TRADE IN SERVICES
IN THE ASEAN ECONOMIC COMMUNITY (AEC)

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Outline

1. Basics: Services, Trade in Services, and How to Negotiate Liberalization
2. Trade in Services Liberalisation in ASEAN: Progress and Challenges of Services Liberalisation under the ASEAN Framework Agreement on Services (AFAS)
3. Understanding the AFAS Schedule of Commitments

4. Further Reading / Topics in ASEAN Trade in Services: the ASEAN Agreement on the Movement of Natural Persons (MNP), and Mutual Recognition Arrangements (MRAs) for professional services in ASEAN
Part 1: Basics

Services, Trade in Services, and How to Negotiate Liberalization
What are services?

<table>
<thead>
<tr>
<th>1. Business Services</th>
<th>7. Financial Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Communication Services</td>
<td>8. Health-related and social services</td>
</tr>
<tr>
<td>3. Construction and related engineering Services</td>
<td>9. Tourism and travel-related services</td>
</tr>
<tr>
<td>4. Distribution Services</td>
<td>10. Recreational, cultural, and sporting services</td>
</tr>
<tr>
<td>5. Educational Services</td>
<td>11. Transport Services</td>
</tr>
<tr>
<td>6. Environmental Services</td>
<td>12. Other Services not included elsewhere</td>
</tr>
</tbody>
</table>

Based on the *Sectoral Classification List of the World Trade Organization (WTO)*: 12 categories with 154 individual (sub-)sectors

For more detail: the *United Nations’ Central Product Classification (CPC)* differentiates into 5,000 sub-sectors
1. Services contribute more to GDP growth than manufacturing in developing countries

2. Trade in Services is less vulnerable to economic shocks

Source: UNCTAD - Key Statistics and Trends in International Trade 2015
3. Services are a source of export growth and export diversification

- Services exports are surging for countries of all levels of development but developing countries are capturing an increasing share.
- The path to an increase in services exports is less capital-intensive than increasing manufacturing exports (but more skills intensive).

**Share in global services exports**

- **Developed economies**: 69.4% in 2010, 68.2% in 2014.
- **Developing countries**: 28.1% in 2010, 29.2% in 2014.
- **LDCs**: 0.7% in 2010, 0.8% in 2014.

*Source: UNCTAD Database*
Services Role in the Economy (3/3)

4. Services increase competitiveness of down-stream sectors

- Services (ICT, transport, distribution, legal or financial services) anchor and support production processes
- High-quality services inputs increase competitiveness & value-added of downstream products in all sectors
- A competitive, high-quality, efficient services sectors helps to attract foreign investment in manufacturing sectors

Source: OECD / Rainer Lenz, 2015
Factors influencing international competitiveness in Services

- Human & intellectual capital
- Investment in intangible assets and innovation
- Digital infrastructure
- Quality of institutions
- Efficiency of domestic regulation
- Efficiency of the financial system
- Trade & investment policy
What is Trade in Services?

Trade in Goods

Indirect relationships between producer and consumer

Only one way to trade: Tangible goods are shipped between countries

Example: A Chinese electronics assembler sends the final mobile phone to wholesale centres across the world; final consumers never interact with manufacturer

Trade in Services

Direct relationships between producer and consumer

Four different possibilities of how to ship the product between producer and consumer

Example: A designer may deliver his designs
a) Virtually / online / via e-mail / telephone
b) Customer may travel across border to consult the designer
c) Designer may set up an office abroad
d) Designer may temporarily travel abroad to the customer
How to Trade in Services?

1. **Mode 1** – Cross-border supply
2. **Mode 2** – Consumption abroad: consumer travels to producer
3. **Mode 3** – Commercial presence (foreign investment): producers moves across border to consumer, long-term
4. **Mode 4** – Temporary movement of natural person: Service supplier moves across border to provide services to a consumer
How to measure Trade in Services?

1. **Mode 1** – Cross-border supply

2. **Mode 2** – Consumption abroad: consumer travels to producer
   → reflected in Balance of Payments

3. **Mode 3** – Commercial presence (foreign investment): producers moves across border to consumer, long-term
   → Movement of capital, measured by foreign affiliate statistics (FATS)

4. **Mode 4** – Temporary movement of natural person: Service supplier moves across border to provide services to a consumer
   → reflected in Balance of Payments

❖ **Indirect services trade** (embodied in goods)
   → Measured by trade in value-added statistics (international input-output tables)
New Trade-in-value-added data shows that services account for almost half of global exports.

Source: ITC
The Services Opportunity in Global Value Chains

- Services are key inputs and enabler of Global Value Chains – both manufacturing and services GVCs
- Opportunities due to global outsourcing of services inputs are huge: developing countries have gained large market shares in construction, ICT, travel and transport in the past 10 years
Negotiation Basics

How to Negotiate Trade in Services Liberalisation?
What is Services Liberalization?

**Liberalization** in trade in services means to allow foreign services providers to compete on a non-discriminatory basis with domestic public and private companies, through all Modes of Supply.

**Deregulation** or **Re-regulation** refers to the creation of a new regulatory environment to ensure a market-oriented framework for services provision, in particular to reduce or eliminate restrictions on competition.
The blueprint of Services agreements: the WTO’s General Agreement on Trade in Services (GATS)

- GATS was concluded in 1995
- GATS seeks the expansion of services trade through progressive liberalisation, and transparent and predictable rules and regulations
- GATS serves as a **blueprint for most services agreements** around the world (definition of Modes of Supply, key principles, rights and obligations, positive-list approach, etc.)
- ASEAN Services negotiations use GATS modalities, for example the **positive/hybrid list approach**: countries only list sectors for which they choose to make commitments (*Schedules of Commitments*)
  - The opposite is a negative list approach that only lists non-conforming measures and sectors that are not to be liberalized
In Services agreements, countries commit to General Obligations…

- **Most-Favoured Nation Treatment (MFN):** *favour one, favour all* = treat all Member States and Member State’s products and services equally

- **Transparency:** publication of measures affecting trade in services, notification of WTO and Member States, etc.

- **Fairness of domestic regulation** (licensing requirements, technical standards, procedures…): should not constitute unnecessary barriers to trade

- (among others)

- Exceptions are possible, for example for security, health, order, morals, privacy, etc.
…and Specific Obligations

• Specific Obligations are made only for certain sectors, inscribed in the Schedules of Specific Commitments

• Under the specific obligations countries guarantee:
  
  ▪ **Market Access** = allow foreign service providers to enter the domestic market without conditions and barriers

  ▪ **National Treatment** = treat all Member States and their products and services as well as you treat domestic suppliers
Maintaining policy space

- Commitments in the schedule are binding; meaning a country may not introduce policies that are more restrictive than international obligations…
- …however, countries may introduce more liberal policies than what they committed in the schedule
- The difference between the bound level and the actual, applied level
- Countries maintain policy space by only undertaking marginal commitments even if their current policy is already far more liberal
Part 2: Trade in Services Liberalisation in ASEAN

Progress and Challenges of Services Liberalisation under the ASEAN Framework Agreement on Services (AFAS)
Trade in Services in ASEAN is growing, but especially intra-ASEAN Trade is still below potential

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>2.662,1</td>
<td>2.825,0</td>
<td>1,0</td>
<td>1,5</td>
</tr>
<tr>
<td>Cambodia</td>
<td>3.029,6</td>
<td>5.707,9</td>
<td>12,7</td>
<td>17,2</td>
</tr>
<tr>
<td>Indonesia</td>
<td>43.131,5</td>
<td>57.070,4</td>
<td>7,0</td>
<td>7,3</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>774,1</td>
<td>1.261,7</td>
<td>17,4</td>
<td>13,0</td>
</tr>
<tr>
<td>Malaysia</td>
<td>65.656,3</td>
<td>87.129,7</td>
<td>8,6</td>
<td>7,3</td>
</tr>
<tr>
<td>Myanmar</td>
<td>1.079,9</td>
<td>5.144,1</td>
<td>25,4</td>
<td>47,7</td>
</tr>
<tr>
<td>Philippines</td>
<td>29.798,7</td>
<td>44.799,9</td>
<td>12,3</td>
<td>10,7</td>
</tr>
<tr>
<td>Singapore</td>
<td>202.044,9</td>
<td>281.981,0</td>
<td>10,6</td>
<td>8,7</td>
</tr>
<tr>
<td>Thailand</td>
<td>79.342,7</td>
<td>108.539,7</td>
<td>8,3</td>
<td>8,1</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>17.274,0</td>
<td>25.380,0</td>
<td>12,2</td>
<td>10,1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>444.793,8</td>
<td>619.839,4</td>
<td>9,7</td>
<td>8,7</td>
</tr>
</tbody>
</table>

- Growth rates for Services trade and investment are higher than for goods
- Regarding FDI, around 60% of total foreign investment (80 billion USD in 2014) in ASEAN goes into services sectors
- Intra-ASEAN services trade is only around one quarter of total services trade; and growing less than total services trade
ASEAN exports mostly *traditional* services (transport and travel) – less successful in tapping modern and IT-enabled services

**ASEAN Export of Services by Sectors**

Source: ASEANStats
Services represent between 40 and 70% of GDP in ASEAN Member States…

Services as Percentage of GDP in ASEAN, 2013

- Brunei Darussalam
- Cambodia
- Indonesia
- Lao PDR
- Malaysia
- Myanmar
- Philippines
- Singapore
- Thailand
- Viet Nam

Source: ASEANStats
…but Services exports are still underdeveloped in most ASEAN Member States

ASEAN Services exports as a percentage of GDP

<table>
<thead>
<tr>
<th>Country</th>
<th>2010</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam</td>
<td>5.9</td>
<td>6.4</td>
</tr>
<tr>
<td>Thailand</td>
<td>10.1</td>
<td>13.7</td>
</tr>
<tr>
<td>Singapore</td>
<td>45.6</td>
<td>42.6</td>
</tr>
<tr>
<td>Philippines</td>
<td>8.9</td>
<td>8.7</td>
</tr>
<tr>
<td>Myanmar</td>
<td>5.0</td>
<td></td>
</tr>
<tr>
<td>Malaysia</td>
<td>12.4</td>
<td>13.3</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>6.4</td>
<td>7.1</td>
</tr>
<tr>
<td>Indonesia</td>
<td>2.6</td>
<td>2.2</td>
</tr>
<tr>
<td>Cambodia</td>
<td>18.2</td>
<td>22.8</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>6.6</td>
<td>8.5</td>
</tr>
</tbody>
</table>

Source: ASEANStats and World Bank Development Indicators
CLMV countries are mostly exporting travel and tourism services

Services Exports 2014: Lao PDR, Cambodia, Vietnam
Largest categories, in million USD

<table>
<thead>
<tr>
<th>Category</th>
<th>Lao PDR</th>
<th>Cambodia</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance and pension services</td>
<td>11.6</td>
<td>0.5</td>
<td>0.8</td>
</tr>
<tr>
<td>Construction</td>
<td>3.9</td>
<td>10.2</td>
<td>36.6</td>
</tr>
<tr>
<td>Financial Services</td>
<td>38.6</td>
<td>25</td>
<td>57</td>
</tr>
<tr>
<td>Other business services</td>
<td>0</td>
<td>2953</td>
<td>642</td>
</tr>
<tr>
<td>Telecommunications, computer, and information services</td>
<td>57</td>
<td>431</td>
<td>419</td>
</tr>
<tr>
<td>Transport</td>
<td>0.5</td>
<td>25</td>
<td>58</td>
</tr>
<tr>
<td>Travel</td>
<td>10.2</td>
<td>49.2</td>
<td>90</td>
</tr>
<tr>
<td>Total Services Exports</td>
<td>764.5 million USD</td>
<td>3824.4 million USD</td>
<td>10922 million USD</td>
</tr>
<tr>
<td>Total Services Imports</td>
<td>497.3 million USD</td>
<td>1883.5 million USD</td>
<td>14458 million USD</td>
</tr>
</tbody>
</table>

Source: ASEANStats
Institutional Framework and Negotiation Process for Trade in Services Liberalization in the AEC

1. Member States draft Schedules of Commitments;
2. Submission of the schedules to the ASEAN Secretariat (ASEC);
3. Negotiation between Member States;
4. Conclusion of Negotiations: Protocol for Implementation is signed by Economic Ministers of all AMS;
5. **AMS finalize domestic process to ratify Protocol within 180 days**

Liberalised sectors to be bound within the schedule of commitments (no new restrictions can be introduced once a sector is liberalised).
Sector coverage in the ASEAN Services Liberalisation Universe

1. Business Services
2. Telecommunication Services
3. Construction and Engineering
4. Distribution Services
5. Education Services
6. Environmental Services
7. Financial Services
8. Healthcare Services
9. Tourism Services
10. Recreation, Culture, sport
11. Transportation Services
12. Others

<table>
<thead>
<tr>
<th>Responsible ASEAN Body</th>
<th>Total number of sub-sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordinating Committee on Services (CCS)</td>
<td>128</td>
</tr>
<tr>
<td>Working Committee on Financial Services Liberalisation (WCFL)</td>
<td>17</td>
</tr>
<tr>
<td>Air Transport Working Group (ATWG)</td>
<td>6</td>
</tr>
<tr>
<td>Coordinating Committee on Investment (CCI)</td>
<td>4</td>
</tr>
</tbody>
</table>
Objectives of ASEAN Trade in Services Liberalisation

- Eliminate barriers to Trade in Services across ASEAN in 128 sectors, in a step-by-step approach. The different sector groups to liberalize include:
  - **Priority Integration Sectors (PIS)** – 29 sub-sectors within air transport, e-commerce, healthcare, and tourism
  - **Logistics** – 9 sub-sectors
  - **Non-PIS** – another 90 sub-sectors

Liberalisation of PIS and Logistics sectors should have been completed by 2010, but commitments are still missing from Member States.

*What is meant by “eliminate barriers” in the AEC? From the Blueprint 2015:*

1. Fully remove limitations to Mode 1 and 2 of Service Delivery
2. Remove limitations to Market Access and National Treatment in Mode 3
3. Raise Foreign Equity Participation under Mode 3 Market Access to 70%

*Important to keep in mind: GATS-plus principle!*
Objectives of ASEAN Trade in Services Liberalisation

**Mode 1**
- None

**Mode 2**
- Market Access
  - Number of service providers
  - Total value of service transactions
  - Total number of service operations / total quantity of service output
  - Number of natural persons to be employed
  - Type of legal entity or joint venture
  - **Percentage limit on foreign shareholding**

**Mode 3**
- National Treatment
  - Limitations on land ownership
  - Determining minimum amount of capital investment
  - Tax requirements
  - Licensing requirements
  - Requirements regarding technology transfer

**Mode 4**
- Not negotiated under AFAS
Achievements: 9 packages of commitments concluded…

• 9th AFAS package concluded in 2013
  ▪ Protocol to Implement AFAS 9 signed in November 2015 by all Member States
  ▪ Domestic procedures for ratification of protocol still on-going
  ▪ Will enter into force on 25 May 2016 (180 days after signing the protocol)

• Financial Services: 6 packages of commitments adopted; completion of 7th package expected in 2016

• Air Traffic Services: large agreements on Freedoms of the Air, and 9 packages of additional commitments.
  ▪ Progress towards a Single ASEAN Aviation market is good; topic is not covered in other international fora – regional initiatives such as the AEC can really make a difference
…but the 10th and final AFAS package remains a challenge

- “AMS are actively undertaking domestic consultations to prepare their offers for the 10th AFAS” *(Report of the last CCS Session)*
- Package10 needs to fulfil the targets set in the Blueprint 2015
- AMS agreed on a staged approach for the 10th package, aiming for a completion only by 2017
- Most countries not ready to make the necessary commitments, protectionism in services sectors remains high
…and overall, ASEAN Member States remain highly restrictive with respect to Trade in Services

Commitments improved **policy certainty** in ASEAN but have not produced significant liberalization.

ASEAN countries have on average **more restrictive** services policies than other regions.

ASEAN countries failed to ensure ASEAN **centrality**: they are rarely more open internally than externally.

Market access is heavily restricted due to **unpredictable and discretionary licensing** procedures in many sectors.
Services Trade Restrictiveness Index (100=fully closed, 0=open) – ASEAN averages compared to targets

Source: ASEC/World Bank - ASEAN Services Integration Report 2015
STRI – Applied Policies for ASEAN Member States, by Industry

Source: ASEC/World Bank - ASEAN Services Integration Report 2015
ASEAN countries frequently lack key domestic policy factors for successful Services liberalization:

- A clear **liberalization strategy**, backed with economic analysis: when and how to open up which sectors for maximum development impact
- Correct **sequencing** of liberalisation, regulatory reform and re-regulation
- An adequate and effective **legal framework** in the respective sector
- Building **regulatory capacity** to oversee increased numbers of players in a certain sector
- Formulating a **negotiation strategy**: what to ask from other Members
- **Implementation capacity**: sector regulators are often not aware of the commitments made at the regional level
- Adequate **supply side capacity building** (supporting the private sector to gain competitiveness and make use of opportunities)
Outlook: new Blueprint – but low ambitions, negotiations for a new Services agreement progress slowly

• AFAS was signed in 1995 and is set to expire in 2015 to be replaced by the ASEAN Trade in Services Agreement (ATISA)

• ATISA should be an even more modern, forward-looking agreement, taking into account changes in the global economy and ASEAN-plus agreements – the hope is that it may accelerate Trade in Services Liberalisation in ASEAN…

• …however, this will crucially depend on political will – and on regulatory capacity, particularly in CLMV countries

• For now, negotiations for the ATISA started but did not conclude
Outlook: Services in the AEC Blueprint 2025

**Characteristic 1: A Highly Integrated and Cohesive Economy**

<table>
<thead>
<tr>
<th>A2. Trade in Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review existing flexibilities, limitations, thresholds and carve-outs, as appropriate</td>
</tr>
<tr>
<td>Enhance mechanisms to attract <strong>foreign direct investment (FDI)</strong> in the services sectors (…)</td>
</tr>
<tr>
<td>Establish possible disciplines on <strong>domestic regulations</strong> to ensure competitiveness of the services sector taking into consideration other non-economic or development or regulatory objectives</td>
</tr>
<tr>
<td>Explore <strong>alternative approaches</strong> for further liberalisation of services</td>
</tr>
<tr>
<td>Consider the development of <strong>sectoral annexes</strong></td>
</tr>
<tr>
<td>Enhance <strong>technical cooperation</strong> in the services sector for human resource development (…)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A5. Facilitating Movement of Skilled Labour and Business Visitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expand and deepen commitments under the <strong>ASEAN Agreement on MNP</strong> where appropriate</td>
</tr>
<tr>
<td>Reduce, if not standardise, <strong>documentation requirements</strong>.</td>
</tr>
</tbody>
</table>

**Characteristic 3: Enhanced Connectivity and Sectoral Cooperation**

<table>
<thead>
<tr>
<th>C7. Healthcare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continue <strong>opening up of private healthcare market</strong> and Public Private Partnership (PPP) investments in provision of universal healthcare in the region</td>
</tr>
</tbody>
</table>
Part 3: Understanding AFAS Schedule of Commitments
Elements of AFAS Schedule of Commitments

- **Horizontal Commitments**
  - Apply to all sectors in the Schedule of Commitment
  - General provisions, in order to avoid having to repeat them for each sector

- **Specific (Sector) Commitments**
  - For each sub-sector, list commitments for each Mode of Supply (1, 2 and 3), distinguishes between market access and national treatment

- **List of MFN Exemptions**
  - In principle, Most-Favoured-Nation Treatment is a general obligation; however, exemptions are possible when countries first join
What are commitments? (1/2)

Three main options for each Mode of Supply

1. “Unbound” = no commitment, country retains full policy discretion
   • Often used for sensitive sectors or not (yet) regulated sectors
   • Country will face pressure to make commitments

2. “None” = full commitment, no limitation or restriction
   • A “none” cannot be undone; no new restrictions may be introduced in future rounds of negotiations

3. Spelling out restrictions or limitation for a specific Mode = partial commitment
What are commitments? (2/2)

Regarding Option 3.

Only a **certain number** and **clearly defined limitations** may be specified in the schedule:

<table>
<thead>
<tr>
<th>Limitations to market access (MA)</th>
<th>Limitations to national treatment (NT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Limitations on the number of service providers</td>
<td>• Limitations on land ownership</td>
</tr>
<tr>
<td>• Limitations on the total value of service transactions</td>
<td>• Determining minimum amount of capital investment</td>
</tr>
<tr>
<td>• Limitations on the total number of service operations / total quantity of service output (products)</td>
<td>• Tax requirements</td>
</tr>
<tr>
<td>• Limitations on number of natural persons to be employed</td>
<td>• Licensing requirements</td>
</tr>
<tr>
<td>• Specific requirements regarding the type of legal entity or joint venture</td>
<td>• Requirements regarding technology transfer</td>
</tr>
<tr>
<td>• Maximum percentage limit on foreign shareholding</td>
<td></td>
</tr>
</tbody>
</table>

**Mostly quantitative restrictions allowed for MA!**
Example 1: Lao PDR’s **Horizontal Commitments** for the 9th AFAS Package

Modes of Supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

<table>
<thead>
<tr>
<th>Sector or Subsector</th>
<th>Limitation on Market Access</th>
<th>Limitation on National Treatment</th>
</tr>
</thead>
</table>
| I. HORIZONTAL COMMITMENTS | 3) **Commercial presence** of foreign service suppliers can be in the following form:  
• joint venture with one or more domestic Lao investors,  
• wholly foreign-owned enterprise  
• branch or representative office  
A company is considered a joint venture when it has at least 10% foreign equity.  
The commercial presence of foreign service suppliers is **subject to approval by the concerned competent authorities**. Enterprises with foreign capital require an investment license, which sets out the terms of operation, and a business cooperation contract.  
3) Foreign service suppliers in the Lao PDR may **lease land** within the Lao PDR and transfer their leasehold interest. They may own improvements on land and other moveable property and transfer those ownership interests.  
Foreign investors shall **provide adequate training opportunities** to Lao PDR nationals.  
**Tax measures**, generally pertaining to small and medium enterprises may result in a difference of treatment in favour of Lao PDR services and service suppliers. |
Example 2: Schedule of **Specific Commitments** for the 9th AFAS Package (Lao PDR): Legal Services

Modes of Supply:  1) Cross-border supply  2) Consumption abroad  3) Commercial presence

<table>
<thead>
<tr>
<th>Sector or Subsector</th>
<th>Limitation on Market Access</th>
<th>Limitation on National Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. BUSINESS SERVICES</td>
<td>1) None</td>
<td>1) None</td>
</tr>
<tr>
<td>A. Professional Services</td>
<td>(2) None</td>
<td>(2) None</td>
</tr>
<tr>
<td>a) Legal services, excluding:</td>
<td>(3) Foreign equity participation limited to 49%.</td>
<td>(3) Unbound</td>
</tr>
<tr>
<td>- Participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Legal documentation and certification services of the laws of Lao PDR (part of CPC 861)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Example 3: Schedule of **Specific Commitments** for the 9th AFAS Package (Lao PDR): Tourism Services

Modes of Supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

<table>
<thead>
<tr>
<th>Sector or Subsector</th>
<th>Limitation on Market Access</th>
<th>Limitation on National Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. TOURISM AND TRAVEL RELATED SERVICES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hotel lodging services, with 3 stars or more (Part of CPC 641)</td>
<td>(1) None</td>
<td>(1) None</td>
</tr>
<tr>
<td></td>
<td>(2) None</td>
<td>(2) None</td>
</tr>
<tr>
<td></td>
<td>(3) None</td>
<td>(3) None</td>
</tr>
<tr>
<td>Meal serving services with full restaurant service (CPC 64210)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beverage serving services without entertainment (CPC 64310)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Example 4: Schedule of Specific Commitments for the 9th AFAS Package (Lao PDR): Health Services

**Modes of Supply:**
1) Cross-border supply  
2) Consumption abroad  
3) Commercial presence

<table>
<thead>
<tr>
<th>Sector or Subsector</th>
<th>Limitation on Market Access</th>
<th>Limitation on National Treatment</th>
</tr>
</thead>
</table>
| Private hospital services (Hospital with more than 100 beds and modern facilities only) (Part of CPC 93110) | (1) None  
(2) None  
(3) None | (1) None  
(2) None  
(3) None |
Things to remember…

• Schedules of commitments are precisely that: commitments – they are not legally binding at the national level, until and unless implemented in national legislation

• Schedules can only be a first point of information – only national rules and regulations can give the final answer

• Often ASEAN Member States are actually more open than what they put in their schedules
  ▪ E.g. Laos allows for 100% of Foreign investment in a number of sectors, despite taking commitment only for 49 or 70% in the schedule

• Drafting and negotiating schedules of commitments requires sound economic analysis (own economy and negotiating partner), a through negotiation and the political will to implement commitments
Where to find AFAS Schedules of Commitments

Find documents on ASEAN website


- **Most of what was presented today, in a more comprehensive report**: [http://www.asean.org/storage/2015/12/ASEAN-Integration-in-Services-%28Dec%202015%29.pdf](http://www.asean.org/storage/2015/12/ASEAN-Integration-in-Services-%28Dec%202015%29.pdf)

Thank you!
Part 4: Further Reading
Free Flow of Labour in the AEC?

**AEC Blueprint 2008-2015**

**FREE FLOW OF SERVICES:**
1) Conclude MRAs currently under negotiation;
2) Work on additional MRAs

**FREE FLOW OF SKILLED LABOUR:**
1) Facilitate issuance of visas and employment passes;
2) Harmonization and standardization through cooperation among ASEAN University Network (AUN)
   - developing core competencies and qualifications in priority services sectors and other services sectors
   - strengthening research capabilities regarding labour market information

**RESULTS:** limited progress with mobility of skilled labour in ASEAN
- ASEAN Agreement on Movement of Natural Persons (MNP) – formalizes current regulation, limited liberalisation
- 8 MRAs for professional services concluded – but they only cover approx. 3% of the ASEAN workforce; they foresee cumbersome administration; and implementation for all of them is slow

**AEC Blueprint 2016-2025**

**FREE FLOW OF SERVICES:** MRAs have shifted to the labour section

**FACILITATING MOVEMENT OF SKILLED LABOUR AND BUSINESS VISITORS:** Existing MRAs and MNP Agreement as main tools to achieve mobility for skilled labour.
1) Expand and deepen commitments under the ASEAN Agreement on MNP where appropriate;
2) Reduce, if not standardise, documentation requirements;
3) Consider improving existing MRAs, consider feasibility of new MRAs
Mode 4 of Services supply covers four categories of skilled labour (defined under GATS) – overlap between Free Flow of Services and Skilled Labour

**Business Visitors**: People who come for business meetings, to negotiate sales, to set up a commercial establishment, but do not receive any income in Bhutan

**Intra-Corporate Transferees**: Executives, managers, specialists (including technical specialists) transferred to Bhutan to manage a company’s investment

**Contractual Service Providers**: Specialists sent by their companies to implement a contract with a Bhutanese company or public service entity

**Independent Professionals**: eg, architects, lawyers, IT technicians, engineers, scientists, medical specialists, teachers, etc) who come to work in Bhutan under personal arrangements with a firm or public organisation
ASEAN Mutual Recognition Arrangements (MRAs) for Professional Services

Why part of AFAS?
Liberalisation is not enough → licensing practices put foreign providers at a disadvantage → standards and guidelines are required

Legal basis: the ASEAN Framework Agreement on Services (AFAS)

Article V: Mutual Recognition
„Each Member State may recognise the education (…) or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. (…)“

A rather vague mandate for MRAs in AFAS

What is a MRA?
Instrument for AMS to recognize the education or experience obtained, requirements met, and certification or licensing granted by other ASEAN members

What the MRAs are NOT:
Automatic recognition or automatic movement of professionals; market access remains subject to national laws and regulation

Institutional mechanism:
Working Groups under the purview of the ASEAN Coordinating Committee on Services (CCS) elaborate MRA for their respective sector; oversee implementation

Benefits:
• Facilitate trade in services by mutual recognition of authorisation, licensing, or certification of professionals (facilitate local license for foreign services providers in regulated professions)
• Bridge information gap between potential employers and foreign employees
• Upgrade quality of education and services providers (in unregulated professions, e.g. Tourism)
8 MRAs in ASEAN

1. Engineering Services, December 2005
2. Nursing Services, December 2006
3. Architectural Services, November 2007
5. Medical Practitioners, February 2009
6. Dental Practitioners, February 2009
8. Tourism Professionals, November 2012
8 MRAs – different approaches (1/2)

<table>
<thead>
<tr>
<th>MRA</th>
<th>Approach</th>
<th>Implementation</th>
</tr>
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<tbody>
<tr>
<td>MRA on Engineers and Architects (&quot;regulated professions&quot;)</td>
<td>Regional bodies to develop and monitor mutually acceptable standards and criteria for practice of the respective professions. Process: 1) Applicant must hold professional license issued by regulatory body in home country 2) License is reviewed by the Chartered Professional Engineers Coordinating Committee or the ASEAN Architect Council 3) If approved, the applicant may work as „Registered Foreign Professional Engineer“ in another AMS… 4) … subject to domestic rules and regulations</td>
<td>Regional registration systems are in place 1252 Engineers and 284 Architects registered (structures have not yet started)</td>
</tr>
<tr>
<td>MRA Framework on Surveying and Accountancy Services</td>
<td>MRA states principles and framework for negotiating the recognition and mobility conditions on a bilateral or multilateral basis; subject to various national regulations</td>
<td>Accountany now upgraded to an actual MRA; similiar approach as above</td>
</tr>
</tbody>
</table>
## 8 MRAs – different approaches (2/2)

<table>
<thead>
<tr>
<th>MRA</th>
<th>Approach</th>
<th>Implementation</th>
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</table>
| **Healthcare MRAs**        | • exchange of information  
• exchange of best practices on the licensing and registration of healthcare practitioners  
• capacity building  
• No regional registration body; only a two step process: a professional in one AMS may apply in other AMS to be registered e.g. as a 'Foreign Nurse' | ongoing                 |
| **MRAs on Tourism Professionals** („unregulated professions“) | • set regional standards  
• elevate the quality of local tourism services providers  
• movement in ASEAN as a possible, secondary outcome | ongoing  
Advantage: differences in legal and education systems matter much less for this MRA compared to regulated professions |
Challenges of ASEAN Professional Services MRAs

**Implementation**
- Resistance of national professional associations in regulated professions
- Major reforms of regulatory regimes to align with MRA needed

**Administrative and political obstacles remain despite MRAs**
- Issuance of visas and employment passes
- Language requirements
- Citizenship / nationality requirements

**Further harmonization and standardization required**
- Harmonization and standardization of education, training, requirements, certificates …
- Develop core competencies and qualifications for job / occupational and trainers skills

**Quality of Education as an overall challenge**
- ASEAN Educational Systems are very heterogeneous
- Quality varies
- Quality upgrades needed for most of the MRA professions
ASEAN Agreement on Movement of Natural Persons (MNP) (1/2)

**Objective:**
- Include all *mobility-related commitments* for services sectors in the AEC in a separate binding document
- Mode 4 not negotiated under AFAS – need to find a different forum

**The Agreement:**
- MNP signed in 2012 (implementation on-going, not all Member States ratified the MNP)
- Incorporates and supersedes all Mode 4 provisions in AFAS
- Adds provisions on streamlined immigration procedures for the temporary entry and stay of natural persons engaged in trade in goods, services and investment

**MNP vs. MRAs:**
- MRAs facilitate but do not ensure the actual movement of professionals
- The MNP addresses the need to streamline, harmonize and liberalize immigration policies and other regulations, to achieve actual movement
- Under the MNP, countries may make commitments for any services sector, including (but not limited to) professional services
ASEAN Agreement on Movement of Natural Persons (MNP) (2/2)

**Analysis:**
- Commitments very limited and similar to those agreed by ASEAN Member States under the WTO GATS
- Commitments refer to Intra-Corporate Transferees (ICTs) and Business Visitors (BVs)
- Only Vietnam, the Philippines and Cambodia allow for the mobility of Contractual Service Suppliers (CSSs)
- Most countries retain barriers such as: domestic immigration procedures, numerical quotas, Economic Needs Tests (ENT)/labour market tests, pre-employment requirements; conditions also include technological transfer and compensation fees