment of permanent residents vs. nationals. Business visitors to be granted entry for a period not to exceed 90 days (same as GATS, but lacks DDA offer possibility of extension). Intra-corporate transferees, definition is similar to that in DDA/GATS, incl. executives, managers and specialists, but unlike GATS/DDA no initial or maximum period specified. (N.B. similar provision in investment part of Annex says can stay as long meets conditions of entry) (b) independent professionals: legal and accountancy</p>



	corporate transferees that have worked at least one year for their firm outside of Singapore and who are managers, executives or specialists -- permitted to stay for three years and up to two additional years for a total of not more than five years.		qualifications essentially same as GATS (DDA adds some categories), but again, lacks GATS/DDA provision of an initial or maximum period for which stay will be allowed.  -does not add DDA category of contractual service supplier
<b>Comment</b>			
At least on the movement of natural persons questions addressed by Singapore in its horizontal commitments, there does not seem to be a willingness to go beyond commitments made in the GATS schedule / Doha Round. The willingness to go farther in this FTA, however, may have been impacted by a Japanese unwillingness to do more bilaterally on mode 4 issues.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	<p>-- <u>Professional Services</u>:</p> <p>For (a) <u>accounting and auditing</u> and (b) <u>taxation services</u>, full commitments in modes 1, 2 and 3, except that at least one of the members of the firm must be effectively resident in Singapore.</p> <p>For <u>Architectural services</u>: Full commitments apply in modes 1, 2 and 3 (national treatment) but mode 3 market access is conditioned on control of the work performed by an architect who is a resident of Singapore.</p> <p>For <u>engineering services</u>: Full commitments apply in modes 1, 2 and 3 (national treatment) but mode 3 market access is conditioned on control of the work performed by an engineer who is a resident of Singapore.</p> <p>For <u>general medical services</u>: full bindings where technically feasible except that in mode 3 market access may be limited depending</p>	<p><u>Taxation Services</u>:</p> <p>-- Offer to split GATS commitment so as to make clear more liberal treatment for any taxation services not necessarily performed by a public accountant (which remain restricted as per original GATS commitment.</p> <p><u>Landscaping Services</u>:</p> <p>-- Offer of a new commitment without sector-specific limitations.</p> <p><u>Research and Development Services</u>:</p> <p>-- Offer of a new commitment on interdisciplinary R&amp;D services for projects undertaken by educational institutions.</p> <p><u>Real Estate Services</u>:</p> <p>-- Offer of a new commitment affecting residential and non-residential property management services on a fee or contract basis.</p> <p><u>Rental / Leasing</u></p>	<p>-- <u>Professional Services</u>:</p> <p>- Singapore commitment on legal consultancy services <u>for Japanese law</u>: <b>additional commitment</b> in mode 2 only, MA and NT</p> <p>-accounting auditing and bookkeeping services: similar to GATS, full commitments in modes 1, 2 and 3, but <b>less restrictive</b> because does not contain requirement that at least one of the members of the firm must be effectively resident in Singapore</p> <p>-financial auditing services: <b>additional commitment</b>, full MA commitments modes 1, 2, 3, and NT commitments in same 3 modes but 1 and 2 subject to requirement that at least one of the members of the firm must be effectively resident in Singapore</p> <p>-taxation services: same as DDA and <b>deeper commitment</b> than GATS because split into 2 commitments, rather than 1, so as to afford more liberal treatment for any taxation services not necessarily performed by a public</p>

	<p>upon the total supply of doctors.</p> <p>For (a) <u>dental services</u> and (b) <u>veterinary services</u>, full commitments apply in all modes.</p> <p>-- <u>Computer and Related Services</u>:</p> <p>Full market access and national treatment commitments across all modes of supply for (a) software development, (b) systems integration services, (c) data processing and (d) database services.</p> <p>-- <u>Other Business Services</u>:</p> <p>Full market access and national treatment commitments across all modes of supply for (a) commercial market research services, (b) professional advisory and consulting services relating to agriculture, forestry fishery, mining and oilfield services, (c) translation and interpretation services, (d) interior design services, excluding architecture, (e) exhibition management services, (f) economic and behavioural research services, (g)</p>	<p><u>Services</u>:</p> <p>-- Three new commitments offered on rental/leasing of ships, aircraft and motor vehicles (except rental car hire is prohibited by residents of Singapore!)</p> <p><u>Other Business Services</u>:</p> <p>-- Two new commitments offered on management consulting services and services related to management consulting.</p> <p>-- Two new commitments offered on technical testing and analysis services for (a) motor vehicles, and (b) products other than motor vehicles.</p> <p>-- New commitment offered on placement and supply services of personnel.</p> <p>-- Two new security-related commitments offered on (a) security consultation services, and (b) alarm monitoring services.</p> <p>-- New commitment offered on maintenance and repair of equipment, excluding maritime vessels, aircraft and other transport</p>	<p>accountant (which remain restricted as per original GATS commitment)</p> <p>-architectural services: <b>deeper commitment</b>, like GATS, commitments in modes 1, 2, 3 MA and NT, but are full commitments without GATS limitation making mode 3 market access conditioned on control of the work performed by an architect who is a resident of Singapore.</p> <p>(but are there domestic regulation barriers?)</p> <p>-engineering services and integrated engineering services: <b>new/broader commitment</b> goes beyond GATS by including all of CP 8672 rather than specified services only, plus adds commitment in respect of CP 8673 (integrated engineering services). Plus MA mode 3 commitment is unrestricted, unlike GATS where mode 3 market access is conditioned on control of the work performed by an engineer who is a resident of Singapore. Mode 1 NT also a little broader than GATS in that it requires physical presence of a professional engineer for works which require approval of authorities, vs. GATS which</p>
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	<p>biotechnology services, (h) public relations consultancy services, (i) advertising consultancy services, (j) information technology consultancy services, (k) building and facilities management services, (l) industrial research services, and (m) courier services (except unbound in modes 1 and 3).</p>	<p>equipment.</p> <p>-- New commitment offered on photographic services.</p> <p>-- New commitment offered on packaging services.</p>	<p>requires effective residence of engineers in Singapore (for all projects)</p> <p>-urban planning services: <b>additional commitment</b>, full but in mode 2 only, MA and NT</p> <p>-landscape architectural services: <b>additional commitment</b>, full in modes 1, 2, 3, MA and NT</p> <p>-medical services, dental services, veterinary services, same as GATS</p> <p>-services of midwives, nurses, physiotherapists and para-medical personnel: <b>additional commitment</b>, full MA modes 2 and 3, full NT modes 1, 2, 3</p> <p>-other professional services: <b>additional commitment</b>, full mode 2 commitments MA and NT</p> <p><u>Computer Services:</u></p> <p>-?broader scope of services covered by same commitments as GATS?, modes 1, 2, 3, MA an NT</p> <p><u>Research and Development Services:</u></p> <p>-natural sciences and humanities and social sciences</p>
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			<p>commitments similar to GATS, but <b>broad</b>, <b>more services</b> covered, all natural sciences (GATS is biotechnology and industrial research), humanities and social sciences is all except legal research (vs. GATS economic and behavioural research)</p> <p>-interdisciplinary research and development services, <b>additional commitment</b>, full commitments in modes 1, 2, 3, MA and NT (broader than DDA offer because not limited to projects undertaken by educational institutions)</p> <p><u>Real Estate Services</u></p> <p>Reals estate services, including appraisal services of all properties other than State properties: <b>additional commitment</b> in modes 1, 2, 3 MA and NT, except that MA mode 3 unbound for foreign ownership and development of residential buildings of less than six levels: and NT mode 3 unbound for purchase of land for development residential housing</p> <p>(N.B. no commitment on property management services, as in DDA)</p> <p><u>Rental / Leasing Services without operator:</u></p> <p>-leasing of ships,</p>
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			<p>aircraft and motor vehicles: <b>additional commitments</b> on rental/leasing (like DDA, with restriction on car rental by residents), but even more services in CP 831 covered: leasing/rental goods transport vehicles, other land transport equipment without operators, other machinery and equipment without operators (vs. DDA cars only)</p> <p>-personal and household hoods rental/lease: <b>additional commitments</b>, full modes 1,2,3 MA and NT</p> <p><u>Other Business Services:</u></p> <p>-advertising services: <b>additional commitment</b>, modes 1, 2, 3, MA and NT</p> <p>-market research and public opinion polling services: <b>broader commitment</b> because both services covered vs. GATS which covers former but not latter</p> <p>-management consulting services and related services: 2 <b>additional commitments</b> (same as DDA offer)</p> <p>- technical testing and analysis services for (a) motor vehicles, and (b) products other than motor vehicles:</p> <p><b>two additional</b></p>
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			<p><b>commitments</b> (same as DDA)</p> <p>-services incidental to agriculture, hunting, forestry and fishing: <b>additional commitment</b> (but with exclusion of specified services) in modes 1, 2, 3 MA and NT</p> <p>- services incidental to mining: <b>additional commitment</b> in modes 1, 2, 3 MA and NT</p> <p>-services incidental to manufacturing: <b>additional commitment</b> in modes 1, 2, 3 MA and NT</p> <p>-transport, distribution, retail and services incidental to the distribution of piped gas: <b>additional commitment</b> in modes 2 and 3 MA and NT</p> <p>-retail of electricity: : <b>additional commitment</b> in mode 2 MA and NT, and mode 3 MA except for supply of electricity above five MW</p> <p>-placement and supply services of personnel, <b>additional commitment</b> in modes 1, 2, 3 MA and NT (same as DDA)</p> <p>-investigation and security services: <b>additional commitments</b> in security consultation services, alarm monitoring services, (same as DDA) plus further <b>additional</b></p>
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			<p><b>commitment</b> on unarmed guard services, in modes 2 and 3, with MA limitation that must register a company with local participation, at least one Singapore director, foreign directors need certificate no criminal conviction and may not work as guards, only in administration of company</p> <p>-geological, geophysical and other scientific prospecting services: <b>additional commitment</b> in mode 2 MA and NT</p> <p>-surveying services with some exclusions: <b>additional commitment</b> in modes 2 and 3 MA and NT, mode 3 NT requires that where certification required for survey work, work will be under control and management of a director who is registered and ordinarily resident in Singapore and has practising certificate and owns at least one share in corporation</p> <p>- maintenance and repair of equipment, excluding maritime vessels, aircraft and other transport equipment: <b>additional commitment</b> (same as DDA) in modes 1, 2 and 3, MA and NT</p> <p>-building-cleaning services, same as</p>
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			<p>GATS</p> <ul style="list-style-type: none"> <li>-photographic services: <b>additional commitment</b> (same as DDA) in modes 1, 2 and 3, MA and NT</li> <li>-packaging services: <b>additional commitment</b> (same as DDA) in modes 1, 2 and 3, MA and NT</li> <li>-convention services: same as GATS</li> <li>--telephone answering services (not regulated under Singapore Broadcasting Authority: : <b>additional commitment</b> in modes 1, 2 and 3, MA and NT</li> <li>-duplicating services: : <b>additional commitment</b> in modes 1, 2 and 3, MA and NT</li> <li>--translation and interpretation services: same as GATS</li> <li>-mailing list compilation and mailing services: : <b>additional commitment</b> in modes 1, 2 and 3, MA and NT, subject to limitations on postal services sector</li> <li>-specialty design services: <b>broader commitment</b> because includes all CP87907 (vs. GATS excludes architecture, although query if really falls in here anyway)</li> </ul>
<b>Comment</b>			
<p>There are a number of business services covered in the FTA between Singapore and Japan where Singapore has shown itself willing to go beyond both the GATS schedule and Doha Round offers in the bilateral agreement, including in respect of</p>			

architecture services, engineering services, legal services (in respect of consultancy services for Japanese law) and a number of "other" business services, including advertising, rental services, investigation services, prospecting and surveying services.

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communications Services	<p>--</p> <p><u>Telecommunications Services:</u> (with Full GATS reference paper)</p> <p>For basic telecommunication services (facilities-based), mode 1 market access conditioned on commercial arrangements with licensed operators, mode 2 full commitments, mode 3 subject to restrictions on the number of operators with accumulative total of 73.99% foreign shareholding allowed.</p> <p>For mobile voice telephony services, mode 1 market access conditioned on commercial arrangements with licensed operators, mode 2 full commitments, mode 3 subject to restrictions on the number of operators with accumulative total of 73.99% foreign shareholding allowed.</p> <p>For re-sale</p>	<p><u>Telecommunications Services:</u></p> <p>-- Coverage of existing value added network services commitment expanded to explicitly cover "store and forward" and "store and retrieve" services.</p>	<p><u>Telecommunications Services:</u></p> <p>--horizontal limitation a bit narrower: "number of licences granted will be limited only by physical constraints such as the availability of frequency spectrum and land" (vs. GATS "number of licences may be limited due to scarce resources")</p> <p>--on face of it, <b>commitments deeper and broader</b> (in particular because, unlike GATS, no conditions on modes 1 and 3 MA, and greater number of services covered) – looks like fairly significant improvement, but further examination warranted</p> <p><u>Audiovisual Services</u></p> <p>-same as GATS</p>

	<p>basis telecommunication s services (e.g. leased circuit services), full commitments across all modes of delivery.</p> <p>For Value Added Network Services: Modes 1 and 3 conditioned on obtaining a license from Singapore regulatory authorities and foreign suppliers are required to establish locally in Singapore or grant power of attorney to a local agent.</p> <p>-- <u>Audiovisual Services</u>: full commitments across all modes of delivery for production, distribution and public display of motion pictures, video recordings and sound recordings but with the exclusion of all broadcasting and AV services that are broadcasting-related.</p>		
<b>Comment</b>			
<p>Telecommunications is a sector in which Singapore already has high quality commitments in the GATS Schedule, so GATS+ improvement should be expected to be marginal. Even so, it appears as though the commitments offered to Japan in the FTA do offer liberalisation that goes further than what is on offer by way of improvements through Singapore's Doha Round offer.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	-- <u>Construction Services</u> : Full commitments across all modes of supply for general building, civil engineering, installation and completion work in construction.	No offer of new or improved commitments.	Same as in GATS Schedule.
<b>Comment</b>			
High level of commitments reflected in original GATS schedule of Singapore. Probably no need for improvement in either Doha Round or FTA context.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	No pre-Doha commitments on distribution services.	<p>-- New commitment offered on commission agents' services (except for pharmaceutical and medical goods and cosmetics)</p> <p>-- New commitment offered on wholesale trade services (except for pharmaceutical goods and medical and surgical goods and instruments)</p> <p>-- New commitment offered on franchising services.</p>	<p>-overall significant improvements over GATS and new commitments go further than DDA</p> <p>-commission agents services: <b>additional commitment</b> in modes 1, 2, 3 MA and NT, plus goes beyond DDA in offering commitments in two sub-sectors excluded in that offer, namely sales on fee or contract basis of pharmaceutical and medical goods and cosmetics not intended for Singapore market (modes 1, 2 and 3 MA and NT) and same goods intended for Singapore market (modes 2 and 3 MA and NT)</p> <p>-wholesale trade services: <b>additional commitment</b> in modes 1, 2, 3 MA and NT, plus goes beyond DDA in offering commitments in sub-sectors excluded in that offer, namely wholesale trade of pharmaceutical and medical goods and surgical and orthopaedic instruments (modes 2 and 3 MA and NT)</p> <p>-retailing services: <b>additional commitments</b> in modes 2 and 3 MA and NT, with exclusion of certain sub-sectors, plus further</p>

			<p>commitments for some of those, including retail sales of food, beverages and tobacco (mode 2 MA and NT): pharmaceutical, medical and orthopaedic goods (modes 2 and 3 MA and NT): motor vehicles (modes 1, 2, and 3 MA and NT for listed services)</p> <p>-franchising:  <b>additional commitment</b> in modes 1, 2, and 3 MA and NT (same as DDA)</p>
<b>Comment</b>			
<p>Distribution services are important and with no commitments in its GATS schedule, it is important that Singapore should begin to liberalise in this sector. Tentative and mostly limited Liberalisation is on offer in the Doha Round, but Singapore has gone much further in scope of coverage and depth of the offer in the FTA with Japan - in particular with relaxation of some of the limits on wholesaling and a commitment opening up the retailing services sector.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	<p>For (a) life insurance and (b) non-life insurance, unbound in mode 1, bound in mode 2 and mode 3 conditioned on foreign companies not being permitted to acquire more than 49% stake in locally-owned insurance companies.</p> <p>For reinsurance and retrocession, fully bound across all modes of delivery with stipulation in mode 3 market access that reinsurance companies may establish in Singapore as branches or subsidiaries.</p> <p>For insurance intermediation services, generally unbound except for admission in mode 3 of reinsurance brokers as locally incorporated subsidiaries.</p> <p>For services auxiliary to insurance, full bindings across all modes of delivery.</p> <p>For banking services: Unbound in mode 1, fully bound in mode 2. In mode 3,</p>	<p>-- Revised commitment offered on finance companies may make it easier for foreign persons to have some ownership interest in finance companies.</p> <p>-- Offshore banks' lending limit to Singapore residents raised in offer from S\$200m to S\$500m.</p>	<p>-life insurance services and non-life insurance services, like GATS except <b>more liberal full mode 3</b> commitment (vs. GATS conditioned on foreign companies not being permitted to acquire more than 49% stake in locally-owned insurance companies)</p> <p>-reinsurance and retrocession services- slightly different wording but substance seems same</p> <p>-insurance intermediation, services auxiliary to insurance same as GATS</p> <p>-banking services: overall very similar to GATS, limited differences in mode 3 conditions for MA and NT, mostly <b>liberalising but not significantly so</b>. (a) acceptance deposits: new NT mode 3 requirement that majority directors of bank incorporated in Singapore must be citizens or permanent residents; minor differences on amount of foreign equity allowed (both 5% per individual or group, GATS specifies maximum 40% aggregate foreign, FTA silent; FTA allows up to 49% foreign equity in a subsidiary of a Singapore-incorporated bank):</p>



	<p>Singapore indicated no new full and restricted banks to be approved. Merchant banks may establish as merchant bank subsidiaries. No new finance companies permitted.</p> <p>For lending services and consumer credit operations, Singapore dollar loans subject to MAS approvals and MAS approvals required for establishment of new credit companies.</p> <p>For financial leasing, unbound in mode 1 and fully bound in other modes of delivery.</p> <p>For payment and money transmission services, unbound in mode 1, fully bound in mode 2 and mode 3 activities generally restricted to Singapore owned and licensed facilities.</p> <p>For guarantees and commitments services, generally bound at liberal access, except for limitations on insurance companies providing contracts of fidelity bonds.</p> <p>For trading for own account or on account of customers, unbound</p>	<p>finance companies: GATS unbound mode 3, FTA allows up to maximum 20% aggregate foreign equity in existing companies (similar to but not same as DDA): (b) lending services and consumer credit operations, replaces requirement that Singapore dollar loans subject to MAS with permission up to S\$5million to residents and to non-residents (latter subjected to certain conditions on currency conversion/swapping, similar to DDA): financial leasing, payment and money transmission services, and guarantees and commitments, essentially same as GATS: trading similar to GATS although conditions focus more on currency-related requirements vs. GATS focus on prudential rules related to trading in derivatives: participation in issuance of securities: allows new members to trade (GATS only allowed establishment as non-member, but not clear what criteria applied to become a new member) except in Government securities, subject to aggregate foreign investment cap of 70% of paid-up capital of dealers that are members of the SGX, plus lower minimum value trades (\$S150,000) than under DDA offer (\$500,000); settlement and clearing services, advisory and auxiliary</p>
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	<p>in mode 1 except for trading on own account, fully bound in mode 2, in mode 3 banks and merchant banks required to set up subsidiaries to trade financial futures for customers.</p> <p>For participation in issues of securities, etc., unbound in mode 1, bound in mode 2 and in mode 3 limited essentially to members of the stock exchange of Singapore. Representative offices cannot conduct business or act as agents.</p> <p>For money broking, unbound in mode 1, fully bound in mode 2 and unbound in mode 3 for new money brokers.</p> <p>For asset management services, unbound in mode 1, bound in mode 2 and in mode 3 provision is made to establish as branches or subsidiaries for this purpose.</p> <p>For settlement and clearing services, unbound in mode 1, bound in mode 2 and in mode 3 subject to limitation of dealing only with SES, SIMEX and Banking Computer Services</p>		<p>financial services, provision of transfer information and data processing: same as GATS</p>
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	<p>Ltd.</p> <p>For advisory and other financial consultancy services, commercial presence (mode 3) is required in Singapore in order to provide investment and portfolio research and advice. In mode 3, investment advisers can establish as branches.</p> <p>For provision and transmission of financial information - commitments are more or less specifically limited to providers like Reuters and Bloomberg.</p>		
<b>Comment</b>			
<p>In its GATS schedule, Singapore already has a fairly liberal set of commitments on financial services, albeit with some limitations (mainly foreign equity limits), so we would expect to see limited and mainly marginal improvements through the DDA and FTA. The FTA appears to go somewhat further than GATS in liberalising mode 3 for insurance services.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Educational Services	No pre-Doha Round commitments for educational services.	<p>-- New commitment offered on adult education services</p> <p>-- New commitment offered on short term training including language training services.</p>	<p>Educational Services</p> <p>- secondary and post secondary technical and vocational education services: <b>additional commitment</b> in modes 1, 2, 3 MA and NT</p> <p>-other higher education services: <b>additional commitment</b> in modes 1, 2, 3 MA and NT, with MA mode 3</p>

			<p>subject to limits on numbers who can pursue medical degrees depending on the total supply of doctors</p> <p>-adult education services: <b>additional commitment</b> in modes 1, 2, 3 MA and NT, like DDA</p> <p>-short term training including English language courses: <b>additional commitment</b> in modes 1, 2, 3 MA and NT, like DDA</p>
<b>Comment</b>			
<p>The Doha Round offer makes a first, but very limited start in liberalising education services in Singapore. The commitments made in the FTA with Japan include what is on offer in the DDA and add supplemental commitments in technical education and medical degrees for doctors.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	No pre-Doha commitments on environmental services.	-- New commitments offered on (a) sanitation and similar services, (b) cleaning services of exhaust gases, and (c) noise abatement services.	<b>-additional commitment</b> in respect of all environmental services (DDA listed 3 only) for MA and NT modes 2 and 3: except for sewage services (commitment mode 2 only) and new environmental services (no commitment)
<b>Comment</b>			
Tentative offers and commitments in these services appear to be essentially the same for the FTA and the Doha Round offer - although the FTA commitments are already in effect v. simply being on offer.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Health & Social Services	No pre-Doha commitments on health and social services.	<p>-- New commitment offered on acute care hospitals, nursing homes and convalescent hospitals run on a commercial basis.</p> <p>-- New commitment offered on child guidance and counselling services.</p> <p>-- New commitment offered on welfare services delivered through residential institutions.</p>	<p>-3 <b>additional commitments</b> in hospital services (mode 2 MA and NT), ambulance services (mode 2 MA and NT): acute care hospitals nursing h, convalescent hospitals run on a commercial basis (modes 2 and 3 MA and NT)(last one only also in DDA).</p> <p><b>-additional commitments</b> in social services: social services delivered through residential institutions to old persons, handicapped, children, modes 2 and 3 MA and NT with restrictions on number of facilities</p>

			<p>partially State-funded and permission needed to solicit business: social services without accommodation in modes 2 and 3 as previous (like DDA offer but broader category of services covered)</p> <p><b>-additional commitment</b> in other health related and social services, mode 2 MA and NT.</p>
<b>Comment</b>			
<p>Singapore's commitments in the FTA include those on offer in the Doha Round plus supplemental and more far-reaching commitments made in a number of social services.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Tourism & Related Services	<p>For hotel services, unbound in mode 1 (technical feasibility) but otherwise fully bound.</p> <p>For restaurant and catering services, fully bound in all applicable modes.</p> <p>For travel agents and tour operators, fully bound in market access (with requirement in mode 3 to be a private limited company) but unbound in national treatment modes 1 and 3.</p>	-- New commitment offered on tourist guide services.	<p>-several additional commitments, primarily but not exclusively in mode 2</p> <p>-hotel restaurants and catering: ?expanded commitment in hotel and other lodging services adds mode 1 MA (but ? feasible)-broader commitment than GATS in food servicing services because commits at a higher level of aggregation <b>-additional commitment</b> for beverage serving services in mode 2 MA and NT</p> <p>-travel agencies and tour operators: <b>expanded commitment</b> in travel agencies and tour operator services, binds modes 1 and 3 NT and removes mode 3 MA requirement that commercial presence be a company.</p> <p>-tourist guide services: <b>additional commitment</b> for tourist guide services: full modes 1, 2, 3 (same as DDA)</p> <p>-other tourism and travel related services: <b>additional commitment</b>, mode 2 MA and NT</p>
<b>Comment</b>			
Generally good commitments in tourism already in GATS Schedule. Additional scope and depth of FTA commitments outweigh what is on offer in the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	-- <u>Maritime Transport Services</u> : Fully bound across all modes of delivery for (a) maritime freight transportation services (less cabotage), (b) shipping agency services, and (c) shipping brokerage services.	No new or improved commitments on transportation services.	<p>-overall, many new commitments, although primarily in mode 2</p> <p>-maritime transport services: international transport excluding cabotage: <b>broader commitment</b> because adds passenger transport to GATS-included freight transport; shipping agency services, shipping brokerage services, international towage, same as GATS; storage and warehousing services: <b>additional commitment</b> in modes 2 and 3 MA and NT; maritime freight forwarding services: <b>additional commitment</b>, modes 1, 2, 3 MA and NT; maintenance and repair of vessels: <b>additional commitment</b> modes 2 and 3 MA and NT;</p> <p>-internal waterways transport: <b>additional commitments</b>, for each mode 2 MA and NT, in: passenger transportation, freight transportation, rental of vessels with crew, pushing and towing services</p> <p>-air transport services: : <b>additional commitments</b>, for each mode 2 MA and NT, in:</p>



			<p>aircraft repair and maintenance services, selling and marketing of air transport services (also includes mode 1 MA and NT), rental of aircraft with crew and space transport</p> <p>-rail transport services: : <b>additional commitments</b>, for each mode 2 MA and NT, in: passenger transportation, freight transportation, pushing and towing services, maintenance and repair of urban and suburban rail transport equipment (also mode 3 MA and NT), and supporting services for rail transport</p> <p>-road transport services: : <b>additional commitments</b>, for each mode 2 MA and NT, in: rental services of cars, buses and coaches and commercial freight vehicles with operators (also mode 3 MA and NT); freight transportation except for refrigerated goods, liquids or gases, containerised freight or furniture: freight transportation for those 4 types goods also subject to mode 3 MA and NT commitments; maintenance and repair services of motor vehicle and parts (also modes 1 and 3 MA and NT commitments); parking services (also modes 1 and 3 MA and NT commitments);</p>
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			<p>supporting services for road transport except parking</p> <p>-pipeline transport: <b>additional commitments</b> mode 2 MA and NT for transportation of fuels and transportation of other goods.</p> <p>-services auxiliary to all modes of transport except maritime: <b>additional commitment</b> in storage and warehousing services (mode 2 MA and NT, along with mode 3 only for storage and warehouse services for land transport): <b>additional commitment</b> for freight forwarding services in modes 1, 2 and 3 MA and NT.</p>
<b>Comment</b>			
<p>More than anywhere else, transportation services seems to be the sector in which Singapore has been most ambitious in agreeing to Liberalisation that goes well beyond its GATS schedule and what is on offer in the Doha Round. Many sub-sectors addressed in the FTA are not covered at all in the GATS context.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, Cultural & Sporting Services	Library services fully bound in all modes of delivery.	No new or improved commitments in Doha offer.	<p>-entertainment services: <b>additional commitment</b>, modes 1, 2, and 3 MA and NT</p> <p>-library, archives, museums and other culture services: library services: same as GATS: archive services: <b>additional commitment</b> in modes 1, 2 and 3 MA and NT: museum services: <b>additional commitment</b> mode 2 MA and NT; parks (except national): <b>additional commitment</b> modes 1, 2 and 3 MA and NT; - other cultural services: <b>additional commitment</b> mode 2 MA and NT</p> <p>-sporting and other recreational services: sports and recreational services except gambling: <b>additional commitment</b> modes 2 and 3 MA and NT</p> <p>-other recreational cultural and sporting services: <b>additional commitment</b> mode 2 MA and NT</p>
<b>Comment</b>			
This is another category of services where very limited Singaporean commitments in GATS are supplemented importantly by the coverage of the FTA with Japan and where no new Liberalisation at all is on offer for the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Other Services	No commitments in pre-Doha schedule.	<p>-- New commitment offered on washing, cleaning and dyeing services.</p> <p>-- New commitment offered on hairdressing and other beauty services.</p> <p>-- New commitment offered on funeral, cremation and undertaking services (except graveyard maintenance services)</p>	-3 <b>additional commitments</b> , in modes 2 and 3 MA and NT (same as DDA offer) in washing, cleaning and dyeing services; hairdressing and other beauty services; and funeral, cremation and undertaking services (except graveyard maintenance services)
<b>Comment</b>			
FTA commitments and Doha Round offer are the same.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
List of MFN Exemptions	<p>-- Preference for workers from traditional sources of supply (Indonesia &amp; Malaysia?)</p> <p>-- Non-MFN investment guarantee agreements where negotiated with other countries.</p> <p>-- Commonwealth tax credit scheme (applying to other Commonwealth countries that grant reciprocal relief.</p> <p>-- All measures pertaining to the provision of legal services in Singapore.</p> <p>-- Preferential treatment in broadcasting for countries where Singapore has negotiated reciprocal agreements.</p> <p>-- Computer reservation systems - reciprocity based preferential treatment tied to civil aviation agreements.</p> <p>-- Maritime Transportation Services: Concessions in respect of the following sub-sectors are subject to the outcome of bilateral services agreements:</p>	<p>Reinsurance and Retrocession:</p> <p>-- Offer to eliminate MFN exemption for ASEAN found in GATS schedule.</p>	

	<p>(a) storage and warehousing, (b) freight forwarding, (c) inland trucking, and (d) container station and depot services.</p> <p>-- Reinsurance and retrocession: Preferential arrangements for ASEAN.</p> <p>-- Banking and currency arrangements: A separate arrangement prevails between Brunei and Singapore.</p>		
<b>Comment</b>			
Modification of MFN exemptions would not appear to be an appropriate topic to be addressed in a bilateral FTA.			

## PART II – FTA Provisions / Architecture

<b>I. General Comments</b>
<p>-JPSEPA uses a positive list approach to services liberalization. The Agreement covers services and investment and also contains multiple chapters providing for cooperation in areas such as competition, financial services, information and communication technology, science and technology, broadcasting and tourism.</p> <p>-Coverage excludes measures affecting air traffic rights and affecting rights directly related thereto, meaning the following are excluded: passenger transport services by air, freight transport services by air and rental/leasing services of aircraft with crew/operator. Cabotage services in the maritime transport sector are also excluded.</p>
<b>II. Main Relevant Provisions</b>
<p>Chapter 6 Mutual Recognition</p> <p>Chapter 7 Trade in Services</p> <p>Chapter 8 Investments</p> <p>Chapter 9 Movement of Natural Persons</p> <p>Chapter 21 (Art 139 "C 148) "C Dispute Avoidance and Settlement</p> <p>Annex IVA Financial Services</p> <p>Annex IVB Telecommunications Services</p> <p>Annex IVC (Services)</p> <p>Japan's Schedule of Specific Commitments</p> <p>Singapore Schedule of Specific Commitments</p> <p>Annex VI</p> <p>Specific Commitments of Japan for the Movement of Natural Persons</p> <p>Specific Commitments of Singapore for the Movement of Natural Persons</p> <p>Annex VIIA (Government Procurement): Goods and Services</p> <p>Annex VIIB (Government Procurement): Entities</p>
<b>III. Rules of Origin / Denial of Benefits</b>
<p>The JSEPA extends benefits to a 'natural' or 'juridical' person of the other Party and services supplied by them. The 'supply of a service' is defined to include the production, distribution, marketing, sale and delivery of a service.</p> <p>A 'natural person of the other Party' is defined to mean a person who resides in the territory of that other Party or elsewhere and who under the law of that other Party:</p> <p style="padding-left: 40px;">in respect of Japan, is a national of Japan; and</p> <p style="padding-left: 40px;">in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore. (But note Japan's reservation to this definition as regards subsidies in the horizontal part of its Schedule of Specific Commitments.)</p> <p>A 'juridical person of the other Party' is defined to mean a juridical person which is either:</p>

<p>constituted or otherwise organised under the law of the other Party and, if it is owned or controlled by natural persons of non-Parties or juridical persons constituted or otherwise organised under the law of non-Parties, is engaged in substantive business operations in the territory of either Party; or</p> <p>in the case of the supply of a service through commercial presence, owned or controlled by:</p> <p>(A) natural person of the other Party; or</p> <p>(B) juridical persons of the other Party as identified above.</p> <p>The JSPEPA defines ownership as more than 50% beneficial interest, and control as the ability to name a majority of directors or otherwise legally direct the actions of the service supplier, and also provides for juridical persons constituted under the laws of a Party which supply through a commercial presence to be accorded benefits under the Agreement provided that they have substantial business operations in a Party.</p>
<b>IV. Sector Specific Provisions</b>
<p>The JSEPA incorporates two annexes with specific provisions on financial services and telecommunication services (Annexes IVA and IVB respectively).</p>
<b>V. Recognition</b>
<p>Article 64 on domestic regulation incorporates the relevant provisions of GATS Article VI. In sectors where specific commitments are undertaken, Parties agree that all measures of general application are administered in a reasonable, objective and impartial manner. In addition, Article 64 also adopts the GATS disciplines referred to in Article V.5, which apply to sectors where a Party has undertaken specific commitments.</p> <p>Article 93 provides a mechanism for mutual recognition of professional qualifications. The Parties have agreed that “a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party of the purposes of fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of natural persons with professional qualifications”.</p>
<b>VI. Government Procurement</b>
<p>The government procurement obligations in the JSEPA incorporate the disciplines of the WTO Agreement on Government Procurement (GPA) for procurement of goods and services by the entities listed by each Party. Article 101 of the JSEPA lowers the threshold value above which government procurement would be subject to the GPA disciplines. The threshold value for goods and services (except construction services) was lowered to Special Drawing Rights (SDR) 100,000. This is a SDR 30,000 reduction from both Japan’s and Singapore’s GPA threshold of SDR 130,000. However, in Annex VIIa, procurement of construction work and architectural, engineering and other technical services are removed from the scope of the relevant GPA disciplines.</p>
<b>VII. Other, including subsidies, safeguards</b>
<p>The services chapter of the JSEPA does not contain any specific provisions for safeguards or subsidies, although the horizontal reservations made by each Party remove most subsidies from the scope of coverage of the specific commitments. Article 68 covers restrictions to safeguard the balance of payments. The JSEPA provides for investor-state, as well as state-state dispute settlement.</p>



### East Asia Services Project: Comparison of GATS Schedule, Doha Offer and Comparator FTA Trade in Services Commitments

Country	GATS Schedule	Doha Offer and Date	Title and Date of FTA
Thailand	GATS/SC/85 & Supplements	Revised Offer TN/S/O/THA/Rev.1 8 November 2005	<a href="#">ASEAN Framework Agreement on Services (AFAS)</a> , signed 15 December 1995, Sixth Package of Commitments November 2007

#### Part I - Comparison of Scheduled Commitments

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Horizontal Commitments	<p>-- Mode 3 Market Access: Unless otherwise specified at sectoral level, commercial presence is limited to registered limited liability company having less than 49 percent registered foreign equity and with foreign shareholders less than half the total for the company concerned.</p> <p>-- Mode 3 / 4 Market Access: Foreign nationals / companies not allowed to purchase land in Thailand.</p> <p>-- Mode 3 National Treatment: Unless otherwise specified, unbound.</p> <p>-- Mode 4</p>	<p>-- Business visitors get opportunity to request extension to not more than one year from arrival.</p> <p>-- Intra-corporate transferees get possibility of extension to a third year.</p> <p>-- New category of contractual services suppliers introduced, but subject to draconian conditions on company and activity and limited to certain sectors where engineers have</p>	<p>-- Mode 3 Market Access: same restrictions as GATS (unless otherwise specified at sectoral level, commercial presence is limited to registered limited liability company having less than 49 percent registered foreign equity and with foreign shareholders less than half the total for the company concerned) but <b>limited relaxation of requirements</b> in that specified list of sub-sectors exempted from requirement that number foreign shareholders must be less than half of total number</p> <p>-- Mode 3 / 4 Market Access: same as GATS: foreign nationals / companies not allowed to purchase land in</p>

	<p>Movement of Persons:</p> <p>Business visitors for periods up to 90 days.</p> <p>Intra-corporate transferees for one year with up to two years' extension.</p>	<p>been specifically disqualified.</p>	<p>Thailand.</p> <p>-- Mode 3 National Treatment: repeats limit of maximum 49% foreign equity for Thai corporate entities (same as DDA vs. GATS unbound)</p> <p>-- Mode 4 Movement of Persons: Market access: <b>limited relaxation</b> of GATS restrictions: like GATS, business visitors for periods up to 90 days, but adds possibility of extension of up to one year. Intra-corporate transferees like GATS for one year, but allows up to three extensions of a year each (vs. GATS up to two years' extension). Both are same as DDA, but do not include the limited mode 4 commitments made in DDA offer in specified categories.</p>
<b>Comment</b>			
Horizontal mode 4 commitments made in the ASEAN context do not appear to be materially more liberalising than those committed to in GATS or offered through the Doha Round.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Business Services	<p>-- <u>Professional Services</u>: For the following sectors, market access and national treatment are generally unbound for mode 1, bound for mode 2. For mode 3, market access is generally bound but national treatment is subject to</p>	<p><u>Computer Services</u>:</p> <p>-- New commitment offered for software training services for staff of clients.</p> <p><u>Other Business</u></p>	<p>-- <u>Professional Services</u>:</p> <p>-most do not offer significant improvements over GATS, a few additional commitments and several sub-sectors with GATS commitments not included in ASEAN</p>

	<p>those situations where foreign equity does not exceed 49%; (a) legal services, (b) accounting/auditing, (c) architectural services, (d) engineering services, (e) urban planning and landscape architecture.</p> <p>-- <u>Computer and Related Services</u>: For the following sectors, market access and national treatment are generally unbound for mode 1, bound for mode 2. For mode 3, market access is generally bound but national treatment is subject to those situations where foreign equity does not exceed 49%: (a) hardware installation consultancy services, (b) software implementation services, (c) data processing services, (d) database services.</p> <p>-- <u>Rental / Leasing Services without Operators</u>: For agricultural machinery, construction machinery etc., market access commitments in modes 2 and 3 but national treatment in mode 3 limited to those with less than 49% foreign equity participation.</p> <p>-- <u>Other Business Services</u>: For the following sub-sectors, mode 1 market access and national treatment is generally unbound, mode 2 is bound, and</p>	<p><u>Services</u>:</p> <p>-- New commitment offered for scientific and consulting services related to oil and gas exploration and production.</p>	<p>schedule</p> <p>-legal services: same as GATS</p> <p>-Accounting, auditing bookkeeping: <b>adds mode 1</b> commitments MA and NT, but restrictive because latter includes requirement of Thai licensed auditor authenticating audits and Thai citizenship and residency for accountants and CPAs</p> <p>-taxation services: <b>additional commitment</b> in modes 1,2, 3 MA and NT but tax review and auditing must be authenticated by licensed tax auditor in Thailand</p> <p>-architectural services and landscape architectural services: <b>adds mode 1</b> commitments MA and NT, plus mode 3 MA restrictions similar to but go further than horizontal limitations (e.g. maximum 49% foreign equity plus requirement of managing director/at least half directors/partners Thai nationals with license from Architects Council-?more restrictive than GATS?)</p> <p>-engineering services: <b>adds mode 1</b> commitments MA and NT (latter subject to requirement of services being authenticated by</p>
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	<p>mode 3 is bound for market access but national treatment is conditioned on not more than 49% foreign equity participation: (a) advertising services, (b) market research and polling services, (c) general management consulting services, (d) technical testing and analysis services, (e) specified services incidental to agriculture, (f) services incidental to forestry, (g) services incidental to fishing, (h) services incidental to mining and gas/oil field operations, (i) maintenance and repair services for office machinery and equipment, (j) packaging services, (k) printing and publishing services, and (l) translation and interpretation services.</p>		<p>a licensed engineer in Thailand), plus mode 3 MA restrictions similar to but go further than horizontal limitations (e.g. maximum 49% foreign equity plus requirement of managing director/at least half directors/partners Thai nationals with license from Council of Engineers - ?more restrictive than GATS?)</p> <p>Urban planning services: <b>adds mode 1</b> commitments MA and NT (latter subject to requirement of services being authenticated by a licensed architect in Thailand), plus mode 3 MA restrictions similar to but go further than horizontal limitations (e.g. maximum 49% foreign equity plus requirement of managing director/at least half directors/partners Thai nationals with license from Architects Council - ? more restrictive than GATS?)</p> <p><u>Computer Services:</u></p> <p>- <b>adds mode 1</b> commitments MA and NT for consultancy services related to hardware installation, database services, software implementation services; data processing services (Check CPC numbers, categories may be</p>
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			<p>slightly broader than in GATS), does not include limited mode 4 improvements offered in DDA</p> <p>-other computer services: <b>additional commitment</b> for maintenance and repair services of office machinery and equipment, including computers, modes 2 and 3 MA and NT. (different category than DDA offer)</p> <p><u>Research and Development Services:</u></p> <p>-<b>additional commitments</b> in specified natural sciences (modes 2 and 3 MA and NT), as well as other natural sciences, law, linguistics and languages</p> <p>-<b>additional commitments</b> on experimental development services on economics in modes 2 and 3 MA and NT, plus mode 1 MA</p> <p><u>Rental / Leasing Services without operator</u>:-same as GATS</p> <p><u>Other Business Services:</u></p> <p>-?broader category of advertising services committed?</p> <p>-market research services, public opinion polling services, general management consulting</p>
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			<p>services: same as GATS</p> <p>-financial management consulting services and human resources management consulting: <b>additional commitments</b> in modes 2 and 3 MA and NT, plus mode 4 MA subject to horizontal.</p> <p>-technical testing and analysis: same as GATS</p> <p>-N.B. omits various committed sub-sectors in GATS in services incidental to agriculture, forestry, fishing, mining at oil and gas fields, along with DDA offer on oil and gas exploration and production and GATS commitment on maintenance and repair services of office machinery and equipment, including computers.</p> <p>-translation and interpretation services: <b>adds mode 1 MA</b> commitment.</p>
<b>Comment</b>			
<p>Thai GATS schedule commitments in business services are frequently undermined by a limitation on foreign equity of the services provider to not more than 49% - which effectively equates to making commitments only in respect of Thai firms. In the ASEAN FTA context, Thailand appears to have been more liberalising than in the GATS or Doha Round offers - often by making mode 1 commitments where none are made in the GATS/DDA (taxation services, landscape architecture services, engineering services, urban planning services, and computer services). Thailand also makes commitments under the ASEAN framework on research and development services and financial management consulting services not made in the GATS or offered in the Doha Round.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Communications Services	<p>--</p> <p><u>Telecommunications Services:</u> Basic telecom services market access in the Thai schedule is conditioned upon the enactment (foreseen in 2006) of legislation to liberalise the sector. As the Thai offer dates from 2005, we cannot say how this has been implemented.</p> <p>In general, the Thai commitments on mode 1 telecommunications services are limited by a requirement that service providers must use the public telecommunications network. Mode 3 commercial presence commitments are required to be routed through a Thai-registered company with foreign equity participation not exceeding 40 percent which itself must use the public telecommunications network under national telecommunication authorities. Such restrictions apply to</p>	No new offers in sector.	<p><u>Telecommunications Services</u></p> <p>.same on voice telephony, telegraph, telex, facsimile, with various restrictions</p> <p>-paging services: <b>additional commitment</b> with same restrictions as above</p> <p>-email, voice mail and online information and data base retrieval: <b>additional commitments</b>, along with online information and/or data processing services <b>modified commitment</b>: all have modes 1 and commitment but MA requirement that traffic routed through Thai gateways operated by licensed suppliers and the provision of services agreed by licensed supplier at both ends (vs.through national network and national authorities), plus mode 3 MA subject to new regulatory rules and regulations gradually being introduced from 2006 (not transparent).</p> <p>-data base access services: <b>modified commitment</b>, modes 1 and 2 restrictions more relaxed, but mode 3 MA and NT limited to maximum 25% foreign equity (vs. GATS 40%)</p> <p>-telecommunications terminal equipment leasing services: <b>additional commitments in modes 2 and 3 MA and NT</b></p> <p>-telecommunications equipment sales services and telecommunication consulting services: <b>adds mode 1 MA to</b></p>

	<p>commitments listed for: (a) database access services, (b) online information and data processing services, (c) video texting, (d) teleconferencing and (e) domestic leased circuits services.</p> <p>(a) Telecommunication s equipment sales services and (b) telecommunications consulting services are generally subject to full commitments in modes 2 and 3 with the exception that national treatment only applies in the case of mode 3 operations of companies with less than 49% foreign equity participation.</p> <p>-- <u>Audiovisual Services:</u> For (a) film and video production and distribution services and (b) radio/television services for the production of program services, market access and national treatment commitments apply in modes 2 and 3 provided there is no more than 49% foreign equity in the company.</p>		<p>GATS commitment</p> <p>-domestic VSAT: <b>additional commitment</b> in modes 1, 2 and 3 MA and NT, with mode 1 restriction must use public network under national authorities, and mode 3 requirement of Thai registered company with maximum 40% foreign equity and 40% number of shareholders, plus permitted under “built-transferred-operated concept” for at least 10 years.</p> <p>-dedicated network services: <b>additional commitment</b> in modes 1,2 and 3, 1 and 2 MA subject to requirement that traffic routed through Thai gateways operated by licensed suppliers and the provision of services agreed by licensed supplier at both ends, plus mode 3 MA subject to new regulatory rules and regulations gradually being introduced from 2006 (not transparent).</p> <p>- video texting, teleconferencing and domestic leased circuits services, same as GATS with limits on mode 1 and 3 MA commitments</p> <p><u>Audiovisual Services</u></p> <p>-film/video production and distribution services, and radio/television services only for production of programmes: same as GATS</p>
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<b>Comment</b>
Thailand appears to have made a number of commitments on telecommunications in the ASEAN framework that have not been incorporated in its GATS schedule. With no new offers made in the Doha Round, the FTA is clearly a more productive route to liberalisation in this sector.

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Construction Services	For (a) construction work for buildings, (b) construction work for civil engineering, and (c) installation work, modes 2 and three are subject to full commitments so long as there is no more than 49% foreign equity in the company for mode 3 operations. The otherwise applicable horizontal commitments for mode 4 are overridden by exclusion of civil engineers.	No new offers in sector.	-construction work for buildings, for civil engineering, installation work, same as GATS but query whether more aggregated categories are broader  -assembly and erection of prefabricated constructions, special trade construction, building completion and finishing work, and renting services relating to equipment for construction or demolition of building or civil engineering works with operator: <b>additional commitments</b> modes 2 and three are subject to full commitments so long as there is no more than 49% foreign equity in the company for mode 3 operations. The otherwise applicable horizontal commitments for mode 4 are overridden by exclusion of civil engineers.
<b>Comment</b>			
It is not clear that the commitments made on construction services in the ASEAN framework go beyond those made in the GATS. In any event, the 49% foreign equity limitations applicable to mode 3 operations in both cases mean that commitments only in effect apply to Thai firms.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Distribution Services	Commission agents' services are bound for mode 2 and	-- New commitment offered for retail	-same limited commitment in single

	for mode 3 except that national treatment is reserved for firms with less than 49% foreign equity.	sales of motor fuel and fuel oil.	subsector as GATS -omits limited offer (motor fuel) on retailing services made in DDA
<b>Comment</b>			
Neither the GATS/Doha Round nor ASEAN framework commitments appear to be commercially interesting.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Financial Services	<p>For <u>insurance services</u>, market access in mode 3 is generally restricted to companies with foreign equity participation of less than 25 percent. This applies to (a) life insurance, (b) non-life insurance, and (c) services auxiliary to insurance.</p> <p>For a range of <u>other financial services</u>, commitments are made for modes 1, 2 and 3, but national treatment in mode 3 is conditioned on foreign equity participation of less than 49% (in other words, national treatment for Thai companies only!). This applies in the case of: (a) insurance consultancy services, (b) average and loss adjustment services, (c) actuarial services, (d) credit card services, (e) financial consultancy services.</p> <p>For <u>banking and related financial services</u>, Thailand has undertaken a number of commitments relative to (a) acceptance of deposits, (b) lending, (c) financial leasing, (d) payment and money transmission services, (e) trading for</p>	No new offers in sector.	<p>In the second package of commitments, commitments were undertaken in respect of <u>insurance consultancy services</u> across all modes of delivery but with national treatment in mode 3 limited to those services providers with less than 49% foreign equity.</p> <p>Also in the second package, a commitment was made for <u>securities companies, securities brokerage, securities dealing, investment advisory and securities underwriting services</u>, unbound for mode 1 market access and with equity based (no more than 50% foreign) conditions on mode 3 market access.</p> <p>In the third package of commitments, a previous mode 4 restriction on the number of foreign personnel allowed in the <u>banking sector</u> was lifted with effect from one year after the ASEAN FAS commitments entered into force.</p>

	own account, (f) participation in securities underwriting, (g) asset management, etc, however, a large number of caveats apply to these commitments that often relate to maximum amounts of foreign equity participation or denial of national treatment for operations with greater than 49% foreign equity.		
<b>Comment</b>			
Commitments made in the context of the ASEAN FTA appear to go beyond what is contained in Thailand's GATS schedule, however, these commitments, like those in the GATS, are seriously undermined by limits on foreign equity participation.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Educational Services	(a) International and national school education services are bound for mode 2 and for mode 3 except that national treatment is reserved for firms with less than 49% foreign equity. (b) Technical and vocational educational services are bound for mode 2 and for mode 3 except that national treatment is reserved for firms with less than 49% foreign equity. (c) Professional and/or	-- New mode 4 commitment offered for teachers, provided satisfy qualification requirements and invited/employed by Thai-registered institution. Applies to school education services, technical and vocational services, higher education services, professional development/short courses services, and foreign language tuition services.	- International and national school education services and technical and vocational education services and profession and/or short courses education: same modes 2 and 3 MA and NT as GATS (DDA adds limited mode 4 commitments).  -no commitment on higher education (DDA has)

	short courses educational services are bound for mode 2 and for mode 3 except that national treatment is reserved for firms with less than 49% foreign equity.		
<b>Comment</b>			
Doha Round offer and commitments in ASEAN FTA context do not appear to be materially different.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Environmental Services	Where technically feasible (often not the case for mode 1), the following environmental services sub-sectors are bound for modes 1, 2 and 3 except that national treatment is reserved for firms with less than 49% foreign equity: (a) environmental consultancy on sewerage, waste management, air pollution and other environmental issues, (b) environmental abatement services, (c) sewerage services, (d) refuse disposal services, sanitation and similar services, (e) cleaning services for exhaust gases, (f) noise abatement services, (g) nature and landscape protection services and (h) other environmental	No new offers in sector.	Same as GATS schedule.

	services.		
<b>Comment</b>			
No post-Uruguay Round commitments or offers.			

Section	Pre-Doha Schedule Commitments	of Doha Round Offer	Commitments in FTA
Health & Social Services	No commitments in schedule	No offers in sector	<p>-general medical services and specialized medical services: <b>additional commitments</b> only in mode 2 MA, plus mode 4 conditions of Thai licence to practice and domicile.</p> <p>-dental services: <b>additional commitment</b> but only mode 2 MA and NT (latter not for reimbursement from public insurance) plus mode 4 requires licence to practice in Thailand and domicile</p> <p>-services provided by nurses: <b>additional commitment</b> mode 2 MA and NT</p> <p>-hospital services: <b>additional commitment</b> but only mode 2 MA and NT (latter not for reimbursement from public insurance) plus mode 4 requires licence to practice in Thailand and domicile</p>
<b>Comment</b>			
<p>The limitation of the commitments made in the ASEAN FTA context to mode 2 provision of the services is unusual and evidently means that the Thai authorities will not attempt to hinder This citizens travelling to other ASEAN countries for treatment. This is perhaps a defensive move designed to make sure other ASEANS do not place limitations on access to Thai "health tourism" operations.</p>			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Tourism and Related Services	Commitments for the following services are generally unbound in mode 1, and bound in mode 2 and 3 although national treatment applies in mode 3 only to operations with less than 49% foreign equity: (a) hotel lodging services, (b) restaurant services, (c) catering services, (d) travel agency and tour operator services and (e) hotel management services.	-- New commitments offered for holiday centre and holiday home services, camping and caravan site services, and theme parks/amusement parks services.	<p>-same commitments as GATS on hotel lodging services and meal serving services with full restaurant</p> <p><b>-additional commitments</b> on camping and caravan site services, beverage serving services without entertainment, motel lodging services and holiday center and holiday home services, all full commitments in modes 1, 2 and 3 MA and NT (DDA has fewer committed sub-sectors and for those fewer committed modes)</p> <p>-same commitments as GATS (mainly modes 2 and 3 NT and MA) for catering services, travel agency and tour operator services and hotel management services</p> <p>-convention centre over 2000 participants: <b>additional commitment</b> modes 2 and 3 MA and NT (? For a specific project?)</p>
<b>Comment</b>			
Thailand's FTA commitments may add marginally to the liberalisation contained in the GATS schedule and Doha Round offer.			



Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Transportation Services	<p>-- <u>Maritime Transport Services:</u></p> <p>For passenger transport internationally, full commitments on modes 1 and 2, with market access in mode 3 unbound for operating under the Thai flag.</p> <p>For freight transportation, mode 1 restrictions noted for traffic between China and Thailand, mode 2 fully bound and mode 3 largely unbound.</p> <p>For international towing, full commitments in modes 1 and 2, with restrictions applying in the case of mode 3 (operating under Thai flag).</p> <p>For (a) supporting services for maritime transport and (b) freight forwarding services, full bindings for mode 2 and bindings for mode 3 market access with mode 3 national treatment restricted to firms with less than 49% foreign equity.</p> <p>For (a) port captains' services and (b) marine port surveys, more or less full commitments for modes 1 and 2 and for</p>	<p><u>Maritime Transport Services:</u></p> <p>-- New commitment offered on maritime cargo handling services.</p> <p>-- New commitment offered on maritime agency services.</p> <p><u>Air Transport Services:</u></p> <p>-- New commitment offered on computer reservations systems services.</p> <p><u>Rail Transport Services:</u></p> <p>-- Meaningless mode 1 commitment offered rail equipment repair, passenger and freight car cleaning services and railway station security services</p>	<p>-passenger transportation and freight transportation: same as GATS (latter removes restrictions on traffic to/from China and Vietnam, now MFN inconsistent anyway since they are Members)</p> <p>-international towing, shore reception facilities, port captain's services attached to specific foreign vessels, classification societies, same as GATS</p> <p>-maritime cargo handling services and maritime agency services: <b>additional commitments</b> (same as DDA) in modes 2 and 3</p> <p>-rail transport services: same as GATS (vs. DDA which adds mode 1 commitments)</p> <p>-road transport services: same as GATS (and DDA)</p> <p>-services auxiliary to all modes of transport: <b>additional commitment</b> in customs clearance services, modes 2 and limited mode 3 MA (Thai nationality and licence required) and NT (Thai nationality</p>

	<p>market access I mode 3 but with national treatment in mode 3 restricted to firms with less than 49% foreign equity.</p> <p>-- <u>Air Transport Services:</u></p> <p>Full commitments only in modes 1 and 2 for aircraft repair and maintenance services,</p> <p>Selling and marketing of air transport services commitments only apply to mode 3 and limit CRS access to airline offices and general sales agent offices and require use of the Thai public telecommunications network.</p> <p>-- <u>Rail Transport Services:</u></p> <p>For the following sub-sectors, no commitments in mode 1, full commitments in mode 2 and full commitments in mode 3 market access but with national treatment in mode 3 limited to firms with less than 49% foreign equity: (a) maintenance and repair of rail transport equipment, (b) passenger and freight car cleaning services, and (c) security services at railway stations.</p> <p>-- <u>Road Transport Services:</u></p>		<p>plus 49% foreign equity limit); storage and warehouse services same as GATS; freight forwarding services: same modes committed as GATS, but appears to be for all modes of transport (whereas GATS for maritime transport only)</p>
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	<p>For the following sub-sectors, no commitments in mode 1, full commitments in mode 2 and full commitments in mode 3 market access but with national treatment in mode 3 limited to firms with less than 49% foreign equity: (a) freight transportation for frozen or refrigerated goods, (b) rental services of passenger cars with operator, and (c) rental services of buses and coaches with operator.</p> <p>-- <u>Services Auxiliary to All Modes of Transport</u>: For storage and warehousing services, no commitments in mode 1, full commitments in mode 2 and full commitments in mode 3 market access but with national treatment in mode 3 limited to firms with less than 49% foreign equity</p>		
<b>Comment</b>			
Thailand's FTA commitments may add marginally to the liberalisation contained in the GATS schedule and Doha Round offer.			

Section	Pre-Doha Schedule of Commitments	Doha Round Offer	Commitments in FTA
Recreational, cultural and sporting services	For (a) sporting services and (b) recreation park and beach services, full commitments apply in the case of modes 2 and 3, but with national treatment in	No offers in sector	<p>-sporting services (with exceptions) and recreation park and beach services: same as GATS</p> <p>-marina facilities (?for specific project) and</p>

	mode 3 guaranteed only to operations with less than 49% foreign equity participation.		theme parks and amusement parks: <b>additional commitments</b> in modes 2 and 3 NT and MA
<b>Comment</b>			
Thailand's FTA commitments may add marginally to the liberalisation contained in the GATS schedule. With no Doha Round offer, the FTA appears to offer more prospect for liberalisation in the sector.			

Section	Pre-Doha Schedule Commitments	Doha Round Offer	Commitments in FTA
List of MFN Exemptions		<p>-- Computer Reservations System MFN exemption dropped.</p> <p>-- Maritime and Air Transport VAT MFN exemption dropped.</p> <p>-- Cargo-sharing MFN exemptions for Chinese and Vietnamese maritime transport dropped.</p> <p>-- Aircraft repair and maintenance MFN exemption dropped.</p>	-ones included are same as GATS, but some (same as in DDA) are omitted: dropped for computer reservation services, selling and marketing of maritime and air transport services, on cargo sharing, on aircraft repair and maintenance services.

## PART II – FTA Provisions / Architecture

<b>I. General Comments</b>
<p>AFAS adopts a positive list approach to services liberalisation, with multiple rounds of negotiations for progressive liberalisation.</p> <p>The ASEAN Economic Community Blueprint adopted by the ASEAN Leaders at the 13th ASEAN Summit on 20 November 2007 in Singapore sets out concrete steps to be taken to achieve a free flow of services by 2015. In addition, certain priority sectors have been identified as targets for accelerated integration.</p> <p>The Protocol to Amend the ASEAN Framework Agreement on Services signed on 2 September 2003 in Phnom Penh, Cambodia provides for the application of “ASEAN Minus X” formula in the implementation of Member Countries’ services commitments. Under this formula, countries that are ready to liberalise a certain service sector may proceed do so without having to extend the concessions to non-participating countries.</p> <p>Disputes are subject to the Protocol on Dispute Settlement Mechanism for ASEAN unless and until a special mechanism is adopted for AFAS.</p>
<b>II. Main Relevant Provisions</b>
<p>AFAS, Protocol to Amend AFAS, and six packages of specific commitments by Member States, as follows:</p>

<p>ASEAN Framework Agreement On Services, Bangkok, 15 December 1995</p> <p>Protocol to Amend the ASEAN Framework Agreement on Services, Phnom Penh, Cambodia, 2 September 2003</p> <p>Initial Package (1997)</p> <p>Second Package (1998)</p> <p>Third Package (2001)</p> <p>Fourth Package(2004)</p> <p>Fifth Package (2006)</p> <p>Sixth Package (2007)</p>
<p><b>III. Rules of Origin / Denial of Benefits</b></p>
<p>Article VI of AFAS provides for the denial of benefits to a service supplier who is a natural person of a non-Member State or a juridical person owned or controlled by persons of a non-Member State constituted under the laws of a member State, but not engaged in substantive business operations in the territory of member State(s). In the absence any express provision in AFAS or the Protocol, the GATS definition of a natural person applies.</p>
<p><b>IV. Sector Specific Provisions</b></p>
<p>Two additional packages of commitments in financial services signed by the ASEAN Finance Ministers (the second and third Package of Commitments of Financial Services under the AFAS) and two additional packages of commitments in air transport signed by the ASEAN Transport Ministers (the Fourth and Fifth Packages of Commitments on Air Transport Services under the AFAS).</p> <p>ASEAN Members have identified 12 priority sectors for integration, including the following services sectors: air travel, health care, tourism, e-ASEAN (information and communications technology), and logistics. Members adopted the ASEAN Sectoral Integration Protocol for the Logistics Services Sector in 2007, along with a roadmap setting out integration measures and a timetable. Members are to take the indicated measures “on a priority basis so as to enable the progressive, expeditious and systematic integration of the logistics services sector”, with the objective of achieving integration by 2012. For other priority sectors the aim is integration by 2010.</p>
<p><b>V. Recognition</b></p>
<p>At present, ASEAN has concluded 4 (four) MRAs:</p> <ul style="list-style-type: none"> <li>▪ MRA on Engineering Services signed on 9 December 2005 in Kuala Lumpur, Malaysia;</li> <li>▪ MRA on Nursing Services signed on 8 December 2006 in Cebu, the Philippines;</li> <li>▪ MRA on Architectural Services and Framework Arrangement for the Mutual Recognition of Surveying Qualifications both signed on 19 November 2006 in Singapore.</li> </ul> <p>A number of other MRAs in other areas are currently in different stages of negotiations, which include Accountancy, Medical Practitioners, Dental Practitioners, and Tourism.</p>
<p><b>VI. Government Procurement</b></p>

Excluded by virtue of cross-reference to GATS, see below.
<b>VII. Other, including subsidies, safeguards</b>
Article XIV.1 of the AFAS provides that for matters in respect of which no specific provision is made, the terms, definitions and other provisions of the GATS shall be applied.