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Southeast Asia under the ASEAN Framework
Agreement on Services (AFAS)**

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1. Introduction

The ASEAN Framework Agreement on Services (AFAS) is a regional agreement on trade cooperation in services involving the members of the Association of Southeast Asian Nations (ASEAN)¹. The AFAS was signed during the Fifth ASEAN Summit on December 15, 1995. It is aimed at enhancing co-operation in the service sector among member economies by eliminating intra-regional trade restrictions and expanding the scope of liberalisation in services beyond those already undertaken under the GATS. In other words, the AFAS commitments are envisaged to be “GATS-plus”. Under the AFAS, initial negotiations focused on five sectors -- financial services, transport, telecommunications, tourism and professional business services. The AFAS has thus far completed two rounds of negotiations and three packages of commitments involving seven sectors (construction and maritime transport services having been added to the initial list of five sectors). The third round of negotiations is to be completed in 2004 (ASEAN Secretariat, 2002).

As with the GATS, the AFAS has adopted a “positive list or bottom-up” approach to liberalising service trade (Nikomborirak and Stephenson, 2001)². This approach requires countries to list their horizontal (all-sector) and sector-specific national treatment and market access commitments in a schedule that specifies the conditions for entry and treatment of foreign service providers vis-à-vis domestic service providers in these sectors. Although the commitments are considered to be binding once they are listed, the specific commitments may be modified in certain cases.

This paper compares the regional market access commitments made by individual ASEAN countries under the AFAS to their corresponding GATS commitments in financial services. This allows us to ascertain the extent to which the AFAS commitments in financial services are truly “GATS-plus”. Since financial services were negotiated in the second package

¹ ASEAN consists of ten of the eleven Southeast Asian countries, East Timor being the exception. The ten members are Indonesia, Malaysia, Thailand, the Philippines, Singapore (original members), Brunei Darussalam, Cambodia, Myanmar, Lao PDR and Vietnam.

of the AFAS commitments of 1998, the analysis that follows draws extensively from the schedules provided in this package. Note that since Cambodia did not offer any specific commitments, it is excluded from the following analysis³.

2. Country Overviews

2.1 Indonesia

Indonesia has not made any specific commitments in financial services under the AFAS and has only stated the general conditions for entry in the banking sector. Thus, its AFAS commitments do not cover insurance services at all. Even in the banking sector, no sub-sector specific commitments are detailed under its AFAS schedule. Comparing the general conditions for entry of foreign investors in the banking sector under the GATS and the AFAS, while in the former all limitations on market access commitments in the banking sector are to be eliminated by 2020 subject to similar moves by other members, the time frame for removing such limitations under the AFAS is 2010. This is, therefore, a GATS-plus feature.

The second GATS-plus feature in the AFAS schedule of Indonesia's financial services is that branch offices of foreign banks and those involving joint ventures can be opened in three more cities (viz. in Padang, Manado and Amban) under the AFAS, compared to those already allowed under the GATS (viz. in Jakarta, Surabaya, Semarang, Bandung, Medan, Ujung Pandang, Denpasar and Batam Island).

All in all, Indonesia has made a few GATS-plus commitments in financial services under the AFAS.

2.2 Malaysia

Under the AFAS, Malaysia has offered commitments in the areas of advisory, intermediation and auxiliary financial services, including credit reference and analysis,

² The other approach to service trade liberalisation is that of "negative listing" or "top-down", wherein all service sectors need to be liberalised unless specified in the form of annexes that refer to any discriminatory measure or reservations with respect to coverage of sectors.

investment advice on acquisitions, corporate restructuring and strategy, operational headquarter (OHQ) for financial sector, and in life and non-life insurance services. However, the schedules indicate that, as in the case of the GATS, limitations on market access and on national treatment under the AFAS pertain mostly to the presence of natural persons (Mode 4) as opposed to commercial presence (Mode 3)⁴. Temporary presence of natural persons in these services (excluding OHQ and insurance) has been offered only when the supply of services is via commercial presence under the AFAS which was kept unbound under the GATS. While entry is limited to a maximum period of five years, the number of posts that can be offered to foreign experts are restricted. There have however been some GATS-plus offers. As one instance of this, under the AFAS, three foreign nationals are permitted to set up representative office for advisory, intermediation and auxiliary financial services, including credit reference and analysis, investment advice on acquisitions, corporate restructuring and strategy.

Overall, a few GATS-plus features are apparent for Malaysia's financial services sector in Mode 4.

2.3 Singapore

Despite the fact that the service sector constitutes nearly two-thirds of GDP in the economy, and the city state has ambitious plans to become a major financial services hub, Singapore has offered very few commitments for financial liberalisation under the AFAS, and in only one sub-sector within the financial services relating to the operation of finance companies in Singapore. Activities range from lending (including consumer credit, mortgage credit and factoring) and financing of commercial transaction. Under Mode 3, Singapore has allowed issuance of credit and charge cards with MAS approval. However, loans in Singapore dollars by local or foreign owned financial institutions to non-residents, or to companies controlled by non-resident as well as to residents for use out of Singapore requires central bank approval. Credit companies that do not conduct activities that require central bank approval are

³ Note that Vietnam and Lao PDR have observer status in the WTO and hence are not signatories to GATS.

allowed to operate. However, there are two limitations on national treatment imposed under Mode 3 for such services. One, each offshore bank cannot lend more than S\$ 300 million in aggregate to residents. Two, its related merchant banks should not be used to circumvent this limit. Since this limit was stipulated to be S\$ 200 million under the GATS, it can be interpreted as a GATS-plus measure under the AFAS.

2.4 Thailand

Under the AFAS, Thailand has made no commitments in banking and insurance services but it has made commitments in the area of securities brokerage, securities dealing, and underwriting services, as well as in collective investment schemes involving asset management companies. A maximum foreign equity participation of up to 100 percent of paid-up capital is allowed in these areas. However, the schedules indicate that there are significant limitations on market access and on national treatment in these areas, mostly like those prevailing in its GATS schedule. Notably, market access share is limited to the acquisition of existing companies and has been unbound for new licenses.

Overall, Thailand's AFAS commitments in financial services have not really been GATS-plus offers in the sense that far fewer sub-sectors have been committed for liberalisation by Thailand under the AFAS compared to those under the GATS. The only possible GATS-plus feature observed under the AFAS commitments made in the financial services sector pertains to limits on foreign equity shareholding of up to 100 percent of paid-up capital, compared to 49 percent under the GATS.

2.5 The Philippines

Under its commitments for financial services liberalisation under the AFAS in 1998, only commercial banking services have been offered. No commitments in insurance and other non-banking sector have been made. Among the other restrictions on market access pertaining

⁴ See Rajan and Sen (2002) for a definition of various modes of trade in services.

to commercial presence under the AFAS, the Philippines has allowed foreign banks to establish a maximum of 6 branches, with locations of half of them being designated by the Monetary Board of the Philippines. Non-Filipinos are allowed to become members of Board of Directors of a bank to the extent of foreign equity participation in the bank. The Philippines also requires authorisation for acceptance of deposits and other repayable funds from the public, performance of important fiduciary functions viz. investment management, foreign currency and trading in derivatives, as well as for underwriting of shares (which can be performed only by commercial banks). Despite these commitments, the Philippines reserves the right to accord favourable treatment to those service providers of member countries that accord similar treatment to Filipino financial service suppliers in their country, on a discriminatory basis, as part of its MFN exemptions for this sector.

2.6 Brunei Darussalam

Brunei Darussalam has offered very few commitments under the AFAS, and that too in only a small sub-sector within the financial services which relates to provision and transfer of financial information, financial data processing and related software by providers of other financial services. However, approval from the Ministry of Finance is required for commercial presence (Mode 3). Under Mode 4, entry and temporary presence of up to 2 intra-corporate transferees at manager, executive and specialists level is allowed, subject to horizontal commitments. All other modes are kept unbound. The only GATS-plus feature in here is the commitment under Mode 4, which was kept unbound under its GATS schedule.

2.7 Lao PDR

Under the AFAS, Lao PDR has offered commitments under Mode 3 in the banking sector related to securities broking and payments and money transmission services, with the stipulation that commercial presence must entail a joint venture with one or more Lao investors, either through 100 % foreign invested companies or through a branch or

representative office. All such proposals have to be licensed by the foreign investment management committee upon approval from the relevant government authority. Foreign equity is stipulated not to be less than 30 % for such joint ventures. Lao PDR has also stated some general conditions for the establishment of banks in the country though no specific commitments are provided. Since the country is not a member of the WTO as yet, it is not a signatory to the GATS and hence does not have any commitments therein.

2.8 Myanmar

Under the AFAS, Myanmar has offered commitments under Mode 3 in the banking sector related to opening of representative offices by foreign banks in the country. This is a GATS-plus feature since Myanmar has not yet negotiated liberalization of financial services under the GATS. However, no equity holding pattern is specified. Limits on national treatment and market access are otherwise kept unbound.

2.9 Vietnam

In contrast to most of the other ASEAN economies, Vietnam has offered specific commitments in a broader range of sub-sectors in financial services spanning both insurance and banking.

Within the insurance sector, Vietnam has offered commitments in life insurance (covering accident and health) and in non-life insurance as well as in reinsurance as well as auxiliary services including brokering and agency services (ASEAN Secretariat, 1998). Under Mode 3, Vietnam has committed to allowing up to two joint ventures in the first and second sub-sectors (i.e. life and non-life insurance respectively) and one in the case of the third sub-sector, i.e. auxiliary services for insurance by the year 2000. In general, such companies are allowed to provide their services only to the foreign invested area. Life, accident and health insurance are exempted. Providers in these areas are also allowed to offer their services to foreigners residing in Vietnam. However, in all cases, these companies are required to divest at

least 30 % of their equity to domestic companies after 5 years of earning profits. These companies are also subject to minimal legal capital requirements.

With regard to banking services, Vietnam has offered commitments under Mode 3 for the acceptance of deposits, lending, and financial leasing, payment and money transmission services. Branches of foreign banks or joint ventures are permitted to receive demand and term deposits in Vietnamese Dong from specific institutions and individuals but are not allowed to receive saving deposits in any form. Such restrictions also apply to banking services related to lending or payment and money transmission services in Vietnamese Dong. Foreign banks are allowed to open only a single branch in each province and city under central authority and are not permitted to set up representative offices in these areas. Banks are also subject to minimal legal capital requirements.

3. Concluding Remarks

If one compares the various specific AFAS commitments offered by the ASEAN economies, the content of services trade liberalisation in most of these countries may at best be termed as “weak”. None of the ASEAN countries have offered commitments in all the sub-sectors of financial services. The widest coverage of sub-sector commitments is observed in the case of Vietnam, which incidentally is yet to become a member of the WTO. The other regional countries that are signatories to the GATS have been very cautious in committing themselves to GATS-plus offers under the AFAS and has made little progress in liberalising trade in financial services at the regional level.

In view of this, Austria and Avila (2001) note that the request-and-offer approach adopted by ASEAN negotiators under the AFAS has been rather time consuming and has had negligible impact on services trade among the member countries. The multilateral approach via the GATS appears to have been more effective in promoting trade liberalisation in services in the ASEAN region. This view is echoed by Nikomborirak and Stephenson (2001) who note:

Bolder and more far-reaching commitments have been made in GATS rather than under the AFAS....the liberalising content of commitments members

made in GATS have been often watered down, rather than furthered in AFAS. The lack of progress can be contributed to four key factors namely, the lack of political will and genuine commitment to open up the service market, weaknesses in the negotiation framework, legal restrictions and institutional limitations (pp.7-10).⁵

Future rounds of AFAS negotiations would thus require much bolder and more effective commitments from all members if the AFAS is to have “teeth”. However, as Nikomborirak and Stephenson (2001) observe, this in turn would require a much greater political will by ASEAN, an increased sense of urgency and enhanced cooperation in ensuring better access to data on services trade, improved transparency with regards to laws and regulations, and a more target-oriented approach to services liberalisation by all ASEAN members.

⁵ Their study covered four service sectors, viz. Telecommunications, Air transport, Maritime Transport and Tourism.

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