



# Trade in Services Negotiation Skills Training Course

## 'Preparing for ASEAN Negotiations'

Training Documentation

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## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>5</b>
<b>PART I. UNDERLYING CONCEPTS FOR TRADE IN SERVICES NEGOTIATIONS .....</b>	<b>7</b>
Session 1. Why are services important for trade and development?.....	7
Session 2. The Lao PDR economy and service sectors: Structure, service sector development and aspirations.....	18
Session 3. The conceptual basis of trade in services negotiations: The WTO General Agreement on Trade in Services (GATS) .....	20
1. Classifications and Definitions .....	20
2. GATS Principles and Aims.....	21
3. GATS vs. GATT (Services vs. Goods) .....	22
4. Scope of GATS.....	23
5. Modes of Supply .....	23
6. Obligations and Rights.....	24
7. Legal Aspects – the Key Articles in the GATS .....	25
8. GATS Annexes.....	29
9. GATS Negotiations and Scheduling.....	30
10. Services Negotiating Approaches: Positive, Negative and Hybrid lists .....	32
11. Some interesting questions that have arisen during GATS negotiations.....	34
<b>PART II. CURRENT TRADE IN SERVICES NEGOTIATIONS INVOLVING LAO PDR ....</b>	<b>35</b>
Session 4. ASEAN Framework Agreement on Services (AFAS).....	35
Session 5. Challenges for the submission of schedules of the 10 <sup>th</sup> AFAS package .....	38
Session 6. Negotiating the new ASEAN Trade in Services Agreement (ATISA) .....	39
Session 7. Services in the Regional Comprehensive Economic Partnership Agreement (RCEP).....	41
<b>PART III. DESIGNING NEGOTIATING STRATEGIES .....</b>	<b>42</b>
Session 8. Strategic thinking about services negotiations and national interests .....	42
Session 9. Defining a Lao position: comparison between GATS and AFAS 9 commitments and discussion of options for further liberalisation .....	43
MFN Exemptions .....	44
AFAS Logistics Priorities.....	44
1. Business Services.....	45
2. Communication Services .....	56

3. Construction Services .....	59
4. Distribution Services .....	59
5. Education Services .....	61
6. Environmental Services .....	62
7. Financial Services.....	62
8. Health-related Services.....	62
9. Tourism Services .....	63
10. Recreational, cultural and sporting Services .....	64
11. Transport Services.....	65
Session 10. Trade negotiations – good practices and tips .....	68
<b>TIMELINE AND STEPS AHEAD .....</b>	<b>71</b>
<b>ANNEX.....</b>	<b>72</b>
1. Agenda of the Training Course on Trade in Services Negotiations.....	72
2. List of Participants.....	76
3. Group Picture .....	78
4. Presentation on the Importance of Trade in Services (Session 1)	
5. Presentation on the Lao PDR Economy and Service Sector (Session 2)	
6. Presentation on WTO General Agreement on Trade in Services (GATS) (Session 3)	
7. Presentation on ASEAN Framework Agreement on Services (AFAS) (Session 4)	
8. Presentation on ASEAN Trade in Services Agreement (ATISA) (Session 6)	
9. Presentation on RCEP (Session 7)	
10. Presentation on Professional Services in Lao PDR (Session 9)	
11. Presentation on Tourism and Recreational Services under GATS (Session 9)	
12. Good practices and tips for trade negotiations (Session 10)	

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## Introduction

The services sector bears increasing relevance for economic diversification and development in Lao PDR. In 2013, services accounted for a quarter of all trade and around 37% of GDP in Lao PDR. This underlines the importance for the Lao government to gain a better understanding of this sector, as well as the proceedings, complexities, opportunities and threats associated with services liberalisation.

The ASEAN Economic Community (AEC) is the key objective of regional economic integration among ASEAN member states. The road towards achieving AEC by 2015 was guided by the AEC Blueprint which member states embraced in 2007. The AEC Blueprint envisions (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy. The crucial first pillar, the single market, is based on five free flows, namely free flow of goods, free flow of services, free flow of investment, freer flow of capital and free flow of skilled labour.

Services, therefore, will be traded freely within ASEAN. There are to be no more restrictions of any kind for ASEAN services providers to sell their products in any of the AEC countries. In addition, free flow of services means that ASEAN service providers might set up branches or own services business in any other ASEAN country; majority foreign ownership will be allowed in all services sectors once liberalisation is completed.

Currently, services liberalisation is negotiated under the ASEAN Framework Agreement on Services (AFAS). With the 9<sup>th</sup> round of AFAS negotiations, which were completed in 2014, countries have made commitments or fully liberalised between 80 and 100 services sectors. Multiple rounds of negotiations will lead to the goal of full services liberalisation. This training course aims to impart fundamental understanding and negotiating skills to better equip the Lao negotiators and services regulators for continuing negotiations.

The five main objectives of the training course on Trade in Services Negotiation Skills (and hence of this documentation) are the following:

- 1) Participants are expected to develop a thorough understanding of key concepts in trade in services, including main aspects of international and ASEAN agreements, terminology, legal concepts, and current issues in trade in services.
- 2) Participants should gain profound knowledge regarding the options which may be negotiated in international negotiations, as well as the “modus operandi” of services negotiations in the international arena (in particular ASEAN).
- 3) Building on the above, participants will be able to better estimate and analyse potential consequences of various options in services liberalisation.
- 4) Participants will also gain an understanding of the service sector in Lao PDR, the characteristics, the role in the economy, the composition and particular opportunities, as well as current trends and challenges.
- 5) Finally, bringing all of the above together, participants should be able to make decisions regarding which options (from those on the table) are actually beneficial for

the Lao economy and hence elaborate a strategy for Lao negotiators in upcoming services negotiations, in particular under the ASEAN Framework Agreement on Services (AFAS). This should in the end enable Lao PDR to become a more proactive player in services negotiations, achieving outcomes that are beneficial for the Lao economy and the Lao people.

## **Part I. Underlying concepts for Trade in Services negotiations**

### **Session 1. Why are services important for trade and development?<sup>1</sup>**

#### **Services' role in the economy**

Services cover a wide range of activities: electricity, gas, and water supply; wholesale and retail trade; hotels and restaurants; transport, storage, and communication; financial intermediation; real estate, professional business services; tourism, education, health, etc. The list also includes services provided by the government in the public interest. According to World Bank analysis, the services sector accounts on average for 72% of GDP in high-income countries, 53% in middle-income countries and 46% in low-income countries. In Laos services made up 36% of GDP in 2013 (estimates), and the sector is growing steadily.

Services are an important driver of economic development and diversification. Services growth contributes more strongly to GDP per capita growth and employment growth than does manufacturing. On average about two-thirds of the global workforce work in services; many of them are women. Research has shown that the higher the share of services employment, the higher the female participation in the economy. This helps to reduce poverty and achieve socio-economic development goals.

Services are not only an important economic sector on their own, but they anchor and support entire production processes in manufacturing and agriculture. High-quality, affordable services, such as ICT, distribution, transport, legal and tax advisory financial and other business services, play an important role in enhancing productivity and competitiveness in manufacturing and agriculture. All commercial enterprises therefore benefit from a strong and competitive services sector. Moreover, Services trade liberalisation accompanied by an appropriate regulatory regime attracts increased investment in domestic services (due to relaxation of foreign ownership limitations), as well as better access to foreign services providers.

The traditional path of development and trade involved moving progressively from agriculture to manufacturing to services. By the time countries moved into services industries they were already quite developed. However, research by the World Bank has found that today developing countries are moving into service industries earlier and at lower levels of GDP per capita than in the past. This means that services could provide an alternative engine of growth, enabling some developing countries to leap over the traditional route to development.

#### **Services trade**

Global commercial services exports expanded an average 8% per year between 2005 and 2013, to more than USD 4.6 trillion in 2013<sup>2</sup>. The fastest-growing segments have been computer and information services, followed by insurance services. Almost all service sectors showed good export performance in 2013.

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<sup>1</sup> Drawn from the presentation by Andrea Spear, Senior Trade and Investment Adviser. The presentation can be found in Annex 3.

<sup>2</sup> WTO, 2014, [https://www.wto.org/english/news\\_e/pres14\\_e/pr721\\_e.htm](https://www.wto.org/english/news_e/pres14_e/pr721_e.htm)

Until recently, a problem of “lost services” puzzled experts: measured in balance of payments terms, services exports account for less than 25% of total world exports – even though they account for 40-70% of world GDP. This mystery has been partly solved by recent WTO/OECD research on trade in value-added data, based on the analysis of input-output tables: when accounting for intermediate activities, trade in services almost doubles to 45% of world exports.

Services exports are expanding particularly strongly in low-income countries. Commercial services exports from least-developed countries (LDCs) grew 14% per year on average between 2000 and 2013 (compared to 9% in developed economies) – fuelled mostly by Asian LDCs.<sup>3</sup> Cambodia for example has become the LDCs’ leading tourist destination, and Bangladesh is exporting information and communication technology. LDCs’ commercial services exports now account for 0.7% of global services exports.<sup>4</sup>

As for the Lao PDR, WTO statistics show that in 2013 Laos exported USD 781 million worth of commercial services and imported USD 534 million (see Tables 1 and 2). This represents a strong increase compared to 2012. Lao PDR has maintained a net services surplus, compared with a net goods deficit. Travel services alone accounted for three quarters of Lao services exports and imports. Transport contributed 9% of total exports and 3% of total imports. ‘Other commercial services’ made up 15% of total services exports and 22% of total imports. “Other commercial services” includes business and professional services, computer and information services, communications, finance and insurance, construction, retail and wholesale trade, health, education, recreation, cultural services – everything on the list except for transport and travel (see WTO W/120 services classification list - Document 2 in the Reader supporting this documentation).

Additionally, on the import side, travel services imports expanded by 70% and ‘other commercial services’ imports grew by 40% compared to 2012. This means that there is still a lot of potential for the domestic services sector to step in and fulfil the growing demand.

**Table 1. Laos Services Exports, 2010-2013, in thousands USD**

Code	Service label	Exported Value in 2010	Exported Value in 2011	Exported Value in 2012	Exported Value in 2013	% of Total in 2013
<b>S</b>	Services	510,994	549,643	577,219	781,187	100
<b>SC</b>	Transport	55,841	51,307	54,309	69,972	9
<b>SD</b>	Travel	381,669	406,185	451,055	595,909	76
<b>SPX1</b>	Other commercial services (eg, business services, communications, etc)	73,484	92,151	71,855	115,306	15

Source: WTO-ITC-UNCTAD joint dataset, 2014

<sup>3</sup> WTO, 2013, [https://www.wto.org/english/res\\_e/statis\\_e/its2014\\_e/its14\\_highlights1\\_e.pdf](https://www.wto.org/english/res_e/statis_e/its2014_e/its14_highlights1_e.pdf)

<sup>4</sup> ITC, 2013,

[http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Sectors/Service exports/Trade in services/LDC%20Services%20Exports%20for%20web.pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Sectors/Service%20exports/Trade%20in%20services/LDC%20Services%20Exports%20for%20web.pdf)

**Table 2. Laos Services Imports 2010-2013, in thousands USD**

Code	Service label	Imported Value in 2010	Imported Value in 2011	Imported Value in 2012	Imported Value in 2013	% of Total in 2013
<b>S</b>	Services	263,121	330,711	339,208	533,782	100
<b>SC</b>	Transport	22,074	22,772	22,135	17,514	3
<b>SD</b>	Travel	202,669	237,123	232,038	398,029	75
<b>SPX1</b>	Other commercial services (eg, business services, communications, etc)	38,378	70,816	85,035	118,239	22

Source: WTO-ITC-UNCTAD joint dataset, 2014

The following table shows some interesting shifts since 2000, as transport and travel have progressively ceded share to fast-growing ‘other commercial services’ – in both exports and imports.

**Table 3. World Trade in Commercial Services by Category, 2000-2013****World Trade in Commercial Services by Category, 2000-2013  
(US\$ billion and %)**

	Value	Share				
	2013	2000	2005	2011	2012	2013
<b>Exports</b>						
All commercial services	4645	100.0	100.0	100.0	100.0	100.0
Transportation services	905	23.2	22.6	20.5	20.2	19.5
Travel	1185	32.0	27.9	24.8	25.1	25.5
Other commercial services	2550	44.8	49.3	54.5	54.5	54.9
<b>Imports</b>						
All commercial services	4380	100.0	100.0	100.0	100.0	100.0
Transportation services	1165	28.6	28.6	27.4	27.3	26.6
Travel	1070	30.1	27.4	23.4	23.9	24.5
Other commercial services	2085	41.2	44.0	48.0	47.5	47.6

*Note:* Total commercial services do not add up to the sum of components due to unallocated services, accounting for 0.1 per cent of world exports and 0.2 per cent of world imports in 2013. For more information on asymmetries, see the Metadata.

Source: WTO World Trade Report 2014:

[https://www.wto.org/english/res\\_e/statis\\_e/its2014\\_e/its14\\_trade\\_category\\_e.htm](https://www.wto.org/english/res_e/statis_e/its2014_e/its14_trade_category_e.htm)

Overall, the strong growth of services trade around the world shows that the services sector can play a key role in economic development and diversification. Diversification of the economy, in particular away from over-reliance on natural resources exploitation, is key to better managing the ups and downs in business cycles.

## Global value chains and trade in intermediate goods

Due to regional and global value chains, trade is increasingly in intermediates, not final goods, and it is driven by FDI flows. These intermediates include not only parts and other goods, but also a large amount of services. In fact, intermediate business-to-business trade in ‘other commercial services’, dominated by ICT and business services, is the fastest growing component of world trade today.

### Box 1. Case Study – Services inputs in solar panel production in China

#### Solar Panels and the importance of services inputs

A recent study of solar panels commissioned by ITC may serve as a good example of how services are integrated into the overall value of a product. The authors looked at a Chinese company that fabricates solar panels to be exported to the EU. Material inputs accounted for 75% of total production costs while remaining costs, including services, accounted for 20-25%. When material inputs are excluded from the calculations, however, services accounted for about 70% of the cost of production, with the remaining 30% spent on bank loan interest and wages for workers on the production line (excluding services posts). Around 40 different types of services went into each solar panel, e.g. services related to the importation of material inputs, in-factory and factory-related services, sales and export-related services, and operation and management-related services. Three quarters of the services were being outsourced within China, the region and worldwide.

Source: Quan Zhao and Patrick Low, *Services in Global Value Chains: Solar Panel Manufacturing in China*, International Trade Centre, Geneva, March 2015  
<http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/solarpanel%20-full-web%20%282%29.pdf>

This example shows that outsourcing of services inputs (intermediate value-adding activities) can offer excellent opportunities for developing countries such as Lao PDR. (Lao PDR could export services, from electricity to transportation, to production facilities in for example China or Thailand.) So far, few developing countries are taking advantage of new opportunities to specialize in intermediate services. Doing so requires an understanding of what influences competitiveness in the services sector.

## Services in ASEAN

The development of services in ASEAN is gaining momentum, as countries collectively and unilaterally take steps to strengthen the competitiveness of their services sectors. This in turn will enhance the competitiveness of the whole region. Services industries account for 40-75% of ASEAN member states' GDP<sup>5</sup> and a similar proportion of inbound foreign direct investment. ASEAN member states export around USD 260 billion services to the world market in 2011, and imported around USD 270 billion. ASEAN services export are dominated by travel services, other business services (including professional and ICT services), and transport services. Intra-ASEAN trade in services accounts for almost one fifth of ASEAN services exports and imports.<sup>6</sup>

Unfortunately, detailed data is not available for Laos, so the case of Cambodia will be considered. Cambodia is the only LDC in the recently created WTO/OECD trade-in-value-added database (data is available only for 1995- 2009).

<sup>5</sup> Source: World Bank Development Indicators. No data on Myanmar.

<sup>6</sup> ASEAN Integration in Services, <http://www.asean.org/communities/asean-economic-community/category/services>

## Box 2. Trade-in-value-added data

### Trade-in-value-added data – What it means

The database allows distinguishing between

- a) Direct services exports: services that are supplied directly from the producer to the user, e.g. IT or tax consultancy from a company in country A to a company in country B.
- b) Indirect services exports: services that went into a goods product that is then exported, e.g. marketing or logistics services that went into a T-Shirt or machinery and ‘added value’.

Here, a difference can be made again between:

- I) Indirect domestic services content: the marketing or logistics service input was provided domestically, the service provider is located in the same country as the goods producer; the country from where the good is now exported.
- II) Indirect foreign services content: the services going into the product were provided by a foreign service provider, e.g. a designer, or a R&D services provider, or tax consultancy abroad, etc.

### *The case of Cambodia*

In traditional Balance of Payment terms, services account for about one third of Cambodia’s total exports, well above the global average of around 25%, and Cambodia enjoys a net surplus in financial and other business services. A first glance at the WTO/OECD value-added data also gives a positive impression: Cambodia’s exports have a services value-added content of 40%, well above the ASEAN average of 34% and the AOEC average of 38% (Figure 2).

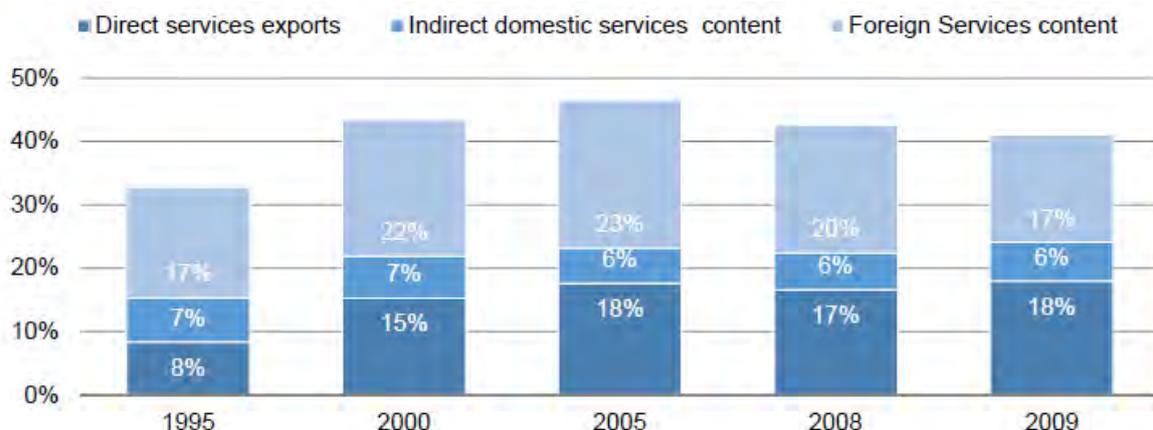
However, the difference between Cambodia’s value-added and that of ASEAN and APEC is due entirely to direct services exports which increased 10% over the period (Figure 3).

Otherwise, a worrying trend emerges. The share of services in all of Cambodia’s goods exports is declining – both for domestic and foreign services content (Figure 4 and 5). The decline in indirect domestic services content is especially notable. This indicates that Cambodia is increasingly specializing in manufacturing activities with low services intensity, and descending the value-added ladder, rather than stepping up. The decline in services intensity is especially marked in the textiles and clothing industry, which accounts for 60% of Cambodia’s exports: a typical t-shirt is ‘cut, made, trimmed’ (CMT) in Cambodia, while inputs of higher value (design, marketing, retail, etc.) are added overseas<sup>7</sup>.

The trend of declining services content in manufacturing holds true for all sectors except agriculture, food and wood – in which the foreign services content is increasing. The growing foreign services component in these sectors shows the influence of international value chains. This combined with the falling indirect domestic services content indicates that Cambodian services companies are facing important challenges in competing.

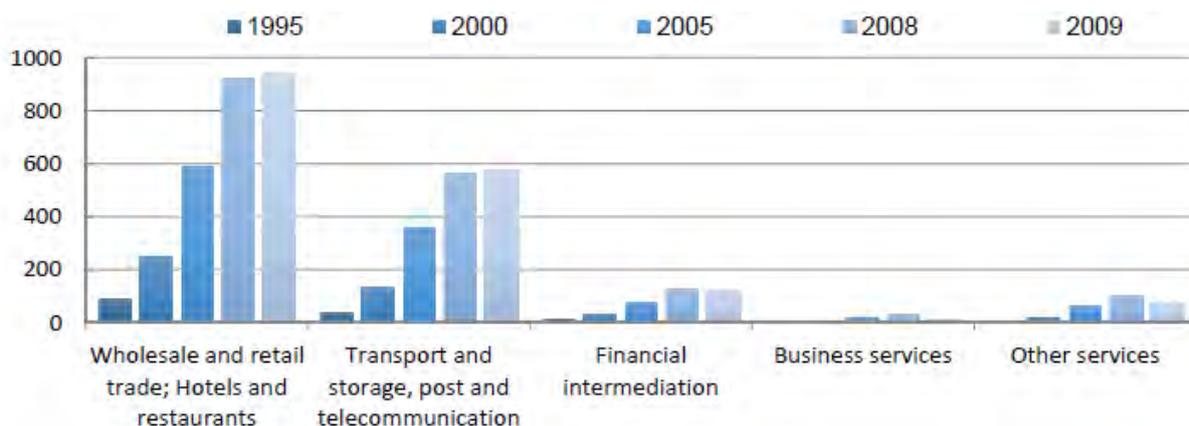
<sup>7</sup> Source: ITC/UNCTAD 2013

**Figure 1. Cambodia: Share of service value added as % of gross exports, 1995-2009 (WTO/OECD)**

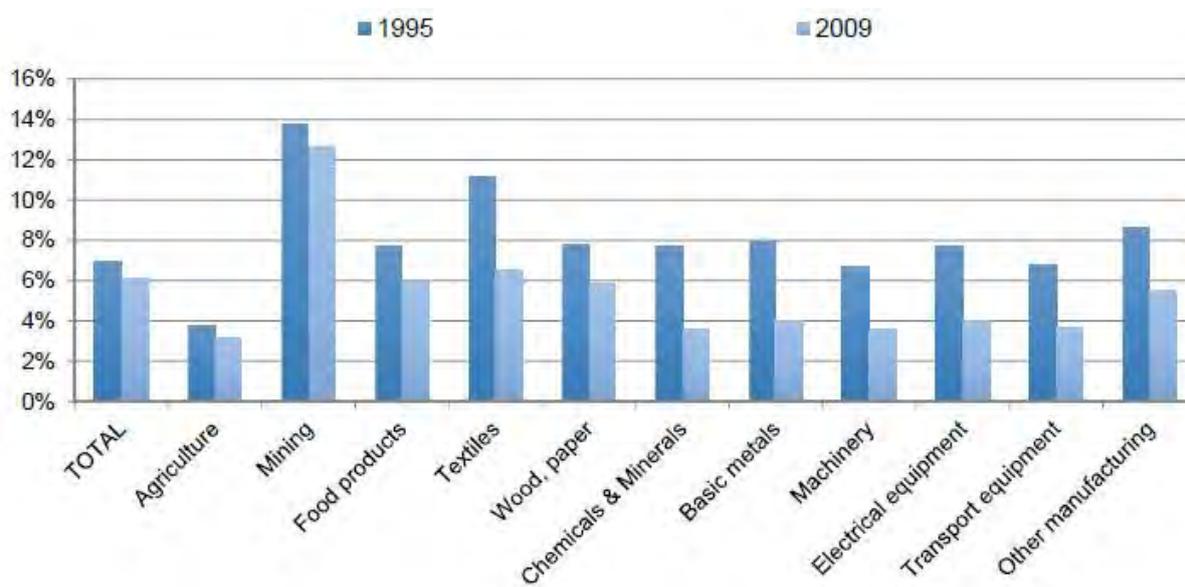


Services content of gross exports (=share of services value added) is composed of direct exports and indirect (embodied) content, both domestic and foreign (=imported) content

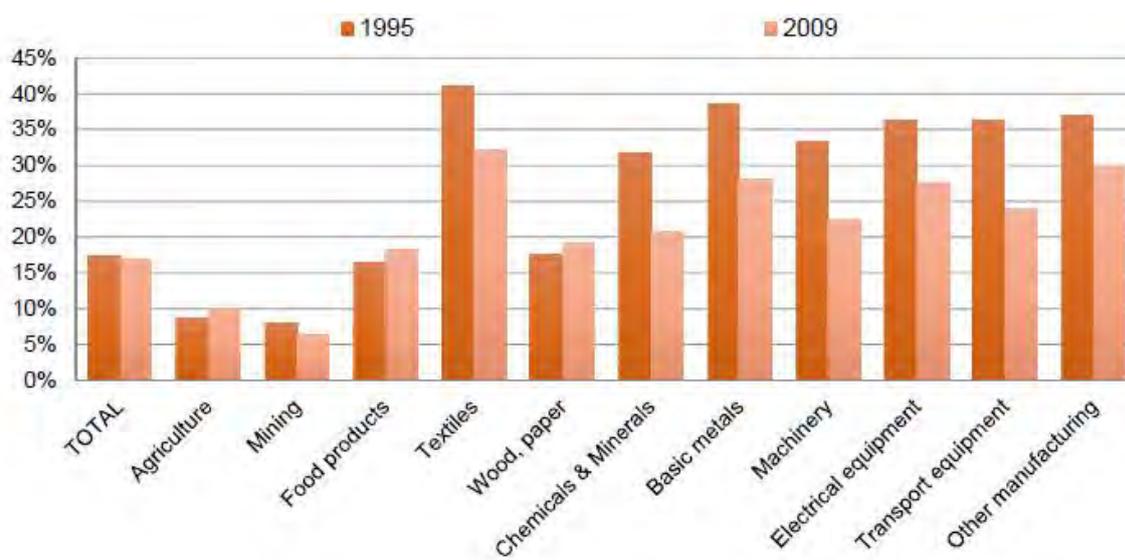
**Figure 2. Cambodia: Direct services exports in million USD, 1995-2009 (WTO/OECD)**



**Figure 3. Cambodia: Indirect domestic services content in goods exports, in 1995 and 2009 (WTO/OECD)**



**Figure 4. Cambodia –Foreign services contained in goods exports, in 1995 and 2009 (WTO/OECD)**



### Competitiveness in Services

How does competitiveness in services differ from competitiveness in goods? What do services companies have in common with each other? Do they require different policy, regulatory and institutional attention? A number of factors appear to play an important role in determining services competitiveness. Surveys and case studies by the Global Services Network, the APEC Business Advisory Council and the World Bank reveal specific variables relevant to services competitiveness. While most of these apply to business across the board, they can be ‘survival’ factors for services businesses, the majority of which are SMEs.

Services firms are usually less capital intensive than manufacturing enterprises and require less physical infrastructure. This constitutes an advantage for countries with limited physical

and financial capital. On the other hand, services are more skills intensive than the other sectors, so the proper educational environment is crucial.

Services trade is characterized by a more direct supplier-client relationship than goods trade. As a result, it depends heavily on movement of information, people, skill sets and commercial presence onshore and offshore.

Services activities tend to be project-based. Companies need flexibility to move people and ideas quickly. Virtual teamwork, 24-hour networks, and cross-border connectivity are crucial. This means that services providers need easy access to international standards, telecommunications, flights and technical interoperability – all of which depend on government policy to one degree or another.

### Factors influencing international competitiveness in services<sup>8</sup>

1. Human and intellectual capital – key issues: talent, education, skills, ideas, culture of client focus
  - Multi- and cross-disciplinary education, including computer science and languages
  - Tertiary education
  - Vocational training
2. Investment in intangible assets (intellectual property copyright, business methodologies, brands, quality standards)
  - Intangible capital tends to enhance labour productivity
  - Supportive environment for innovation, including business process innovation
3. Digital infrastructure
  - Quality and reliability of the telecommunications network
  - Internet penetration
4. Quality of institutions
  - Transparency, corruption, rule of law
  - Capacity to implement and enforce policy, laws and regulations
  - Inter-agency coordination
  - Economic freedom index
  - Regulatory Impact Assessment and guillotines for ‘business friendly’ legislation and regulation
  - Public-private sector dialogue
  - Reliable service sector statistics
5. Efficiency of domestic regulation
  - Complexity of the business environment
  - Rigidity or other inefficiencies in employment laws (in the services sector, human capital costs are often 70 -80% of total costs, so rules on hiring, firing, training, etc, can affect profitability)
  - Regulatory compliance costs`
  - Intellectual Property (IP) protection

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<sup>8</sup> Sources: World Bank, ABAC, OECD, ITC

- Flexibility to adjust to rapid change
6. Efficiency of the financial system
    - Access to finance
    - E-banking
    - Banking infrastructure to support e-commerce
  7. Trade policy
    - Trade and investment openness
    - Access to reliable market information and opportunities to connect with supply chains
    - Mutual recognition and interoperability of standards
    - Harmonised regulation across markets

### Typical Impediments to Services Development and Trade

#### 1. Access to Infrastructure

Service providers require reliable energy and communications infrastructure. Frequent power cuts and expensive, overburdened, low-tech telecommunications infrastructure constitute major impediments to business development.

#### 2. Limitations on Foreign Direct Investment (FDI)

Often FDI is restricted to 49% ownership, and foreign executives and specialists may face restrictive work permit conditions, despite GATS and other commitments. This can inhibit access to capital, technology, skills, product development support and markets.

#### 3. Restrictions on Type of Business

Professional service providers may find it difficult to enhance competitiveness and find economies of scale due to restrictions on incorporating or functioning as multidisciplinary firms (e.g. legal and accounting partnerships).

#### 4. Access to Reasonable Financing

Companies usually need to finance operating activities with an overdraft against accounts receivable. Commercial banks may charge exorbitant interest rates, or they may not offer this means of financing at all. Instead, as was common in the past, they may require physical collateral (though central banks often accept accounts receivable as collateral). Some governments require payment of VAT within 7 days of invoicing, even though the invoice term is 30-90 days, so companies often must borrow to pay the VAT. In addition, public sector bodies can demand 45-90 day payment terms, severely affecting cash flow management.

#### 5. Access to Appropriate Skilled Workforce

Securing workers with the appropriate skills is a challenge for companies around the world. Services companies and services functions within manufacturing producers face particular problems because they need people with education, training and experience in computers, new applications and technologies, and new ways of thinking, problem solving and communicating. Closer linkages between business and educational institutions are

imperative - starting even at the primary level, but most importantly at the secondary, tertiary and vocational levels.

#### 6. Access to Service Quality Standards

Services providers increasingly require international quality accreditation/certification (e.g. compliance with international accounting and auditing standards, ISO management standards, food safety, etc.). Securing such certification can be time-consuming and costly. Moreover, local quality bodies may not be familiar with international services sector accreditation and quality standards.

#### 7. Protection of Intellectual Property

While governments may have adopted international agreements (TRIPs, WIPO, etc.) enforcement of intellectual property rights is often lax. This can demotivate inventors, contribute to brain drain, and have a generally negative impact on both goods and services development and trade.

#### 8. Access to Affordable Information and Communication Technology Equipment

High import duties on computers and other ICT equipment reduces businesses' ability to compete. The WTO Information Technology Agreement (ITA) is designed to address this issue; signatories agree to eliminate duties on computers and other equipment listed in the ITA. More than 80 of the WTO's 160 members have joined the ITA.

#### 9. Monopolies and Exclusive Service Providers

Monopolies are still frequently found in telecommunications, power, transport and finance/insurance. Without effective regulation and enforcement regarding pricing, abuse of dominant market position and unfair competition, these monopolies can pose a deterrent to services sector – and indeed, economic – development.

#### 10. Lack of e-Government

Recognition of and provision of facilities for processing electronic documents is still in its infancy in many countries and sectors. Nevertheless, e-Government is expanding around the world, with increased automation and decreased discretion leading to faster processing and fewer opportunities for corruption. Business needs to advocate strongly for this.

#### 11. Tax Policy

Service firms may not enjoy the same tax incentives or treatment as other industries in the economy.

#### 12. Official Procurement Practices

Donor and government procurement rules and processes often give preference to foreign entities and public-sector agencies. Open procurement processes are preferable for service sector development, as they allow local service firms to compete for contracts above certain thresholds.

## **Conclusions**

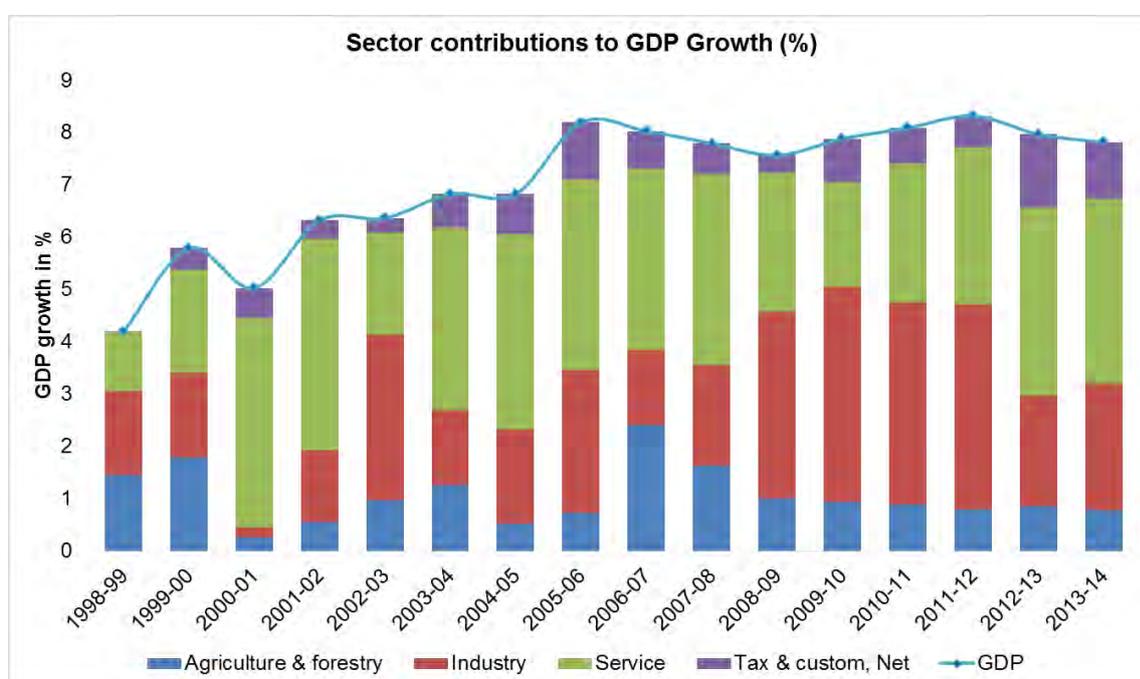
Services sector development offers an opportunity to leapfrog stages of development. Services exports can act as an engine for growth and a stepping stone up the value-added ladder. Services are the glue of global value chains, and services outsourcing provides opportunities for developing countries to take part in global value chains. Overall, a strong correlation exists between restrictiveness in trade in services, the complexity of the business enabling environment and high trade costs – all of which impact on company, sector and national competitiveness.

The World Trade Organization's General Agreement on Trade in Services (GATS) was established with a view towards addressing these issues. Properly implemented, it can facilitate the development of both a competitive services sector and services trade. The GATS will be discussed in detail in Session 3.

## Session 2. The Lao PDR economy and service sectors: Structure, service sector development and aspirations<sup>9</sup>

GDP in Lao PDR has grown steadily around 8% in recent years, driven mostly by services, followed by manufacturing (Figure 7). The services sector now accounts for around 37% of GDP. The services sector is becoming an important factor in economic diversification and development in Lao PDR. Currently, the sector is still being dominated by traditional activities with low levels of value-added, such as wholesale and retail trade and public services (Figure 8). However, tourism has recently grown to become a reliable source of export revenue, and market-oriented reforms have given an impetus to new areas of service activities such as ICT, construction, education, environment, insurance, and banking. Services are important for improving the productivity and competitiveness of the overall economy.

**Figure 5. Sector contributions to GDP growth (%) in Lao PDR, 1998-2014**



Source: NERI

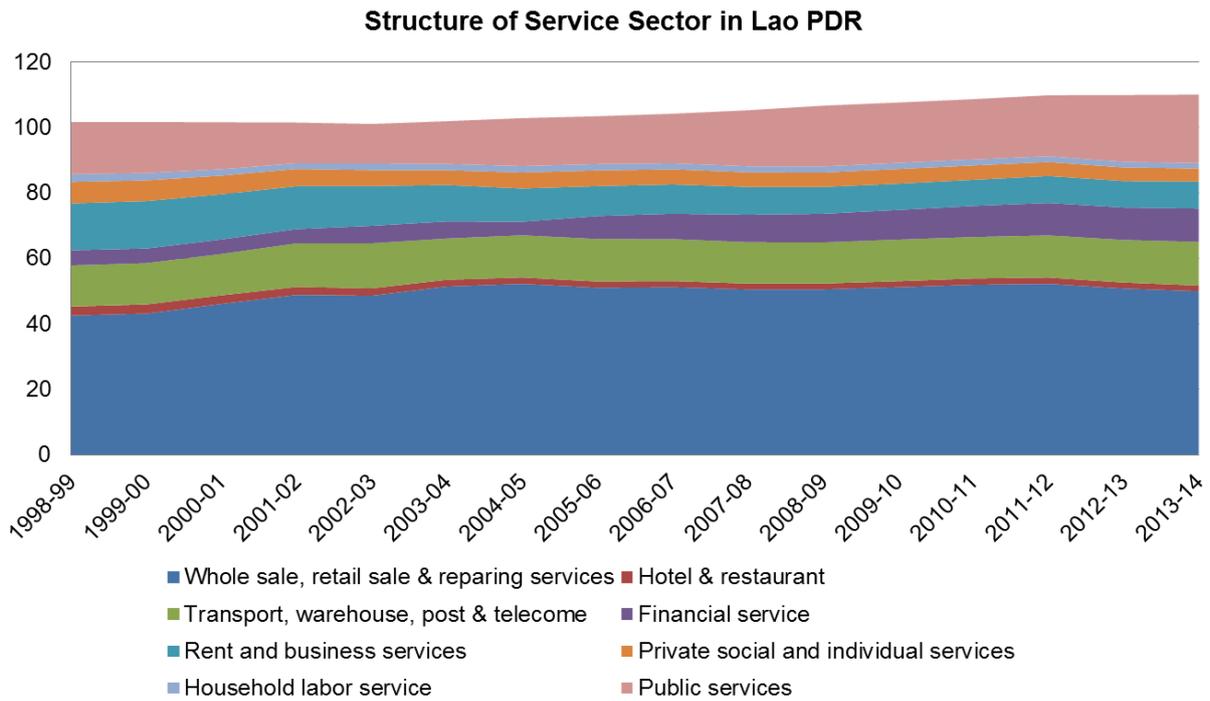
Employment in services is currently around 20% of the workforce, but this number has been expanding rapidly in recent years. Most people are still employed in agriculture (around 70%). It is important to keep this in mind while focusing development on higher value added sectors in manufacturing and services. FDI in services is around 10% of total FDI in the past decade, reaching almost 20% in the years 2006-2010. Out of total FDI in services, around 25% is going into the banking sector. Access to finance is potentially a problem for Lao service companies: in recent years, only between 12% and 20% of total credit has been going to service sectors.

In conclusion, the service sector recently plays a very significant role in driving the Lao PDR economy. However, the sector continues to be dominated by traditional activities including

<sup>9</sup> Presented by Sitthiroth Rasphone, International Economic Research Division, National Economic Research Institute (NERI). The presentation slides can be found in Annex 4.

wholesale and retail trade, and hotel and restaurant services. In addition, capital intensive sectors such as mining and hydro-power are growing, with limited real benefits in terms of employment and growth of GDP per capita for the Lao people. The growth of modern services including ICT, finance and business services is very limited and at the early stage of development. Economic growth will need an increased focus on developing value added services that provide employment and a source of income generation in order to overall strengthen the link between a strong service sector and poverty reduction.

**Figure 6. Structure of the Lao services sector, as a percentage of total services GDP**



Source: NERI

## Session 3. The conceptual basis of trade in services negotiations: The WTO General Agreement on Trade in Services (GATS)<sup>10</sup>

### 1. *Classifications and Definitions*

The WTO General Agreement on Trade in Services, or GATS, forms the ***basis of virtually all other agreements on trade in services***, including in ASEAN. Therefore, it is crucial for anyone working on services to understand the key concepts, definitions, sector coverage and negotiating principles of the GATS.

Clear ***classifications and definitions are extremely important*** in negotiations, because to a great degree they define the scope of potential concessions or gains. Services classification presents a number of challenges for negotiators. What is classified as a ‘service’ in trade agreements is often classified as an ‘industry’ in national statistics systems (for example: construction, electricity, gas, water, mining services and manufacturing services). People are still arguing about how to classify electricity, gas and water – as a good or as a service. In addition, many national statistics systems are not fully harmonised with international systems, and up-to-date data is scarce.

Bearing this in mind, the *WTO Services Sectoral Classification List* (W/120, Document 2 in the Reader supporting this documentation) was developed during the Uruguay Round in the early 1990s to give Members a common base for making commitments. The List covers **12 sectors and 160 sub-sectors** and is cross-referenced to the *United Nations Provisional Central Product Classification* (Provisional CPC 1991, which provides more detailed definitions of particular services).

The 12 sectors are

- (1) Business Services
- (2) Communication Services
- (3) Construction and Related Engineering Services
- (4) Distribution Services
- (5) Educational Services
- (6) Environmental Services
- (7) Financial Services
- (8) Health and Social Services
- (9) Tourism and Travel Services
- (10) Recreational, Cultural and Sporting Services
- (11) Transport Services
- (12) Other Services not included elsewhere

Nevertheless, in the GATS as well as in national systems, things are not so straightforward as they may seem. ***Use of W/120 is voluntary***. Members are free to use their own definitions, the W/120 or the United Nations Central Product Classification.

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<sup>10</sup> Presented by Andrea Spear, Senior Trade and Investment Adviser. The presentation for this session can be found in Annex 5.

In the GATS, members may define the scope of the service sectors they are willing to liberalise – or ask others to open. They can do so as broadly or as narrowly as they choose. They do not have to cover an entire sector or even a whole CPC classification. Members can make commitments on just a sub-sector, or even a part of a sub-sector (for example, voice mail is just one part of CPC item 7523, which itself is a component of the Telecommunications subsector of the Communication Services sector).

Following the launch of the Doha round of GATS negotiations in 2002, numerous Members presented negotiating proposals on classifications, suggesting new subsectors and groups of services to facilitate negotiation of commitments – for example, computer services, energy services, express delivery services, multimodal transport services, and service providers. Proponents have been ‘testing’ these approaches on acceding countries in recent years as well. ‘New services’ are often listed in (bilateral or regional) Free Trade Agreements (FTAs) texts and schedules.

## ***2. GATS Principles and Aims***

The GATS was born in 1995 out of the Uruguay Round of Trade Negotiations, in recognition of services’ vital role in global trade and in underpinning economic development. One of the landmark achievements of the Uruguay Round, the GATS was inspired by the same objectives as its counterpart for merchandise trade, the GATT, or General Agreement on Tariffs and Trade.

Both Agreements’ underlying principles are **non-discrimination and transparency**. Non-discrimination is embedded in the Most-Favoured Nation and National Treatment principles.

➔ *Most-Favoured Nation* means treating all Members as well as you treat the most-favoured one.

➔ *National Treatment* means treating foreign and local products and services alike.

(More on these principles below under Legal Aspects, section 7 below)

*GATS is good for business*: The GATS is a multilateral framework of rules and disciplines aiming for the expansion and progressive liberalisation of services trade, based on increasingly transparent and predictable rules and regulations. The GATS - more than any other agreement - aims for a strong business- and trade-enabling environment.

In negotiations, the GATS seeks to give all parties a ‘fair go’. It aims to promote all members’ interests on a mutually advantageous basis and to secure an overall balance of rights and obligations. It respects members’ right to regulate the supply of services in their territories in order to meet national policy objectives. The GATS does not seek to influence these objectives. Rather, it establishes a framework of rules and disciplines to ensure that services regulations are administered in a transparent, objective and impartial manner and do not constitute unnecessary barriers to trade.

The GATS places special emphasis on developing countries’ need to exercise the right to regulate. In fact, the GATS was one of the first WTO agreements to focus heavily on developing countries’ special requirements.

### Box 3. The Right to Regulate under WTO GATS

#### Right to Regulate

A main worry for governments is often that they will use their ability to regulate services sectors as they wish, after signing the GATS. However, governments very much retain their ability to implement 'behind the border' domestic measures and regulations, i.e. to discriminate between foreign and local services and service providers. And they are free to choose when and how much to liberalise.

How? In practice, members tend to commit – at best – the *status quo* (i.e. the existing level of openness) or even a more restricted *status quo* in the GATS schedule of commitments. This means that they mostly do not actually liberalise anything in written since they 'bind' themselves only to relatively restricted levels of openness. It is like binding tariff ceilings well above applied levels in the goods negotiations. In consequence, governments retain the space to restrict foreign competition up to the 'bound' level (i.e. up to the current level) if they so decide.

However, this must be **transparent**. All 'limitations' on market access or national treatment must be listed in the schedules of commitments. Laos could, for example, list restrictions on foreign investment in retail services and construction services (to protect small businesses). This reflects a member's right to regulate.

### 3. GATS vs. GATT (Services vs. Goods)

While their underlying principles and objectives are the same, the WTO goods and the services agreements and negotiations differ in important ways.

For example, national treatment is obligatory under the GATT, but subject to specific commitments under the GATS. Remedies to deal with unexpected import surges exist under the GATT, but members continue to debate the need for safeguards under the GATS. The GATS adopts a *positive-list approach*, while the GATT has a *negative-list* tradition. This means that under the GATS, 'everything is *off* the table except...', while under the GATT, 'everything is *on* the table except...'. More on this distinction between positive and negative list can be found in section 10 below.

Services are traded differently from goods. Unlike goods producers, which can face several layers between them and end-users, the services value chain can be quite short and direct; **services suppliers and consumers tend to be directly linked**.

- Examples of direct relationships in *trade in services*: transport company and shippers, nurse and patient, call centre employee and airline passenger.
- Example of indirect relationships under *trade in goods*: Beekeeper sends honey to packer who sends it to wholesale trader who delivers it to a shop which sells it to consumers.

Goods trade usually involves tangible goods crossing borders. Services trade can take place in a variety of ways, including virtually, at home or abroad, through foreign investment, or through labour mobility. One intersection is e-commerce where the online sale involves a combination of services, and the physical delivery involves both goods and services.

Because of these differences in trading value chains, services negotiations differ from goods negotiations. Goods negotiations focus on tariffs, tariff lines and their systematic reduction,

often through formulae. Services negotiations focus on sectors, measures and modes of supply.

#### **4. Scope of GATS**

The GATS has two parts:

1. The *Framework Agreement* containing the rules (focusing on MFN and transparency); and
2. The *Schedules of Specific Commitments*, in which each member specifies the degree of openness it is prepared to guarantee for foreign service suppliers.

The GATS covers **all services trade** except bilateral aviation rights and non-commercial government services (i.e. those not supplied in competition with the private sector). The GATS also applies to **all measures** affecting trade in services. These measures relate to the production, distribution, marketing, sale and delivery of a service and can take any form: laws, rules, regulations, procedures, decisions, administrative guidance, etc.

- Examples of measures affecting trade in services: Restriction on competition in telecommunications services, criteria for recognition of professional qualifications, equity limit on foreign investment in a logistics firm. More examples are listed above in Session 1.

The GATS applies to measures taken by central, regional and local authorities and by non-governmental bodies exercising delegated powers. However, in practice, subnational bodies are frequently unaware of GATS obligations. In fact, even many officials in national bodies are unaware of the GATS.

#### **5. Modes of Supply**

The designers of the GATS devised a rather unique system for assessing trade barriers and making commitments. They set out **four modes of supplying services**: cross-border trade, consumption abroad, commercial presence, and presence of natural persons.

This is because the supply of many services is possible only through face-to-face producer-consumer interaction. In order to be commercially meaningful, therefore, trade commitments must go beyond normal cross-border trade, and include temporary cross-border movements of consumers and service providers, and the establishment of a commercial presence in a market.

**Mode 1: Cross-border supply** covers services that flow from the territory of one Member into the territory of another Member via telecommunications, post, etc. (e.g. financial services, architectural plans, airline reservations transmitted via telecommunications or mail, transport services, call centres, etc.).

**Mode 2: Consumption abroad** occurs when a resident of one Member goes to another Member's territory to utilise a service such as tourism, education or healthcare.

**Mode 3: Commercial presence** occurs when a service supplier from one Member establishes a formal presence in another Member's territory to provide a service (e.g. subsidiaries of foreign mobile phone service providers, banks, insurance companies or hotel chains). Hence this mode is linked to foreign investment.

**Mode 4: Movement of natural persons** consists of residents of one Member entering temporarily the territory of another Member to supply a service (e.g. engineers, architects, lawyers, accountants, doctors, teachers, etc.). The Annex on Movement of Natural Persons specifies, however, that Members are free to maintain permanent limitations regarding citizenship, residence and access to the labour market.

Under Mode 4, in schedules of commitments, Members tend to use the following classifications for listing commitments and limitations (e.g. length of stay, quotas, etc.):

- *Business Visitors*: People who come for business meetings, to negotiate sales, to set up a commercial establishment, but do not receive any income in Laos.
- *Intra-Corporate Transferees*: Executives, managers, specialists (including technical specialists) transferred to Laos to manage a company's investment there.
- *Contractual Service Providers*: Specialists sent by their companies to implement a contract with a Lao company or public service entity.
- *Independent Professionals*: professionals (e.g., architects, lawyers, engineers, IT technicians, scientists, medical specialists, teachers, etc.) who come to work in Laos under personal arrangements with a company, NGO or public organisation.

## 6. *Obligations and Rights*

Obligations exist at two levels:

1. **General obligations** applying to all services trade and disciplines. These cover most-favoured nation (MFN) treatment, transparency, fairness of domestic regulation, recognition of qualifications, economic integration arrangements, monopolies, business practices, payments and transfers, general exceptions and security exceptions.
2. **Specific obligations** applying only to commitments inscribed in schedules. These include guaranteed market access and national treatment.

Regarding **rights**, in addition to waivers and dispute settlement, the GATS (in Articles XII and XIV) permits Members in special circumstances to introduce or maintain measures that may contravene their obligations, in order to:

- protect public morals or maintain public order;
- protect human, animal or plant life or health;
- secure compliance with laws or regulations not inconsistent with the Agreement, including measures necessary to prevent deceptive or fraudulent practices.

In addition, the Annex on Financial Services entitles Members to take measures for prudential reasons, including for the protection of investors, depositors, policy holders, etc., and to ensure the integrity and stability of the financial system. Finally, in the event of serious balance-of-payments difficulties, Members are allowed to temporarily restrict trade, on a non-discriminatory basis.

## **7. Legal Aspects – the Key Articles in the GATS**

The GATS is structured into 29 articles, plus annexes on MFN exemptions, financial services, maritime services, telecommunications and natural persons. The GATS aims for something very close to business peoples' hearts: transparent and predictable rules and regulations, and a level playing field (i.e. the same rules apply to all). Articles II - XV set out general obligations, while Articles XVI and XVIII specify the scope of the specific commitments governing market access, national treatment and additional commitments in scheduled sectors. The most important articles are discussed below.

### **MFN (Article II)**

Most-favoured nation treatment, or MFN, is short for “treating all nations as you would treat your most-favoured nation”. This means that a WTO member cannot discriminate among other WTO Members. Concessions given to one must apply to all. In principle, this amounts to a prohibition of preferential arrangements among groups of Members in individual sectors or of reciprocity provisions which confine access benefits to trading partners granting similar treatment.

The GATS allows **three exceptions to the MFN principle**:

1. Members are able to claim a limited number of MFN exemptions upon joining the GATS. This has allowed them to keep some sensitive sectors off the table indefinitely.
2. Members belonging to a WTO-consistent regional trade agreement can receive preferential treatment.
3. MFN does not apply to recognition of qualifications, as this is normally covered by bilateral or industry-specific mutual recognition arrangements.

All WTO members have a one-off opportunity to claim MFN exemptions when they join the GATS. Of the 430-odd ‘Article II exemptions’, the most common are in transport, communication and audio-visual services. Audio-visual exemptions are the most sensitive, as they aim to protect the means to reinforce cultural and national identity.

In principle, these exemptions are not to exceed 10 years and are subject to regular peer reviews and negotiation in rounds. However, a number of members have listed their exemptions as ‘indefinite’. Peer reviews are conducted every few years to press members to justify why they still need their exemptions. Most members say the situation causing the exemption in the first place has not changed. A few say the situation no longer exists, and commit to remove the exemption at the end of the negotiating Round.

For developing countries, the MFN principle is a valuable efficiency measure, since they can benefit from others' concessions without having to invest huge resources in the negotiating effort. MFN and coalition arrangements allow small countries to devote their thin resources to negotiating areas of major importance, while keeping a watching brief on the others.

#### Box 4. The ‘LDCs Services Waiver’

##### An MFN Exemption: The LDCs Services Waiver

An important exception to the MFN principle for LDCs is the “LDC Services Waiver” which was adopted at the WTO Ministerial Conference in 2011 and operationalization mandated at the Ministerial Conference in Bali 2013. The services waiver allows WTO members to deviate from the MFN obligation and give preferential market access to LDCs. LDCs submitted a collective request in 2014, listing services sectors and modes of supply of export interest to them. At the WTO High-Level Meeting on 5 February 2015, developed countries signalled preferential treatment that they intended to give LDCs (subject to their domestic approval processes). These preferences covered mainly Modes 1 (crossborder trade) and Mode 3 (commercial presence) in professional and other business services, construction, distribution, financial services, entertainment/sport, IT and computer services, travel and tourism, and certain maritime and air transport services. While Mode 4 remains sensitive, several Members offered to extend classifications and length of stay for certain categories (e.g., contractual service suppliers, independent contractors, intra-corporate transferees, graduate trainees). Several committed to streamline visa procedures, remove economic needs tests and waive visa fees for LDCs. Members were to endeavour to submit their formal written notifications no later than 31 July 2015. The waiver is to remain in place until 2026.

#### National Treatment (Article XVII)

National Treatment has a far-reaching impact on services providers, both domestic and foreign. Along with Market Access, National Treatment is one of the legally binding obligations assumed by GATS members in their schedules of specific commitments. Under the principle of non-discrimination, it means treating local and other members’ service suppliers and services equally once they meet the conditions for market entry, and once they meet specific conditions and qualifications listed for National Treatment (in case there are any). Unlike in the GATT, where National Treatment is a general obligation in goods trade, in the GATS it is negotiable. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of a Member’s own service industry.

#### Transparency (Article III)

Basic transparency obligations include the requirements that:

1. Members must publish promptly - (except in emergency situations) at latest – by entry into force, all relevant measures of general application, which pertain to or affect the operation of the GATS. If publication is not practicable, the information should be made otherwise available.
2. Members must promptly inform the Council for Trade in Services of new or altered measures significantly affecting trade in services covered by its specific commitments.
3. Members must reply promptly to requests for information from other members and should establish enquiry points for this purpose.

Members may notify the Council for Trade in Services of measures taken by other Members which they consider affect the operation of the agreement.

Members are not required to disclose confidential information that would impede law enforcement or otherwise be contrary to the public interest - or would prejudice legitimate commercial interests of particular enterprises.

### **Developing Countries (Article IV)**

Facilitating the participation of developing countries in services trade has been enshrined in the Preamble to the GATS and underlies the provisions of Article IV. This Article refers to ***special and differential (S&D) treatment*** to be extended by developed members to developing country members - and especially least-developed members - to help them strengthen their services sectors through *access to technology, distribution channels, information networks and export markets*. Specific mention goes to facilitating developing country companies' *access to information* on commercial and technical aspects of supply; registration, recognition and obtaining professional qualifications; and technology.

In addition to this, Article XIX provides that liberalisation take place with due respect for national policy objectives and Members' development levels, both overall and in individual sectors. Developing countries are thus given flexibility for opening fewer sectors, liberalising fewer types of transactions, and progressively extending market access in line with their development situation. Other provisions ensure that developing countries have more flexibility in pursuing economic integration policies, maintaining restrictions on balance of payments grounds, and determining access to and use of their telecommunications and transport networks and services. In addition, developing countries are entitled to receive technical assistance from the WTO Secretariat.

### **Regional Trade Agreements (RTAs) and Bilateral Trade Agreements (BTAs) (Article V)**

Members are free to enter into agreements liberalising services trade, provided these: (1) have 'substantial' sectoral coverage; (2) do not a priori exclude any mode of supply; (3) provide for the elimination of 'substantially all discrimination' between the parties. Developing countries have special dispensation for preferential treatment.

### **Domestic Regulation (Article VI)**

Article VI mandates work to ensure that requirements and procedures for professional qualification and licensing requirements, and technical standards, should not constitute unnecessary barriers to trade. The *Working Party on Domestic Regulation (WPDR)* was set up to develop disciplines ensuring that such requirements:

- are based on objective, transparent criteria (e.g. competence or ability to supply);
- are not more burdensome than necessary to ensure the quality of service; and
- do not pose a restriction to supply.

The 'Article VI.4 discussions', as they are commonly known, started out with disciplines relating to professional services technical standards, recognition of qualifications, and licensing procedures. These discussions led to the agreement on Accountancy Services in 1998, which set the basis for further negotiations on professional services, including the ongoing debate on the necessity test (evaluating if existing or new regulation is more trade-restrictive than necessary).

Based on experiences in the accountancy negotiations, the WPDR is fostering dialogue among trade negotiators, regulators and services suppliers, to facilitate a common understanding of the overall issues and options. A draft text on Domestic Regulation disciplines is currently on the negotiating table, building on the accountancy agreement and the thinking and practice that has evolved in the past 15 years.

### **Monopolies (Article VIII)**

The GATS does not prohibit monopolies – rather, Article VIII acknowledges that they may continue to exist, provided they act consistently with both the MFN requirement and market-opening commitments. If a monopoly or exclusive service supplier arrangement exists for a service where a commitment is made, it can remain but must be listed in the schedule as a market access limitation. If a country wants to introduce new monopoly rights in an area subject to liberalisation commitments, it must notify the WTO ahead of time. It can renegotiate those commitments and compensate affected trading partners. Finally, if a monopoly competes (either directly or via an affiliated company) in services for which it does not have monopoly rights, and for which liberalising commitments have been made, then *the monopoly must not abuse its monopoly position*. In other words, it must compete fairly.

### **Unfair Business Practices (Article IX)**

GATS Article IX recognises that certain business practices may restrain competition and thereby restrict trade in services. It calls on Members, if requested by other Members, to enter into consultations aimed at eliminating such practices.

### **Administration of the GATS - Ongoing Work and the ‘Built-In Agenda’**

The GATS, including its Annexes and Related Instruments, set out a work programme which is normally referred to as the ‘built-in’ agenda. The GATS contains a number of areas of unfinished business – issues that were not completed during the Uruguay Round and which required further negotiations to determine whether, or what type of, disciplines were necessary. These include government procurement, subsidies and emergency safeguards, and disciplines applying to certain types of domestic regulation. The Working Parties on GATS Rules and Domestic Regulation were set up to deal with these. The Specific Commitments and Domestic Regulation groups are the most important in terms of completing substantial work.

The **Specific Commitments Committee** handles the interminable classifications and scheduling-related issues - especially important to resolve before final scheduling of commitments in this round. Because members have considerable liberty in defining the scope of their sectoral and sub-sectoral specific commitments, this committee has had its work cut out for it. Much of its time is spent in delving into the finer points of classifying sectors and subsectors for the purposes of making specific commitments. For example, how should ‘foreign legal consultants’ be classified for purposes of ‘legal services’ commitments; or what should be included under ‘energy services’; or how should multimodal solutions be classified under ‘transport services’. As GATS negotiations move toward final offers, these issues will need to be resolved.

The **Committee on Trade in Financial Services** oversees implementation of the Financial Services Agreement finalised in 1998 (Fifth Protocol), as well as analytical and negotiating matters (e.g. prudential regulation).

## 8. GATS Annexes

International trade in goods is a relatively simple idea to grasp: a product is transported from one country to another. Trade in services is much more diverse. Telephone companies, banks, airlines and accountancy firms provide their services in quite different ways. The GATS annexes reflect some of the diversity.

The ***Movement of Natural Persons annex*** deals with negotiations on individuals' rights to stay temporarily in a country for the purpose of providing a service. It specifies that the agreement does not apply to people seeking permanent employment or to conditions for obtaining citizenship, permanent residence or permanent employment.

The ***Financial Services annexes*** recognise that instability in the banking system affects the whole economy. The financial services annex gives governments very wide latitude to take prudential measures, such as those for the protection of investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system. The annex also excludes services provided when a government is exercising its authority over the financial system, for example central bank services. The Understanding on Financial Services is used for negotiating progressive liberalisation in the sector.

The ***Telecommunications annex*** recognises the sector's dual role: it is a distinct sector of economic activity; and it is an underlying means of supplying other economic activities. The annex says governments must ensure that foreign service suppliers are given access to the public telecommunications networks without discrimination. The Basic Telecommunications Reference Paper is used for negotiating progressive liberalisation and good practices, such as an independent regulator, in the sector.

The ***Air Transport Services annex*** excludes traffic rights and directly related activities from GATS coverage, on the basis that they are handled by other bilateral agreements. Three areas are covered by the GATS: aircraft repair and maintenance services, marketing of air transport services and computer-reservation services.

### Box 5. How to Benefit from GATS

#### Recipe to Benefit from WTO

**Implement** all WTO commitments and obligations, especially those that encourage streamlining procedures, increasing transparency, and enforcing laws and regulations. This will help business and trade development, and generate employment.

**Raise awareness** of GATS commitments among both private sector and line ministries. Ministries often do not understand their WTO obligations, so it is important to establish a consultation mechanism and ideally a regulatory impact assessment, to ensure that WTO compatibility of any new law or regulation is checked.

**Strategically seek technical assistance** to help meet obligations, improve trade-related infrastructure, increase awareness and develop strategies to maximise membership.

## 9. GATS Negotiations and Scheduling

### Different kinds of services negotiations within the WTO

**Ongoing work** is, as mentioned before, an intellectual and analytical exercise, with members negotiating on texts that will complement the GATS agreement, in line with built-in mandates. The Accountancy and Domestic Regulation work, as well as discussions on subsidies, safeguards and government procurement fit this category.

**Accession negotiations** are one-sided. WTO members make requests, and the Acceding Country responds to these through offers; it can't make requests until it is a member. Members often use pressure tactics to force Acceding Countries to make more concessions than they themselves have made, and they use the process to test new negotiating formulae, such as combined groups of products, etc. There are now 160 members in the WTO, quite a few countries joint in the past two years.

In the current **Doha Round of Multilateral Negotiations**, GATS negotiations are carried out under a 'request-offer' process. Members analyse each other's schedules, consult stakeholders, and request other members to make or add additional sectors or subsectors to their schedule of commitments. In compiling offers, members analyse their own schedules and consult stakeholders, decide what they can liberalise and what they can't, and then prepare a negotiating strategy that will best serve their interests. At least, this is what they should do.

### Schedules of Specific Commitments

Accession and multilateral negotiations are made on the basis of schedules of specific commitments. These commitments are called 'specific' because each Member decides which sectors it wishes to open up to foreign competition, and in which ways. The Member then 'inscribes' the extent to which it will open these sectors, in each of the four modes of supply in the Market Access (MA) and National Treatment (NT) columns.

Horizontal commitments and limitations are those that apply to all sectors. They are listed at the beginning of Schedules. These are usually used to limit liberalisation in Modes 3 and 4. For example, they spell out under which circumstances the Member will allow movement of natural persons or establishment of enterprises for service delivery.

Sector-specific commitments are formalized in a list of sectors to be liberalised. While the first column of the schedule lists the sector that the Member "takes specific commitments on", the second and third columns specify limitations to Market Access (MA) and National Treatment (NT) for each mode of supply.

Members tend to inscribe – or bind - as the best case, the current legal level of restriction/limitation on Market Access and National Treatment for each Mode. However, in practice Members frequently give better treatment (referred to as the 'applied level'). This is akin to the difference between bound and applied tariffs in the Good Schedules. A Member may not give worse treatment than the 'bound' level, but they may apply better treatment in practice. In negotiating rounds, Members come under pressure to bind the 'applied' level of treatment.

Table 4 below shows how Laos has scheduled a specific subsector.

**Table 4. Examples of scheduling, from Lao PDR’s  
GATS Schedule of Specific Commitments on Services**

Modes of supply: (1) Cross-Border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons			
<b>Sector or Sub-sector</b>	<b>Limitations on Market Access</b>	<b>Limitations on National Treatment</b>	<b>Additional Commitments</b>
(t) Specialty design services (CPC 87907)	(1) None.  (2) None.  (3) For 5 years after accession, foreign equity participation limited to 49%. Thereafter: foreign equity participation limited to 51%.  (4) Unbound, except as indicated in the horizontal section.	(1) None.  (2) None.  (3) None.  (4) Unbound, except as indicated in the horizontal section.	

The Table illustrates the three main options for scheduling each mode of supply in the MA and NT limitations columns:

1. “None” = no limitations to MA or NT in this mode (typically the case for Mode 1 and 2, there are rarely any restrictions) → Mode fully open

A “None” cannot be undone – once a sector is liberalised, no new restrictions can be introduced in future rounds of negotiations.

2. Spelling out restrictions or limitations for a specific mode (e.g. 49% of foreign ownership allowed in Mode 3) → Mode partly open

The country will be pressured to remove remaining limitations in future negotiations.

3. “Unbound” = no legal commitments /non-negotiable for the moment. Often used for areas that are sensitive or not very well regulated. Frequently used for Mode 4

The country will be pressured to remove “unbound” in future negotiations.

In practice:

- If there is a “None” for Modes 1 to 3 for a specific sector, then this is called ‘full commitments’ and means that the sector is fully open for other Members
- Mode 4 is generally “Unbound, except as indicated in the Horizontal section” for all GATS members; few Members take binding commitments in Mode 4.

### **Scheduling Rules for Market Access and National Treatment Limitations**

As stated in Article XVI.2, in the **Market Access column** Members may only inscribe the following six types of restrictions:

1. Limitations on the *number of service suppliers* whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
2. Limitations on the *total value of service transactions or assets* in the form of numerical quotas or the requirement of an economic needs test;
3. Limitations on the *total number of service operations* or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
4. Limitations on the *total number of foreign natural persons* that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
5. Measures which *restrict or require specific types of legal entity or joint venture* through which a service supplier may supply a service; and
6. Limitations on the participation of foreign capital in terms of *maximum percentage limit on foreign shareholding* or the *total value* of individual or aggregate foreign investment.

Five of the six are quantitative restrictions. These measures must be backed up by law or regulation. If there are no restrictions, the Member inserts the word 'None'.

In the **National Treatment column** (based on Article XVII), the Member must write either 'None', meaning that it will treat other Members' services and service suppliers identically to its own, or it must inscribe the way in which it will discriminate. Most National Treatment limitations involve nationality or residency requirements, extra social responsibilities (e.g. training), discriminatory subsidy or tax measures, etc.

### **10. Services Negotiating Approaches: Positive, Negative and Hybrid lists**

Different negotiating approaches are used in services negotiations around the world. The GATS uses a '*positive list*' approach, whereby members list the sectors and modes they are ready to open. The opposite is the '*negative list*' approach where countries list only the exclusions or restrictions (be it sectors or measures) in a totally different format. In reality, GATS Schedules feature a mixture of positive and negative approaches – a positive list of the sectors and subsectors to be included, and a negative list of restrictive or discriminatory measures and conditions. This is called in some circles a 'hybrid' approach.

#### **Positive- and Hybrid-list approach**

The 'positive list' or 'hybrid list' approach as used in the GATS Schedules of Specific Commitments opens to market access and national treatment only the specific sectors included in the schedule of specific commitments. The Schedule lists all measures, etc, that limit market access and national treatment in these specific sectors. The first column of the schedule lists specific sectors and sub-sectors that will be open to market access and national treatment. The second and third columns, however, may contain exemptions to this general 'opening' of a specific sector - namely measures, regulations, etc, that limit market access and/or national treatment.

## Negative-list approach

The negative-list approach – used in many Free Trade Agreements (FTAs) – turns the principle around: all sectors are assumed to be open (and negotiable: ‘everything is on the table’) except those for which limitations are specified. Hence this approach opens up all sectors to market access and national treatment except those on the *List(s) of Nonconforming Measures*. Such list(s) include all sector-specific measures and other restrictions that do not comply with full openness (therefore called noncomplying or nonconforming measures). These then form the basis for future negotiations. In the ASEAN context, the ASEAN Comprehensive Investment Agreement (ACIA) uses a negative list approach for negotiations.

Two specific mechanisms apply to the *List(s) of Nonconforming Measures*

- 1) Once measures have been listed, parties are not allowed to make the measures more restrictive. That is, they agree to a **‘standstill’**. If Parties make them *less* restrictive, they must **‘bind’** them at the less restrictive level (‘ratchet mechanism’).
- 2) If measures are ‘applied’ in a less restrictive way than stipulated in the law, the binding must be at the applied level (‘status quo’). This means that, unlike in the GATS, there is **no policy space between applied and bound levels**. They must be one and the same.

FTAs usually feature two sets of negative lists (‘Lists of Nonconforming Measures’):

1. Existing Measures (which may only be improved)
2. Future Measures (basically ‘unbound’ measures – and sectors - which may be changed; i.e. a country can keep its ‘policy space’ for these sectors and measures).

## When to use which negotiation approach

Negative lists serve countries with highly developed and very well regulated service sectors. Relevant regulation for all or most sectors is already in place. Hence it is relatively easy for those countries to simply use the same list of regulations and limitations for all FTA negotiations.

However, for developing countries with unregulated or under-regulated services sectors, the negative list negotiating approach should be viewed with caution. . Once a commitment is made (i.e. regulations for a sector are listed), there is usually no way back (no more restrictive regulations can be added later). In addition, for non-experts, negative lists can be un-transparent and confusing.

In conclusion, initial analyses indicate that in services chapters in FTAs, the best method for countries with un- or under-regulated services sectors would be to:

1. Use a **positive/hybrid-list approach for lightly or non-regulated sectors and subsectors** where a government wishes to maintain its policy space. The sectors that a country decides to open can be listed in a GATS-style Schedule of Specific Commitments.
2. Use **a negative list approach only for the well regulated sectors**, such as Telecommunications and Financial Services, which tend to be covered in separate

Annexes to the FTA Services Chapter (possibly Labour Mobility as well). These annexes can incorporate the respective negative lists of measures that do not conform with full openness.

### **11. Some interesting questions that have arisen during GATS negotiations**

**Services Mode 4:** Several Asian countries wondered if they could use GATS negotiations to seek better regulation of labour flows into their country (they were especially concerned about inbound foreign construction crews). They also wanted to use GATS negotiations to seek better conditions for their own migrants in neighbouring countries (also construction workers), including allowing local banks to set up operations aimed at servicing their migrants.

Comment: Obviously the Accession and Request/Offer negotiations would provide a platform to raise such issues and to negotiate mutually satisfactory solutions (which would have to be made available to all WTO members under MFN provisions). However, experience has shown that migration issues are very sensitive and that it is difficult to seek or make Mode 4 commitments in other than professional categories.

**Border problems:** One country was convinced that one of its neighbours wanted to re-establish its previous territorial spread and take over not only it but other countries as well. The two countries are barely on speaking terms. It wondered if it had to have any dealings with this country in the WTO negotiations.

Comment: When a country joins the WTO it agrees to apply MFN treatment to all other members. Apart from the LDC Services Waiver, only one waiver has been granted to date, namely Pakistan's waiver not to grant MFN status to India.

**Transit:** Several landlocked countries in different regions want to know how to use the WTO to secure and enforce freedom of transit to ports or major markets.

Comment: It is possible to use WTO Trade Facilitation and GATS negotiations to deal with these problems, including in bilateral discussions related to the WTO negotiations. Other international conventions also apply. With access to energy and raw materials becoming an increasing strategic interest, it is likely that such issues as transit of pipelines and energy shipments will become more important in the GATS negotiations, and this could open the way for general trade as well.

#### **Box 6. Note on Lao PDR commitments under GATS**

##### **Lao PDR Commitments under GATS**

During its accession to the WTO, Lao PDR made multiple commitments under the GATS. The schedule of commitments can be found in Document 3 of the Reader supporting this documentation.

A large number of sectors are also discussed in detail in Session 9 of this training documentation. This section in particular includes a comparison between commitments under GATS and the most recent commitments under the ASEAN Framework Agreement on Services (AFAS).

## Part II. Current trade in services negotiations involving Lao PDR

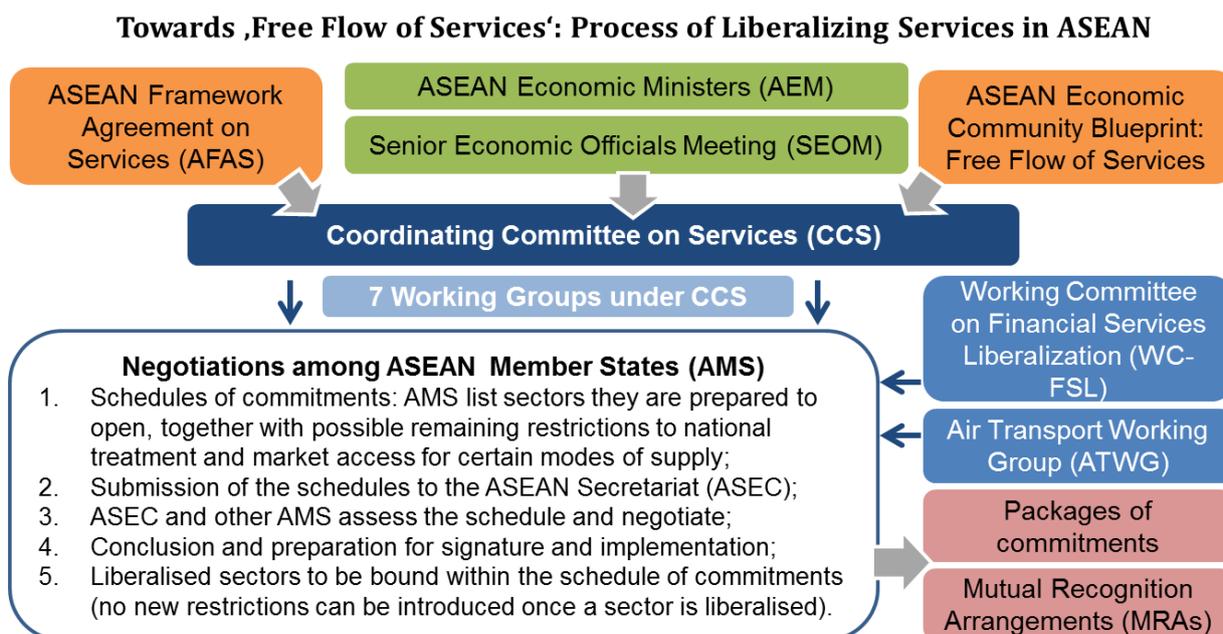
### Session 4. ASEAN Framework Agreement on Services (AFAS)<sup>11</sup>

The **ASEAN Economic Community (AEC)** will be established by the end of 2015, based on the AEC Blueprint developed in 2007. The four pillars of AEC are the Single Market & Production Base, the Competitive Economic Region, the Equitable Economic Development and the Integration into the Global Economy. The first pillar includes the five freedoms, namely free flow of goods, free flow of services, free flow of investment, freer flow of capital, and free flow of skilled labour.

Free flow of services among ASEAN member countries is one of the key features of the upcoming AEC. The **ASEAN Framework Agreement on Services (AFAS)** has been concluded in 1995 to provide a framework for negotiations. The main objective of AFAS is to liberalise trade in services in the ASEAN region, i.e. to reduce or eliminate restrictions on providing services and establishing a commercial presence for service suppliers across the region. AFAS, in conjunction with the AEC Blueprint which countries adopted in 2007, sets clear targets and timelines for negotiations and prevents back-loading of commitments, while also allowing for pre-agreed flexibilities.

Rules and procedures under AFAS are consistent with GATS; in fact, nearly all provisions missing from AFAS may be referred to GATS, as stated in the AFAS final provision. Scheduling also works in a similar way as under GATS. Overall, AFAS is intended to be a ‘GATS plus’ agreement, hence going further in scope and depth of liberalisation.

**Figure 7. Process of Liberalizing Services under AFAS**



<sup>11</sup> Presented by Dr. Souphaphone Saignaleuth, Investment Promotion Department, Ministry of Planning and Investment. The presentation for this session can be found in Annex 6.

Services negotiations under AFAS are coordinated by the **Coordinating Committee on Services (CCS)** which reports to the ASEAN Economic Ministers. CCS is responsible for most services sectors, except financial services, air transportation and services incidental to manufacturing, agriculture and mining. Until today, nine packages of commitments have been signed and submitted. The general negotiations process is illustrated in Figure 8 above.

### Liberalisation approach

Liberalisation under AFAS aims predominantly at Modes 1 to 3 of services supply, while Mode 4 (movement of natural persons) is ‘out of question’, similar to GATS scheduling. For Mode 1 and 2, the objective is to have no limitations in any of the priority sectors (to schedule “None”) for both market access and national treatment. This has largely been achieved. For Mode 3, in each round of negotiation increasingly ambitious MA and NT targets have been fixed – with the aim to reach zero restrictions by the end of 2015. However, multiple restrictions remain for Mode 3, even in priority sectors.

Mode 3 limitations include the following:

<b>Limitations to market access (MA)*</b>	<b>Examples of limitations to national treatment (NT)</b>
<ul style="list-style-type: none"> <li>• Limitations on the number of service providers</li> <li>• Limitations on the total value of service transactions</li> <li>• Limitations on the total number of service operations / total quantity of service output (products)</li> <li>• Limitations on number of natural persons to be employed</li> <li>• Specific requirements regarding the type of legal entity or joint venture</li> <li>• Maximum percentage limit on foreign shareholding.</li> </ul>	<ul style="list-style-type: none"> <li>• Limitations on land ownership</li> <li>• Determining minimum amount of capital investment</li> <li>• Tax requirements</li> <li>• Licensing requirements</li> <li>• Requirements regarding technology transfer</li> </ul>
<p>*Note: These are the only limitations that may be applied, as in the WTO GATS rules.</p>	

### Priority sectors

Overall, ASEAN member countries have named 12 priority integration sectors; of which 5 have services elements: air travel, e-ASEAN, healthcare, tourism (= 29 sub-sectors) and logistics (=9 logistics priority sectors). By the end of 2015, full liberalisation (of Modes 1 to 3) of all sectors (a total of 128) needs to be achieved. (See Document 1 in the Reader supporting this documentation). Currently, member states are invited to submit commitments to reach the target of 128 services sectors in the 10<sup>th</sup> AFAS package (precise requirements and thresholds for the 10th round of negotiations are in Session 5).

Liberalisation of the PIS and logistics sectors was already foreseen in 2013. PIS liberalisation is proceeding well, but problems remain with the 9 logistics priority sectors – the deadline here has been pushed to 2015.

### Negotiations of Mode 4 liberalisation (movement of natural persons)

Negotiations on Mode 4 have been moved to another section of ASEAN negotiations.

### Mutual Recognition Arrangements

Partly, Mode 4 is covered under the negotiations for Mutual Recognition Arrangements (MRAs). These agreements are designed to provide a process for recognizing education and skills gained in another member country. Being able to obtain necessary licences and accreditation is a prerequisite for the movement of natural persons to another ASEAN country to provide services in their speciality (= Mode 4 of services supply). MRAs so far have been concluded for 8 professions, namely:

1. Engineering Services
2. Nursing Services
3. Architectural Services
4. Surveying
5. Accountancy Services
6. Medical Practitioners
7. Dental Practitioners
8. Tourism Professionals

MRAs are crucial for ASEAN trade in services to actually and in practice allow for the movement of service providers across borders. It allows foreign services providers to request a licence, certificate, or other proof of knowledge and qualification in their professions and to provide services in the other country thereafter. MRAs, if properly implemented, will allow service providers to register as a professional in other ASEAN countries – following laws and regulations in that other country, of course. Lao PDR has signed all MRAs. The big challenge will be to implement them in practice.

### Negotiations on air transport and financial services

Negotiations on air transportation and financial services are conducted in separate working groups. Air transport is discussed in the framework of Air Transport Sectoral Negotiations under the Air Transport Working Group (ATWG) which reports to the ASEAN Transport Ministers. Financial services are discussed in the AFAS Working Committee on Financial Services Liberalisation (WC-FSL), which reports to the ASEAN Finance Ministers.

### Negotiations on services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying

Negotiations on incidental services are conducted within the framework of the ASEAN Comprehensive Investment Agreement (ACIA), since they are very closely tied to foreign direct investment (FDI). Negotiations are coordinated by the Coordinating Committee on Investment (CCI). Discussions after the presentation revealed that these services are integral to international trade and value chains, and, while they may be related to foreign investment in many cases, they should be included in regular services negotiations. This is especially true for ‘services incidental to manufacturing’, or ‘contract manufacturing’.

## Session 5. Challenges for the submission of schedules of the 10<sup>th</sup> AFAS package

Several challenges have been identified with respect to finalizing the Lao schedule for the 10<sup>th</sup> AFAS package. Little knowledge of sectors and potential consequences of different liberalisation options represent a serious problem for Lao policy makers, since they are making decisions without having all the information. Limited capacity, lack of funding and limited dissemination capabilities in the public sector mean that the private sector has had a limited role in consultations and has not been able to feed its experiences in the process.

The second challenge is actually fulfilling the requirements (the AFAS target thresholds) for the 10<sup>th</sup> package, especially regarding market access in Mode 3 (opening up for foreign ownership up to 70%). So far, Lao PDR has completely opened only around 100 sub-sectors. The table below shows the target thresholds for the last (9<sup>th</sup>) package and for the package currently under preparation, the 10<sup>th</sup> AFAS package, and provides an explanation of the commitments that are required. Explanations are provisional and have not been verified with the ASEAN Secretariat, which makes the final decisions.

**Table 5. AFAS Target Thresholds for 9<sup>th</sup> and 10<sup>th</sup> Package of commitments**

Target Thresholds for the 9 <sup>th</sup> and 10 <sup>th</sup> AFAS package of commitments			
	9 <sup>th</sup> Package	10 <sup>th</sup> Package	Explanations
Completion Target	AEM 2013	AEM 2015	Thresholds stipulated for the 10 <sup>th</sup> package need to be met by end of 2015
Number of Subsectors	104	128	Countries need to make commitments for a total of 128 (sub-)sectors. This includes 29 priority integration sectors, 9 logistics priority sectors, and 90 other sectors. As for the logistics priority sectors, the targets for the 9 <sup>th</sup> package have not been met for all 9 sectors – the deadline has therefore been extended to the end of 2015 (10 <sup>th</sup> package).
Mode 1	All 104: None	All 128: None	For Mode 1, there cannot be any restrictions to either market access (MA) or national treatment (NT), for a total of 128 sectors, by the end of 2015
Mode 2	All 104: None	All 128: None	For Mode 2, there cannot be any restrictions to either MA or NT, for a total of 128 sectors, by the end of 2015
Mode 3MA FE	29 PIS: 70%	29 PIS: 70%	This requirement refers to foreign equity (FE) restrictions under the MA limitations. For 29 priority services sectors, the maximum share of foreign equity needs to increase to 70%. The same is true for the 9 logistics sector priorities. For the other 90 sectors (out of the total of 128), the foreign equity limitation also needs to increase to 70%
	9 LOG: 70%	9 LOG: 70%	
	66 OTHER: 51%	90 OTHER: 70%	
Mode 3 MA Limitations	29 PIS: No limitation	29 PIS: No limitation	For the 10 <sup>th</sup> AFAS package, there can be no limitations whatsoever on mode 3 under the MA column, in any of the 128 priority sectors. (Limitations are for example the requirement to form a joint venture or to be subject to economic needs testing.)
	9 LOG: No limitation	9 LOG: No limitation	
	26 OTHER: max 2 lim	90 OTHER: No limitation	

	26 OTHER: max 1 lim		
Mode 3NT	Max 3 lim /subsector (including horizontal)	Max 1 lim /subsector (including horizontal)	This requirement refers to restrictions under mode 3 of the NT column. There can be maximum one limitation per sub-sector, including the horizontal commitments.
Flexibility Allowed	15%*(104*3)= 47 modes across modes 1-2-3	15%*(128*3)= 58 modes across modes 1-2-3	Further clarification on the flexibility is currently being sought from the ASEAN Secretariat – flexibility is also under discussion in the ASEAN Coordinating Committee on Services (CCS).
Max flexibility in one mode of supply	55%*47= 26 sub-sectors per mode	50%*58= 29 sub-sectors per mode	

Besides the requirements set by the ASEAN Secretariat, another challenge for Lao PDR is that documents (such as the list of sectors used under AFAS negotiations) have still not been translated into Lao language. This has led to many misunderstandings of sector definitions and scheduling rules in the past.

A third challenge for Lao PDR is to improve coordination between line ministries and the coordinating unit for trade in services. Each ministry has a CCS contact person (focal point), who is to facilitate internal discussion and, provide feedback to the IPD coordinator. Frequent turnover and chronic staff shortages in the trade in services functions exacerbate the challenges of inter-agency coordination.

A fourth problem identified during the training is inadequate involvement of the private sector. Private sector consultation is a very important part of trade negotiations and policymaking. The objective is to enhance trade and economic development, and this depends largely on the private sector. Therefore, they need to be involved in identifying barriers and bottlenecks (at home and abroad), and in finding solutions that fit with international trade rules.

Finally, the fifth challenge related to the 10<sup>th</sup> AFAS package is the lack of background research. Lao PDR would benefit from impact assessments for different policy and negotiating options in sectors being considered for liberalisation. In addition, research on neighbouring countries is necessary to understand Lao PDRs relative competitiveness vis-à-vis other ASEAN economies.

## **Session 6. Negotiating the new ASEAN Trade in Services Agreement (ATISA)<sup>12</sup>**

The ASEAN Framework Agreement on Services (AFAS) has facilitated negotiations on trade in services since 1995, for almost 20 years. But an update of AFAS has become necessary in order to adapt ASEAN trade in service negotiations to the new global economy and correct for inconsistencies. The *ASEAN Trade in Services Agreement (ATISA)* will replace AFAS and is currently being drafted.

ATISA, similar to AFAS, is based on GATS and will take a similar overall approach, including the positive list approach towards scheduling. However, while AFAS used the same

<sup>12</sup> Presented by Dr. Souphaphone Saignaleuth, Investment Promotion Department, Ministry of Planning and Investment. The presentation for this session can be found in Annex 7.

procedures as GATS for scheduling commitments, the concrete procedure of scheduling commitments under ATISA is still under consultation and might be slightly different from AFAS.

Currently, the sector coverage of ATISA is an important question. All commitments made under AFAS will be included in the ATISA. However, under AFAS, financial services, air transport, logistics and services incidental to investment (manufacturing, agriculture, mining and quarrying....) were negotiated under various different working groups:

- Services incidental to agriculture, fishery, forestry, manufacturing and mining and quarrying were negotiated under the ASEAN Comprehensive Investment Agreement (ACIA)
- Financial services were negotiated under the Working Committee on ASEAN Financial Services Liberalisation (WC-FSL)
- Air transport were negotiated under the ASEAN Air Transport Working Group (ATWG)

For ATISA, the idea is to have one agreement, covering all service sectors – however, it is not yet clear which individual working groups will actually merge with ATISA. For financial services an annex to ATISA is currently being drafted. Telecommunication might be dealt with in another annex to ATISA. One option is to draft a similar annex for air transport and maritime transport, currently covered under the ASEAN Single Aviation Market (ASAM) and the ASEAN Single Shipping Market (ASSM).

Currently, the 10 chapters of ATISA are as follows.

1. General provisions
2. Obligations and Rules (MFN, MA, NT, etc.)
3. Modes of Liberalisation
4. Controls (transparency, domestic regulation, recognition, etc.)
5. Creation of tables of commitment
6. Issues across business sectors (supply chains, e-commerce, vocational services, etc.)
7. Financial Services
8. Trade facilitation and cooperation
9. Other provisions (payments and money transfer, monopoly policy, balance of payment, exemptions etc.)
10. Final provisions

There are currently 2 annexes being negotiated under ATISA

1. Annex on Financial Services (negotiated separately by WC-FSL)
2. Annex on Telecommunication Services (negotiated under CCS)

In addition to the question of sector coverage, the platform for future negotiations has not yet been decided on. One option is to maintain the current arrangements with the different working groups. The mechanism to schedule future commitments under ATISA is also still open. Similar to above, one option is to maintain the current practice.

Line ministries in Lao PDR are not yet very involved in ATISA negotiations, but the idea is to at least consult them in the coming months and to share the draft ATISA with them for

comments. The exception is the Lao Central Bank and the Ministry of Finance which are currently involved in the decision making of whether there will be a chapter, an annex or no such thing on financial services in ATISA.

## **Session 7. Services in the Regional Comprehensive Economic Partnership Agreement (RCEP)<sup>13</sup>**

The Regional Comprehensive Economic Partnership (RCEP) is currently being negotiated between ASEAN and six countries, with which ASEAN already has FTAs in place (namely Australia, China, India, Japan, South Korea and New Zealand). Negotiations started in October 2012. Seven rounds of negotiations have been concluded; the next round will take place in Kyoto, Japan, in June 2015.

The idea of RCEP is to be open for accession of any of the ASEAN FTA partners (and current negotiation partners), immediately or later, whenever a country is ready to join. The scope of RCEP is relatively ambitious; it seeks to cover trade in goods, services, investment, economic and technical cooperation, intellectual property, competition policy, dispute settlement – among other issues.

Trade in services is still under negotiation and the outcome is open. ASEAN member countries decided that commitments made under AFAS should be some kind of ceiling for RCEP negotiations: under RCEP, countries should not open up more than under AFAS, to continue providing more benefits for ASEAN members and preserve the importance of ASEAN.

For Lao PDR and other LDCs there are multiple challenges entering in negotiations with very advanced economies. However, even more advanced ASEAN countries, as well as for example India, are facing difficulties in the negotiations. One issue is that regulations are not yet well developed in these countries and hence making liberalisation commitments is difficult. In addition, stakeholders are worried about not having enough time to prepare their domestic companies for increased competition.

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<sup>13</sup> Presented by Onida Vinavong, Deputy Director Trade in Services Division, Foreign Trade Policy Department, Ministry of Industry and Commerce. The presentation for this session can be found in Annex 8.

## Part III. Designing Negotiating Strategies

### Session 8. Strategic thinking about services negotiations and national interests

A key question of any trade negotiation is to decide on *which sectors to liberalise*. There are always different options for how, when and what to liberalise, and it is important that Lao PDR take the driver's seat where possible in negotiations – and not simply respond to others' requests. It should also take a strategic approach to seeking concessions from others in areas of export and investment interest. These strategic choices can only be used if preparations have been thorough.

Negotiations are not merely about being as defensive as possible in light of multiple requests from other countries. It is important to keep in mind that FDI is indeed needed in many sectors; hence overzealous protection serves no one. In addition, there is also an offensive side to a services negotiation strategy: think about which sectors you want other countries to open up.

#### Discussion 1: How can Lao PDR use services negotiations for development?

Participants agreed that Modes 1 and 2 are both very important for Lao citizens, e.g. to access medical or legal advice from abroad, or to be able to travel abroad for education, medical treatment, tourism or other services. Mode 3 is equally important since many sectors need foreign investment. Foreign investment is deemed important to create jobs and facilitate learning and the transfer of management skills and technology. International investment in Lao PDR helps Lao companies and service suppliers become more competitive and have a better understanding of the international context. In addition, consumers benefit from more competition through higher quality, greater choice and potentially lower prices.

However, liberalisation of Mode 3 should be reserved for sectors in which liberalisation will really serve the national interest. One example is education, where participants see a need for foreign teachers and education providers to improve quality of education. Another sector is health care where private and foreign-run hospitals may be able to provide services that are not yet available or are in short supply. Other sectors are those that require hefty investment and know-how, such as energy and major infrastructure services.

Mode 4 is controversial worldwide, given its sensitive immigration implications. However, highly educated and skilled foreigners can contribute to development in certain sectors. In others, their potential contribution may be hindered by a lack of Lao language skills or understanding of local culture. There has been some progress under ASEAN with the conclusion of multiple MRAs (to be implemented). Nevertheless, there is a long way to go in terms of freeing up flows of natural persons.

#### Discussion 2: What constraints to business and trade development exist in Lao PDR?

Participants realised that they needed to study relevant regulation and consult the private sector on specific difficulties and barriers before they could respond to this set of questions. This was a good lesson learned.

### Discussion 3: Which services sectors does Lao PDR want to develop, both at home and abroad?

Participants identified a range of sectors that were important to develop at home, including education and training, R&D, health, environmental services, waste management, ecological and cultural tourism, as well as areas important for women’s employment (e.g., those related to handicrafts and cotton).

Sectors participants would like to develop for export included tourism, handicrafts, cotton value adding, and possibly in the future, health-related services.

Knowing what one wants to develop strategically at home and abroad helps in the development of negotiating positions, options and strategies. Critical thinking began with this training programme, and it needs to continue, as noted in Discussion 2 above.

## **Session 9. Defining a Lao position: comparison between GATS and AFAS 9 commitments and discussion of options for further liberalisation**

This session looked at individual service sectors, following the order of the WTO’s Services Sectoral Classification List (W/120)<sup>14</sup>. Each service sector was examined to identify *current commitments under GATS and AFAS, particular sensitivities* and future *negotiating options* that would best support sectoral development and competitiveness of the individual Lao service sectors. Options that were discussed applied to the 10<sup>th</sup> AFAS package, ATISA and RCEP negotiations, and ongoing or future GATS negotiations.<sup>15</sup>

This section of the training documentation provides a summary of the issues discussed during the training<sup>16</sup>, including:

- Current schedule of WTO/GATS commitments
- Current schedule of AFAS commitments  
(in both cases, Mode 4 is not discussed since this mode is “unbound” for all sectors in both GATS and AFAS)
- Specific features, trends and characteristics of the sector, reasons for restrictions in the past, as well as negotiation options for the future

For the comparison between GATS and AFAS it is important to keep in mind that FTAs (such as AFAS) are meant to be “**GATS-plus**” agreements – hence they should further liberalise GATS commitments under GATS or at least make the same commitments as in GATS. More restrictive scheduling under FTAs is not allowed.

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<sup>14</sup> The W/120 list is cross-referenced with the UN Central Product Classification (CPC) List. W/120 provides splits CPC service sectors into sub-sectors, thereby adding more depth and detail which facilitates trade negotiations.

<sup>15</sup> Lao PDR has quite a number of other (bilateral) FTAs with neighbours and other countries – however, ASEAN and WTO agreements are the most important in terms of services sector development

<sup>16</sup> In terms of sectors, the training addressed most of the main sectors under AFAS, as being negotiated through the Coordinating Committee on Services (CCS). Sectors not negotiated under AFAS are: Services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying; Financial services; Air transport services. Under GATS, Lao PDR took commitments for services incidental to mining, hence this sector is covered below.

This requirement made the negotiations of the 9<sup>th</sup> AFAS package very difficult for Lao PDR – it was the first round of negotiations conducted after Laos’s WTO accession. AFAS commitments had to equal or go beyond GATS commitments. In many cases, Laos’s standing commitments under AFAS were indeed less restrictive. However, in some cases they were more restrictive and needed to be brought in line with both GATS and AFAS requirements.

Documents for this session

- The full list of the CPC 128 sub-sectors under AFAS (including exact definitions of sectors and sub-sectors) (Document 1 in the Reader supporting this documentation);
- The schedule for commitments under GATS (Document 3 in the reader supporting this documentation);
- The schedule of specific commitments for the 9<sup>th</sup> AFAS package (Document 4 in the reader supporting this documentation).

***MFN Exemptions***

WTO members were allowed, upon joining the GATS, to exclude certain sectors/areas from application of the Most-Favoured Nation (MFN) principle (see Session 3, Section 7). These MFN exemptions allow members under certain circumstances to give preferences to one or more countries, but not to all WTO members (e.g. regional agreement preferences, bilateral preferences). (More on MFN exemptions can be found in Session 3, Section 7)

When Lao PDR joined the WTO, it carved out audio-visual (cultural), internal waterways and land transport (Greater Mekong Sub-region Agreement), and bilateral trade and investment agreements.

Under AFAS, Lao PDR carved out legal, auditing, banking and finance, and newspaper publishing. However, recent events mean that most of these are no longer excludable. In the latest round, Lao PDR took commitments in legal services, so this should be no longer in the exemptions list. Lao PDR has also made commitments on auditing. It is negotiating liberalisation of financial services in separate negotiations. As a result, newspaper publishing is therefore the only item that should remain on the AFAS MFN exemption list.

**Table 6. Current MFN Exemptions of Lao PDR under GATS and AFAS**

WTO/GATS	AFAS
Audio-visual (cultural); Internal Waterways and Land Transport (Greater Mekong Sub-region Agreement); Bilateral Trade and Investment Agreements	Legal Services (case-by-case); Auditing Services (reciprocity); Banking and Finance (reciprocity), Newspaper Publishing (reciprocity)

***AFAS Logistics Priorities***

Logistics was named the 12<sup>th</sup> priority in ASEAN for accelerated economic integration in 2006, in addition to the 11 priority services areas identified in 2003<sup>17</sup>. The *Roadmap for the*

<sup>17</sup> Electronics, e-ASEAN, healthcare, wood-based products, automotive, rubber-based products, textiles and apparels, agro-based products, fisheries, air travel and tourism.

*Integration of Logistics Services* aimed to fully liberalise all logistics services on the priority list (see box below) by the end of 2013, under the AFAS 9<sup>th</sup> Package of commitments. However, this deadline has been extended to 2015, as members (including Lao PDR) did not make enough commitments. Logistics services are now handled under a dedicated CCS working group, the *Logistics and Transport Services Working Group (LTSSWG)*.

The logistics priorities include the following sectors:

1. Maritime cargo handling: CPC 741
2. Storage and warehousing: CPC 742
3. Freight transport agency services: CPC 748 [Freight brokerage services, freight forwarding services (primarily transport organisation or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break-bulk]
4. Other auxiliary services: CPC 749 [Freight brokerage services; bill auditing and freight rate information services; transportation document preparation services; packing and crating and unpacking and de-crating services; freight inspection, weighing and sampling services; and freight receiving and acceptance including local pick-up and delivery.]
5. Packaging: CPC 876
6. Courier services: CPC 7512\*\* [\*\*includes ‘express delivery’ services not related to the Post. In Laos’s GATS schedule (CPC 7512), ‘express delivery’ is defined as the ‘collection, transport and delivery of documents, printed matter, parcels and/or other goods on an expedited basis, while tracking and maintaining control of these items throughout the supply of this service’. This is distinct from Postal services.]
7. Freight transport under each sector (A, B, E, F in this schedule): CPC 7212 excluding cabotage; CPC 7112, 7123, 7222
8. Customs clearance services (no CPC code)
9. Air freight services (implement ASEAN Multilateral Agreement of the Full Liberalisation of Air Freight Services): separate negotiation and agreement.

Lao PDR’s Commitments in the logistics priority sectors are discussed in detail below in the section on *Transport*, while packaging is under *Other Business Services* and Courier Services can be found under *Communication*. Under GATS, Lao PDR did not take commitments on any of the AFAS logistics priority sectors, except for courier services.

## **1. Business Services**

Business Services cover a vast range of subsectors ranging from Professional and R&D services to contract manufacturing, building cleaning and packaging services. These activities underpin business development.

## A. Professional Services

### Development and Trade of Professional Services in Lao PDR<sup>18</sup>

Professional services are a key ingredient for productivity and competitiveness. Professional services include, for example, legal services, accountancy, architecture, engineering, surveying, veterinary services, and healthcare professions.

Legal services, accountancy and engineering are of particular interest to Lao PDR due to a considerable shortage of qualified professionals due to shortcomings in academic facilities and institutional arrangements for professional training.

Trade in professional services in Lao PDR is still minimal; there is practically no data on it. Exports are negligible while Lao PDR has indeed imported professional services, mainly architects and construction engineers – including ‘informal’ architects and engineers from neighbouring countries. Many legal and accounting services are provided through foreign firms.

Lao PDR has taken commitments under both GATS and AFAS for professional services. However, there are multiple challenges connected to the liberalisation of professional service sectors, including limited capacity of institutions to adequately regulate sectors, educate sufficient domestic suppliers, apply international standards, implement mutual recognition arrangements, etc. Domestic legislation can also be a limiting factor. For example, the law on lawyers and the accounting law set out language, nationality and residency requirements that make market access for foreign providers (and hence liberalisation) virtually impossible on paper. In practice, however, exceptions are allowed.

Laos has signed the eight ASEAN Mutual Recognition Arrangements (MRAs) which aim to facilitate recognition of foreign professional credentials for accountants, engineers, architects, surveyors, nurses, doctors, dentists and tourism professionals,. These MRAs tend to be somewhat vague and give considerable discretion to signatories to recognize - or not - foreign education and certificates, and to grant licences to practice in their territory.

*“Each Member State **may** recognise the education or experience obtained, requirements met, or licences or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. Such recognition **may** be based upon an agreement or arrangement with the Member State concerned or **may** be accorded autonomously.”<sup>19</sup>*

All MRAs stress the importance of exchanging information and promoting standards and best practice. A number of agreements go even further in their ambition and aim for professional capacity-building in the receiving country.

Lao PDR is facing multiple constraints in the implementation of MRAs: a lack of experience in regulating professional services and inadequate capacity and systems to manage, monitor and enforce regulation in the various professions.

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<sup>18</sup> This part is based on a presentation by Mr. Santisouk Phounesavath, presented at the WTO in Geneva in February 2015. The presentation can be found in Annex 9.

<sup>19</sup> ASEAN MRA on Accountancy Services, <http://www.asean.org/news/item/asean-mutual-recognition-arrangement-framework-on-accountancy-services>

All responsible line ministries are aware of the MRAs and their respective obligations. They have undertaken basic preparatory work to establish an improved legislative framework and are aware of the requirement to create or further operationalize a Professional Regulatory Authority (PRA) to develop implementing regulation and to supervise the profession for which they are responsible.

Further work is also required to strengthen national professional qualifications so that Lao professionals can meet other ASEAN members' requirements. This will require effective coordination among relevant ministries, including in the development of university curricula.

### a) Legal Services

This sector includes legal advisory and representation services in different fields of law; legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.; legal documentation and certification services; and other legal advisory and information services.

Legal services are crucial for business development. They help to ensure rule of law, one of the top priorities of foreign investors. Legal services are essential for proper legal documentation, and for legal interpretation and representation to ensure fairness and transparency in judicial decision making, commercial transactions and investment activities.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Legal services, excluding:  - Participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR;  - Legal documentation and certification services of the laws of Lao PDR (part of CPC 861)	<b>Limitations on Market Access (MA):</b> (1) None. (2) None. (3) Foreign equity participation limited to 49%.  <b>Limitations on National Treatment (NT):</b> (1) None. (2) None. (3) Unbound.	<b>Limitations on Market Access (MA):</b> (1) None (2) None (3) Foreign equity participation limited to 49%.  <b>Limitations on National Treatment (NT):</b> (1) None (2) None (3) Unbound
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• <u>Market access is an issue</u>: the law does not actually require a ceiling 49% foreign ownership; in practice, foreigners may own 100%.                             <ul style="list-style-type: none"> <li>- Under GATS, many countries put down 49% initially – but now there is a lot of rethinking. Countries realize that for the development of the economy and for companies to do business internationally, they need access to international state-of-the-art legal services.</li> <li>- AFAS 10: The maximum limitation on foreign equity holdings will have to be 70% (i.e., majority joint ventures).</li> </ul> </li> <li>• <u>Should Lao PDR open up more under AFAS?</u> <ul style="list-style-type: none"> <li>- <i>Analyse foreign investment to date</i>: What has been the impact? Has it been positive in terms of creating high-quality services and developing local skills and knowledge? Have there been any negative side effects? What gaps in supply exist? What types of legal support will businesses and government agencies need in future?</li> <li>- <i>Analyse the potential impact of further liberalisation</i>: Would liberalisation attract additional legal services in the areas where the greatest needs exist? Might too many companies wish to enter; at what level would that be negative? Often international legal firms follow their major clients – so only if big foreign investors come to Laos (e.g. in mining), then additional large law firms might follow. But the market in Lao PDR might not be that large actually...</li> </ul> </li> </ul>		

→Overall, the answer should not be an automatic resort to protectionism (“we do not want competition”), but rather think in terms of national benefits overall (and include measures to assist Lao lawyers to benefit from the opening and improve their own competitiveness).

- In addition, it is important to keep in mind the opportunity to develop ‘offensive’ negotiating strategies, through consultations with business: Are Lao lawyers facing barriers in providing legal services to clients in other countries? How can negotiators help them?

## b) Accounting, auditing and bookkeeping services

Accounting and auditing services can facilitate transparent, credible and legal financial transactions.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Accounting, auditing and bookkeeping services (CPC 862)	<p><b>Limitations to MA:</b></p> <p>(1) None. (2) None. (3) Unbound for 7 years after the date of accession. Thereafter, a joint venture with a Lao PDR national accountant who is a full member of the Lao Institute of Certified Public Accountants (LICPA) is required.</p> <p><b>Limitations to NT:</b></p> <p>(1) None. (2) None. (3) The majority of directors must be certified accountants who are Lao nationals.</p>	<p><b>Limitations to MA:</b></p> <p>(1) None (2) None (3) Foreign professional accountants aiming to practise in Lao PDR should submit an application to Ministry of Finance and meet the following conditions:</p> <ol style="list-style-type: none"> <li>1. Be a member of any professional organization that is a member of IFAC or of a professional organization of which Lao PDR is a partner; and</li> <li>2. Certify equivalence of qualifications. Such certificates shall be issued with the approval of the Equivalence Qualification Commission.</li> <li>3. Complete a training program and aptitude test on related regulation of Lao PDR, code of ethics and national financial reporting standards co-organised by the Ministry of Finance and the Lao Institute of Certified Public Accountants (LICPA).</li> </ol> <p>After 2 February 2020: None, except a joint venture with a Lao PDR national accountant who is a full member of the Lao Institute of Certified Public Accountants (LICPA) is required.</p> <p><b>Limitations on NT:</b></p> <p>(1) None (2) None (3) The majority of directors must be certified accountants who are Lao nationals.</p>
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• <b>‘GATS-minus’:</b> AFAS should be GATS-plus. Here, the limitations on AFAS 9 regarding MA Mode 3 are stricter than under GATS, hence this is a violation of GATS Article XVI.</li> <li>• <b>Liberalisation potential:</b> The Accounting Department in the Ministry of Finance stated in 2013 that legislation/regulation did <b>not</b> require accountancy firms to establish a joint venture or have a majority of directors who were Lao national CPAs as set out in the GATS commitments. Hence, Lao PDR has considerable capacity to liberalise this sector in AFAS 10.             <ul style="list-style-type: none"> <li>➔ Options: Remove the MA and NT limitations, since they are not mandated by the law or do not</li> </ul> </li> </ul>		

apply exclusively to foreign firms.

- Labour law might be an important source for current regulation since it provides information about the proportion of national to international staff

### c) Taxation services (CPC 863)

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Taxation consulting services (part of CPC 863)	<b>Limitations to MA:</b> (1) None (2) None (3) None <b>Limitations to NT:</b> (1) None (2) None (3) None	<b>Limitations to MA:</b> (1) None (2) None (3) None <b>Limitations to NT:</b> (1) None (2) None (3) None
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• <u>Demand</u>: So far there seems to be little demand for such services separately from accounting. The private sector should be consulted to see if they expect the demand for such services to grow and if they would welcome/need foreign advice on taxation.</li> <li>• <u>Option for AFAS 10</u>: Laos could remove the words 'part of' and offer the whole of CPC 863.</li> </ul>		

### d) Architectural services (CPC 8671)

Architecture is important for infrastructure development– and competition among qualified architects is needed for consumer choice and quality. Are there sufficient well-qualified architects for the requirements of a modern market economy? Liberalisation decisions should be based on the answer to this question.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Architectural services (CPC 8671)	<b>Limitations to MA:</b> (1) None. (2) None. (3) For 5 years after accession, foreign equity participation limited to 51%. Thereafter: none.  <b>Limitations to NT:</b> (1) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (2) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (3) None.	<b>Limitations to MA:</b> (1) None (2) None (3) None  <b>Limitations to NT:</b> (1) None (2) None (3) None
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• What is the explanation for the marked difference between GATS and AFAS?</li> </ul>		

### e) Engineering services (CPC 8672)

High-quality engineering services are essential to ensure efficient procedures and technical sustainability in a number of areas, including construction, manufacturing, mining and other

resource development activities. Engineering services matter for consumer protection (e.g. building safety).

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Engineering services (CPC 8672)	<p><b>Limitations to MA:</b></p> <p>(1) None. (2) None. (3) For 5 years after accession, foreign equity participation limited to 51%. Thereafter: none.</p> <p><b>Limitations to NT:</b></p> <p>(1) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (2) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (3) None.</p>	<p><b>Limitations to MA:</b></p> <p>(1) None (2) None (3) None</p> <p><b>Limitations to NT:</b></p> <p>(1) None (2) None (3) None</p>
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• What is the explanation for the marked difference between GATS and AFAS?</li> </ul>		

#### f) Integrated engineering services (CPC 8673)

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Integrated engineering services (CPC 8673)	<p><b>Limitations to MA:</b></p> <p>(1) None. (2) None. (3) For 5 years after accession, foreign equity participation limited to 51%. Thereafter: None.</p> <p><b>Limitations to NT:</b></p> <p>(1) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (2) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (3) None.</p>	<p><b>Limitations to MA:</b></p> <p>(1) None (2) None (3) Joint venture with Lao services suppliers is required and foreign equity participation limited to 2/3. After 2 February 2018: <b>None.</b></p> <p><b>Limitations to NT:</b></p> <p>(1) None (2) None (3) None</p>
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• Market access restriction under AFAS is almost as restrictive as in GATS (ie, 66% vs 51% foreign equity ceiling).</li> <li>• Why is this sector subject to market access restrictions if other related sectors (engineering, architecture, urban planning) are fully liberalised? Is there a competition issue?</li> <li>• Option for 10<sup>th</sup> package: remove '2/3' limitation and insert 'None'.</li> </ul>		

**g) Urban planning and landscape architectural services (CPC 8674)**

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Urban planning and landscape architectural services (CPC 8674)	<p><b>Limitations to MA:</b></p> <p>(1) None. (2) None. (3) For 5 years after accession, foreign equity participation limited to 51%. Thereafter: none.</p> <p><b>Limitations to NT:</b></p> <p>(1) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (2) The service must be authenticated by an architect or engineer who has appropriate practicing certificate working in a juridical entity established in Lao PDR. (3) None.</p>	<p><b>Limitations to MA:</b></p> <p>(1) None (2) None (3) None</p> <p><b>Limitations to NT:</b></p> <p>(1) None (2) None (3) None</p>
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• What is the explanation for the marked difference between GATS and AFAS?</li> </ul>		

**h) Medical and dental services (CPC 9312)****i) Veterinary services (CPC 932)****j) Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191)**

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
(h) Medical and Dental services (CPC 9312) - General and Medical services (CPC 93121) - Specialized Medical services (CPC 93122)	No commitments	<p><b>Limitation on MA:</b></p> <p>(1) None (2) None (3) None, except clinics are limited to 49% foreign equity share</p> <p><b>Limitation on NT:</b></p> <p>(1) None (2) None (3) None</p>
(i) Veterinary services (CPC 932)	No commitments	No commitments
(j) Midwives, nurses, Physiotherapists, and para-medical personnel (CPC 93191)	No commitments	No commitments
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• <b>Definitions:</b> In the 9<sup>th</sup> AFAS schedule, clinics are defined as “medical service consisting of the prevention, diagnosis and treatment by doctors of medicine of physical and/or mental diseases of a general nature, such as consultations, injections (limited and/or periodical), physical check-ups, etc., and small private hospital with less than 100 patient beds” → Clinics face lower requirements in terms of equipment and qualifications, as they are meant</li> </ul>		

mainly for outpatient services involving the prevention, diagnosis and treatment of general diseases, consultations and check-ups – while larger hospitals offer more sophisticated services and treat more severe and specific diseases.

- **Liberalisation?** There is considerable leeway for more liberalisation under AFAS 10. The ultimate rationale needs to be the benefit of the customers and the Lao population as a whole. Medical services in the above sub-sectors are very important for the development of the economy. A healthy population is a productive population. The key question is: Is the supply of doctors, nurses, midwives, veterinaries, etc. in Lao PDR is sufficient to cover the needs of all people including tourists? For example, there is a clear shortage of specialists, e.g. for mental illness, cardiovascular diseases, and neurological diseases.
- **Potential threats:** Other countries might also liberalise their health sectors and most ASEAN countries have a shortage of medical personal. Since salaries in Lao PDR are low, qualified personnel may leave for other countries. However, there is not much that can be done about this except setting incentives for people to stay through better salaries, working conditions and support.
- **Potential threats of non-liberalisation:** There might be an impact on tourism; tourist arrivals could drop if they deem the medical system inadequate.
- Also see commitments on “health-related services” below: Sector 8.

### k) Other

*No commitments under WTO/GATS. No commitments under AFAS*

## B. Computer and Related Services (CPC 841, 842, 843, 844, 845, 849)

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
a) Consultancy services related to the installation of computer hardware (CPC 841)	<b>Limitations to MA:</b> (1) None (2) None (3) None	<b>Limitations to MA:</b> (1) None (2) None (3) None
b) Software implementation service (CPC 842)	<b>Limitations to NT:</b> (1) None (2) None (3) None	<b>Limitations to NT:</b> (1) None (2) None (3) None
c) Data processing services, excluded sensitive data and for non-commercial purpose (part of CPC 843)		
d) Data base services (CPC 844)		
e. Other: Maintenance and repair services of computer (Part of CPC 84500)		
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• Full liberalisation probably makes sense here since this is an area that Laos wishes to develop further.</li> <li>• <u>An obstacle to further ICT services development</u> – and business development as a whole is that <u>equipment is more expensive in Laos than abroad</u> (a problem of many LDCs) due to high tariffs. To tackle such problems, WTO members established the Information Technology Agreement (ITA) in which countries commit to not restrict imports of computer and IT equipment in any way, including taxes (80 members have signed it so far – counting the EU 28 as one signatory).</li> </ul>		

**C. Research and Development services (CPC 851, 852, 853)**

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
a) R&D Services on Natural sciences and Engineering (CPC 851)	<b>ONLY R&amp;D Services on Natural sciences and Engineering (CPC 851)</b>	<b>Limitations to MA:</b> (1) None (2) None (3) None
b) Research and experimental development services (CPC 852)	<b>Limitations to MA:</b> (1) None (2) None (3) Foreign equity participation limited to 51%.	<b>Limitations to NT:</b> (1) None (2) None (3) None
c) Interdisciplinary R&D Services (CPC 853)	<b>Limitations to NT:</b> (1) None (2) None (3) None	
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>Similar to computer services: This is an area important for development, and the local supply cannot meet demand or quality requirements.</li> </ul>		

**D. Real Estate Services (CPC 821, 822)**

No commitments under GATS nor AFAS. Not discussed in detail.

**E. Rental and Leasing of equipment without operators (CPC 831, 832)**

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
Rental/leasing services relating to ships (CPC 83103)	No commitments	<b>Limitations to MA:</b> (1) None (2) None (3) None
Leasing or rental services concerning construction machinery and equipment without operator (CPC 83107)		<b>Limitations to NT:</b> (1) None (2) None (3) None
Rental/leasing services relating to other machinery and equipment (CPC 83106-83109)		
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>Many such services have a connection to financial services; important to understand whether the right financial products are offered for these services.</li> </ul>		

**F. Other Business Services**

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
<b>Advertising services (CPC 871)</b>	<b>ONLY Applies to advertising planning, creating and placement services (CPC 87120)</b>	<b>Limitations to MA:</b> (1) None (2) None (3) None
	<b>Limitations to MA:</b> (1) None (2) None (3) Foreign equity participation limited to 49%.	<b>Limitations to NT:</b> (1) None (2) None (3) None
	<b>Limitations to NT:</b>	

	<ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) Unbound</li> </ul>	
<b>Market research services (CPC 864)</b>	<p><b>ONLY Applies to CPC 86401</b></p> <p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul>	<p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul>
<b>Management consulting services (CPC 865)</b>	<p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) For 3 years after accession, foreign equity participation limited to 51%. Thereafter: None.</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul>	<p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul>
<b>Technical testing and analysis services (CPC 8676)</b>	<p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) Foreign equity participation limited to 51%. After 5 years from the date of accession, foreign equity participation limited to 70%.</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) The majority of directors must be engineers who are Lao PDR nationals.</li> </ul>	<p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) Joint Venture only, with foreign equity limited to 51%. After 2 February 2018, foreign equity participation limited to 70%.</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul>
<b>Services incidental to mining (CPC 883 +5115)</b>	<p><b>ONLY Applies to CPC 5115</b></p> <p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) Unbound.</li> <li>(2) None.</li> <li>(3) Foreign equity participation limited to 51%. After 5 years from the date of accession, foreign equity participation limited to 70%.</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) Unbound.</li> <li>(2) None.</li> <li>(3) The majority of directors must be engineers who</li> </ul>	Not listed in AFAS because it falls under Investment negotiations
<b>Related scientific and technical consulting services (CPC 8675)</b> - Geological, geophysical and other	<p><b>ONLY Applies to CPC 86751 &amp; 86752</b></p> <p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) Foreign equity participation limited to 51%. After 5 years from the date of accession,</li> </ul>	<p><b>Limitations to MA:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> <li>(3) None</li> </ul> <p><b>Limitations to NT:</b></p> <ul style="list-style-type: none"> <li>(1) None</li> <li>(2) None</li> </ul>

scientific prospecting services (CPC 86751) - Sub-surface surveying services (CPC 86752)	foreign equity participation limited to 70%.  <b>Limitations to NT:</b> (1) None (2) None (3) The majority of directors must be engineers who are Lao PDR nationals.	(3) Unbound
<b>Maintenance and repair of equipment (not transport equipment) (CPC 633+8861-8866)</b>	<b>Applies to repair of energy equipment (part of CPC 88620)</b>  <b>Limitations to MA:</b> (1) None (2) None (3) Foreign equity participation limited to 51%.  <b>Limitations to NT:</b> (1) None (2) None (3) None	<b>Limitations to MA:</b> (1) Unbound, due to lack of technical feasibility (2) None (3) None, shall be joined with local partner  <b>Limitations to NT:</b> (1) Unbound, due to lack of technical feasibility (2) None (3) None
<b>Building cleaning services (CPC 874)</b>	No commitments	<b>Limitations to MA:</b> (1) None (2) None (3) None  <b>Limitations to NT:</b> (1) None (2) None (3) Unbound
<b>Photographic services (CPC 875)</b>	No commitments	<b>Limitations to MA:</b> (1) None (2) None (3) None  <b>Limitations to NT:</b> (1) None (2) None (3) None
<b>Packaging (CPC 876)</b>	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) Joint venture with Lao services suppliers is required.  <b>Limitations to NT:</b> (1) None. (2) None. (3) Unbound.
<b>Printing and publishing services (CPC 876)</b>	No commitments	<b>Limitations to MA:</b> (1) None (2) None (3) Joint venture, with minimum 49% foreign equity share.  <b>Limitations to NT:</b> (1) None (2) None (3) Unbound, except as indicated in the horizontal commitment.
<b>Specialty design services (CPC 87907)</b>	<b>Limitations to MA:</b> (1) None (2) None (3) For 5 years after accession,	<b>Limitations to MA:</b> (1) None (2) None (3) Until 2 February 2018, foreign equity

	foreign equity participation limited to 49%. Thereafter: foreign equity participation limited to 51%. <b>Limitations to NT:</b> (1) None (2) None (3) None	participation is limited to 49%. Thereafter: foreign equity participation limited to 51%. <b>Limitations to NT:</b> (1) None (2) None (3) None
<i>Comments, Definitions and Discussion</i>		
<ul style="list-style-type: none"> <li>• <b>Advertising:</b> Under the GATS, 'unbound' for national treatment might indicate that there is insufficient regulation in place and Lao PDR wants to retain policy space</li> <li>• <b>Services incidental to ...:</b> In ASEAN, services incidental to manufacturing, agriculture, fishery, forestry and mining are discussed under investment negotiations, hence no commitments are mentioned under AFAS. However, they <u>should be here</u>, since all of them have direct linkages to the local services economy, and are not only related to foreign investment. Services incidental to manufacturing, for example, refers among other things, to 'contract manufacturing' which doesn't require foreign presence.</li> <li>• <b>Technical testing and design services</b> could possibly be <u>further liberalised</u> in Mode 3.</li> <li>• <b>Related scientific and technical consulting services:</b> This sector includes, for example, surveying, and hence is also related to the mining industry. The fact that mode 3 under national treatment is "unbound" makes it "GATS-minus", i.e. more restrictive than the WTO commitments. Also not clear why unbound was chosen. It could and should be replaced by the same condition as in the GATS ("The majority of directors must be engineers who are Lao nationals"). Further liberalisation is possible.</li> <li>• <b>Maintenance and repair of equipment:</b> There are some options for further liberalisation under AFAS. In addition, scheduling rules require a percentage for MA Mode 3.</li> <li>• <b>Building cleaning services:</b> "Unbound" for NT Mode 3 (investment) is perhaps based on a misunderstanding of the sector. The idea was to reserve traditional, "simple" cleaning of buildings to Lao nationals – however, the sector comprises much more, including very technical cleaning of e.g. large air conditioning systems, chemical cleaning, etc, for which experts are needed in Lao PDR. Since there is no law mandating the restriction, this sector could certainly be liberalised further – even with a reservation of "routine cleaning services" for Lao nationals, while eliminating the "unbound", which applies to the whole sector.</li> <li>• <b>Packaging:</b> Packaging is an activity with high relevance and impact on exporting and importing activities. This is why it is on the AFAS logistics priorities list. Packaging intersects with logistics in so far that modern logistics services use highly specialized packaging and labelling methods, including barcodes and other tracking and quality-assurance systems, which require certain standards on packaging. The AFAS foreign equity limitation should have a numerical value in order to comply with scheduling rules.</li> <li>• <b>Specialty design services:</b> since same commitments exist under the GATS and AFAS, it would be possible to even go a bit further here under AFAS – e.g. allow 70% foreign ownership, as anyway required for AFAS 10</li> </ul>		

## 2. Communication Services

Communication services include A. Postal Services, B. Courier Services, C. Telecommunication Services and D. Audiovisual Services. Telecommunication services are divided between basic telecommunication services (e.g. voice telephone services, telegraph services, etc.) and value-added telecommunication services (e.g. electronicmail, voice mail, online information and data retrieval, etc.).

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
<b>A. Postal service (CPC 7511)</b>	No commitments	

<p><b>B. Courier services (CPC 7512)</b></p>	<p>Applies to: Express delivery services<sup>20</sup>, except for the following:</p> <p>(a) the collection, transport and delivery of domestic and cross-border addressed mail to Post Office (PO) boxes in the following categories:</p> <p>(i) addressed letters weighing not more than 200 grams;</p> <p>(ii) small items or packages weighing up to 2 kg;</p> <p>(b) the collection, transport and delivery to PO boxes of domestic and international postal parcels weighing up to 20 kg;</p> <p>(c) the provision of PO boxes; and</p> <p>(d) Issuing postage stamps.</p> <p><b>Limitations to MA:</b></p> <p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p><b>Limitations to NT:</b></p> <p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p>	<p>Only for multimodal courier services (CPC 75121)</p> <p><b>Limitations to MA:</b></p> <p>(1) None.</p> <p>(2) None.</p> <p>(3) Joint venture with Lao services suppliers is required.</p> <p><b>Limitations to NT:</b></p> <p>(1) None.</p> <p>(2) None.</p> <p>(3) Unbound.</p>
<p><b>C. Telecommunication services</b></p>		
<p>Basic telecommunication services<sup>21</sup></p> <p>(a) Voice telephone services (CPC 7521)</p> <p>(b) Packet-switched data transmission services (CPC 7523**)</p> <p>(c) Circuit-switched data transmission services (CPC 7523**)</p> <p>(d) Telex services (CPC 7523**)</p> <p>(e) Telegraph services (CPC 7522)</p> <p>(f) Facsimile services (CPC 7521**+ 7529**)</p> <p>(g) Private leased circuit services (CPC 7522**+7523**)</p> <p>(o) Other:</p> <p>- Terrestrial-based mobile phone services</p>	<p><b>Limitations to MA:</b></p> <p>(1) Wire-based services, Terrestrial-based mobile services and Satellite-based services: Service must be offered through commercial arrangements with an entity established in Lao PDR and licensed to provide international telecommunication services.</p> <p>(2) None.</p> <p>(3) Only through acquisition of existing operators and foreign equity participation limited to 49% for 5 years after the date of accession. Thereafter, commercial presence for new investments will be allowed with foreign equity participation limited to 60%.</p> <p><b>Limitations to NT:</b></p> <p>(1) Wire-based services, Terrestrial-based mobile services and Satellite-based services: Service must be offered through commercial arrangements with an entity established in Lao PDR</p>	<p><b>Limitations to MA:</b></p> <p>(1) None</p> <p>(2) None</p> <p>(3) None</p> <p><b>Limitations to NT:</b></p> <p>(1) None</p> <p>(2) None</p> <p>(3) None</p>

<sup>20</sup> Express delivery services include the collection, transport and delivery of documents, printed matter, parcels and/or other goods on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. 'Express delivery' services are a category being used in the Doha Round, at the behest of a group of countries with strong transport and distribution interests.

<sup>21</sup> The (\*\*) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

	and licensed to provide international telecommunication services. (2) None. (3) None as phased-in in the market access column.	
Value-added telecommunication services (h) Electronic-mail (CPC 7523**) (i) Voice mail (CPC 7523**) (j) Online information and data base retrieval (CPC 7523**) (k) Electronic data interchange (EDI) (CPC 7523**) (l) Enhanced/value-added facsimile services, including store and forward, store and retrieve (CPC 7523**) (m) Code and protocol conversion (n) On-line information and/or data processing (including transaction processing) (CPC 843**)	<b>Limitations to MA:</b> (1) None (2) None (3) None <b>Limitations to NT:</b> (1) None (2) None (3) None	<b>Limitations to MA:</b> (1) None (2) None (3) None <b>Limitations to NT:</b> (1) None (2) None (3) None
<b>D. Audiovisual services</b>  a. Motion Picture and Video tape production and distribution services (CPC 9611) - Motion Picture production (CPC 96112 excl. video tape) - Motion Picture distribution (CPC 96113 excl. video tape)  b. Motion Picture projection service (CPC 9612)	No commitments (MFN Exemption)	<b>Limitations to MA:</b> (1) None (2) None (3) Joint venture, with minimum 49% foreign equity share.  <b>Limitations to NT:</b> (1) None (2) None (3) Unbound, except as indicated in the horizontal commitment.
<b>Radio and Television services</b>	No commitments	<b>Limitations to MA:</b> (1) None (2) None (3) None <b>Limitations to NT:</b> (1) None (2) None (3) Unbound, except as indicated in the horizontal commitment.
<i>Comments, Definitions and Discussion</i>		
<ul style="list-style-type: none"> <li>• <b>Courier services</b> are still restricted, and it would appear that the Mode 3 Market Access limitation is GATS-minus. As Courier Services are a Logistics Priority area, they are scheduled to be liberalised in full by the end of 2015. It remains to be seen if another extension will be granted.</li> <li>• <b>Telecommunications:</b> There is now a common understanding among countries that ICT liberalisation has led to incredible revolutions in telecommunications, connectivity and</li> </ul>		

competitiveness, particularly in developing countries. Highly specialized foreign companies are coming in and modernizing the sector, being often very innovative in setting up modern value-added ICT infrastructure (e.g. mobile antennas, optical fibre for broadband internet, etc) – for which local companies or governments do not have the money. The benefits have been far greater than the costs for the country as a whole, especially in landlocked economies such as Lao PDR.

→ Therefore, liberalisation in the telecommunications sector is in the long-term interest of Lao PDR. Many countries maintain ‘national carriers’ which ‘lease’ space on their ‘backbone’ infrastructure (e.g. mobile and value-added services providers).

- **Broadcasting:** Radio and television services (CPC 9613) constitute an important and sensitive sector. Need to be careful about liberalizing it, to understand very well the consequences of liberalisation, as ‘broadcasting’ services can be defined very broadly and used for many things. Important to know what demanders of liberalisation are seeking and what they have used such liberalisation for in other markets.
- **Audio-visual services:** Many countries have MFN exemptions for this sector; but under AFAS Lao PDR has commitments in motion picture production, distribution and projection, with equity limits on foreign investment.

### 3. Construction Services

Sub-sectors (if applicable)	Commitments/Limitations under WTO/GATS	Commitments/Limitations under AFAS
A. General construction work for buildings (CPC 512)	<b>Limitations to MA:</b> (1) Unbound (2) None (3) Foreign equity participation limited to 70%.  <b>Limitations to NT:</b> (1) Unbound (2) None (3) None	<b>Limitations to MA:</b> (1) None (2) None (3) None  <b>Limitations to NT:</b> (1) None (2) None (3) None
B. General construction work for civil engineering (CPC 513)		
C. Installation and assembly work (CPC 514+516)		
D. Building completion and finishing work (CPC 517)		
E. Other: (CPC 511+515+518)		
<i>Options and Discussion</i>		
The ‘Unbound’ in Mode 1 in the GATS commitments refer to the technical infeasibility of physically conducting construction activities across borders (since Mode 1 for services refers mostly to crossborder trade conducted virtually – by phone, fax, internet, mail, etc).		

### 4. Distribution Services

Distribution services include the following main sub-sectors: A. Commission agents services, B. Wholesale trade services, C. Retailing services, D. Franchising. Lao PDR’s GATS Schedule excludes the distribution of goods under the Controlled List of the Ministry of Industry and Commerce: arms, ammunition, explosives and explosive substances, highly toxic chemicals, narcotics, cultural items, books, newspapers and magazines, precious metals and stones, medicines and medical equipment, endangered species, gambling machines, money printing machines, processed oil and crude oil, alcohols, tobacco products, rice. This list may change over time.

Sub-sectors (if applicable)	Commitments/Limitations under WTO/GATS	Commitments/Limitations under AFAS 9
<b>A. Commission agents services (CPC 621)</b>	No commitments	<b>Limitations to MA:</b> (1) None (2) None (3) None, except subject to economic needs test. Foreigners need to use

		a local agent for distribution. <b>Limitations to NT:</b> (1) None (2) None (3) Foreigners need to use a local agent for distribution.
<b>B. Wholesale trade services (CPC 622)</b>	<b>Limitations to MA:</b> (1) None (2) None (3) Unbound for 7 years after the date of accession. Thereafter, foreign equity participation limited to 49%. Subject to meeting economic need tests.  <b>Limitations to NT:</b> (1) None (2) None (3) Unbound	ONLY for Wholesale trade services on a fee or contract basis of <u>textiles, clothing and footwear</u> (Part of CPC 622) <b>Limitations to MA:</b> (1) None (2) None (3) Joint venture with Lao services providers is required. Foreign equity participation is limited to 49%. Subject to meeting economic needs test. <b>Limitations to NT:</b> (1) None (2) None (3) Unbound
<b>C. Retailing services (CPC 631 + 632, 6111+6113)</b>	<b>Limitations to MA:</b> (1) Unbound (2) Unbound (3) Unbound for 7 years after the date of accession. Thereafter, foreign equity participation limited to 49%. Subject to meeting economic need tests.  <b>Limitations to NT:</b> (1) Unbound (2) Unbound (3) Unbound	No commitments
<b>D. Franchising (CPC 8929)</b>	<b>Limitations to MA:</b> (1) None (2) None (3) Unbound for 7 years after the date of accession. Thereafter, foreign equity participation limited to 49%. Subject to meeting economic need tests.  <b>Limitations to NT:</b> (1) None (2) None (3) Unbound	<b>ONLY for textiles, clothing and footwear (Part of CPC 8929)</b>  <b>Limitations to MA:</b> (1) None (2) None (3) None, except subject to economic needs test. Foreigners need to use a local agent for distribution.  <b>Limitations to NT:</b> (1) None (2) None (3) Foreigners need to use a local agent for distribution.
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• <b>General perspective:</b> Given the highly localised nature of wholesaling and retailing, these two areas are often highly restricted in international trade agreements. Economic needs tests typically are used to limit the number of wholesale and retail outlets in a particular geographic area (e.g. so many per square-kilometre, or so many per 1000 population). These often apply to local, as well as foreign, investors. Commission agents and franchising services are less contentious. →With globalisation, the limits among all these services are becoming less clear. For example, franchising might involve a local entrepreneur licensing the right to use a brand name (eg, DHL) and receiving systems, technology and management support in order to uphold the brand quality. Such services actually contribute to local business and economic development, and should be encouraged.</li> <li>• <b>Specific comments on the AFAS commitments:</b></li> </ul>		

- Commission agents and Franchising: Market Access Mode 3: incorrect to say ‘None’ and then add two restrictions. Economic needs tests are permitted under scheduling rules. However, the second restriction (requirement to use local agent) does not meet scheduling rules. It should be deleted. It can remain under NT if indeed it is a discriminatory measure. Is there any law that requires foreigners to use local agents?
- Wholesale trade and franchising commitments are limited to textiles, clothing and footwear. If there is no regulation to support this limitation, Lao PDR can improve its AFAS 10 offer by extending it to CPC 622 and CPC 8929, respectively.
- Laos has no AFAS commitments on Retailing. This could be seen as GATS-minus, because even though its GATS Schedule reads ‘Unbound’ for Retailing (meaning ‘no commitments’, it provides for liberalisation after 7 years (i.e. in 2020). The AFAS Schedule should do the same, if Laos cannot offer better conditions.
- Franchising is actually a way to empower local entrepreneurs. It constitutes a good way for SMEs to acquire management skills, state of the art management, marketing and quality control systems and access to technology.

## 5. Education Services

Laos’s GATS Education Services commitments bear the following ‘horizontal’ conditions:

- The education curriculum and contents must be approved by the Ministry of Education of Lao PDR.
- With respect to C and D below, the commitments cover only technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields.
- The scope of private education services concerns only fully-privately funded services.

Laos’s AFAS Education Services commitments also have some conditions:

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
A. Primary education (GATS: part of CPC 921; AFAS: CPC 921)	<b>Limitations to MA:</b> (1) Unbound (2) None (3) Foreign equity participation limited to 51%	<b>Limitations to MA:</b> (1) None (2) None (3) None. May be subject to economic need test.
B. Secondary education services (part of CPC 922)	<b>Limitations to NT:</b> (1) Unbound (2) None (3) Directors must be qualified teachers who are Lao PDR nationals	<b>Limitations to NT:</b> (1) None (2) None (3) None. May be subject to economic need test.
C. Higher education (GATS: part of CPC 923; AFAS: CPC 923)		
D. Adult education (GATS: part of CPC 924; AFAS: CPC 923)		
E. Other education services: short term foreign language training only (part of CPC 929)		
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• AFAS is more liberal than GATS because it does not impose a foreign equity ceiling.</li> <li>• Under AFAS, Lao PDR offers the regulation approach as opposed to market access limitations– a good approach for sectors that are important for development</li> </ul>		

## 6. Environmental Services

Environmental services are important for all economies. Lao discussants mentioned waste management and environmental impact assessment services as priority areas. This is one of the reasons why Laos's has fully opened the sector under AFAS.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
A. Wastewater management (part of CPC 9401)	<b>Limitations to MA:</b> 1) Unbound, except related consulting services (2) None (3) None <b>Limitations to NT:</b> (1) Unbound, except related consulting services (2) None (3) None	<b>Limitations to MA:</b> (1) None. (2) None. (3) None. <b>Limitations to NT:</b> (1) None. (2) None. (3) None.
B. Waste management (part of CPC 9402 and 9403)		
C. Protection of ambient air and climate (part of CPC 9404)		
D. Remediation and cleanup of soil and water (part of CPC 9406)		
E. Noise and vibration abatement (part of CPC 9405)		

## 7. Financial Services

Not discussed, as being covered in another negotiating forum.

## 8. Health-related Services

This sector covers healthcare services other than those listed under WTO W/120 Professional Services (medical and dental services – doctors and dentists; veterinary services; midwives, nurses, physiotherapists, paramedics, etc). See above under professional services for details.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS 9</i>
A. Private hospital services Modern hospitals with more than 100 beds in big cities only (part of CPC 93110)	<b>Limitations to MA:</b> (1) Unbound. (2) None. (3) None. <b>Limitations to NT:</b> (1) Unbound. (2) None. (3) Unbound.	<b>Limitations to MA:</b> (1) None. (2) None. (3) None. <b>Limitations to NT:</b> (1) None. (2) None. (3) None.
<i>Options and Discussion</i>		
<ul style="list-style-type: none"> <li>• <u>GATS</u>: Mode 1 is “unbound” for both market access and national treatment. But telemedicine has become quite usual these days – and very important for people living in remote areas or without access to specialists. So in a future WTO negotiating round, Laos can convert the ‘unbound’ to ‘none’.</li> <li>• <u>For AFAS 10</u>, Laos could revisit the 100-bed and the ‘big cities’ requirement.</li> <li>• <u>Benefits</u>: the liberalisation of the hospital sector is a good message to investors and can hugely benefit Lao PDR. There are many good hospitals in ASEAN countries which could commence cooperation agreements with Lao hospitals. In fact, some Lao hospitals already have a cooperation agreement with Thai hospitals. In addition, Luang Prabang, as the main tourism destination, could benefit if a an international hospital or clinic were to be established.</li> <li>• <u>Other health or social sectors</u>: It might be worthwhile to also consider other sub-sectors of</li> </ul>		

“health-related services” for liberalisation. A problem is however, that many social services are considered the realm of the government which provides concessions to private sector to provide such services.

## 9. Tourism Services

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS</i>
<p>A. Hotels and restaurants (including catering)</p> <p><b>FOR GATS:</b> (part of CPC 641 (excluding guesthouses<sup>22</sup> and 6419), CPC 642, and CPC 643)</p> <p><b>FOR AFAS:</b> Hotel lodging services, with 3 stars or more (Part of CPC 641) Meal serving services with full restaurant service (CPC 64210) Beverage serving services without entertainment (CPC 64310)</p>	<p><b>Limitations to MA:</b> (1) None. (2) None. (3) For lodging services: limited to establishments with three stars rating or higher.</p> <p><b>Limitations to NT:</b> (1) None (2) None. (3) None.</p>	<p><b>Limitations to MA:</b> (1) None. (2) None. (3) None.</p> <p><b>Limitations to NT:</b> (1) None. (2) None. (3) None.</p>
<p>B. Travel agencies and tour operators services (CPC 7471)</p>	<p><b>Limitations to MA:</b> (1) None. (2) None. (3) Foreign equity participation limited to 70%.</p> <p><b>Limitations to NT:</b> (1) None (2) None. (3) Foreign service supplying enterprises can only do inbound services.</p>	<p><b>Travel agencies services, in-bound services ONLY</b></p> <p><b>Limitations to MA:</b> (1) None. (2) None. (3) Foreign equity participation limited to 70%</p> <p><b>Limitations to NT:</b> (1) None. (2) None. (3) None</p>
<p>D. Other: -Tourism consultancy services</p>	<p><b>Limitations to MA:</b> (1) None. (2) None. (3) None.</p> <p><b>Limitations to NT:</b> (1) None (2) None. (3) None</p>	<p><b>Limitations to MA:</b> (1) None. (2) None. (3) None, subject to economic needs tests.</p> <p><b>Limitations to NT:</b> (1) None. (2) None. (3) None</p>
<i>Options and Discussion</i>		
For 'D', Laos should review the market access limitation: 'subject to economic needs tests', because it renders the commitment GATS-minus.		

<sup>22</sup> Defined as "furnished accommodation with up to 14 bedrooms, mainly provided in private apartments or homes on a temporary lodging, and with a two stars rating or lower".

## **10. Recreational, cultural and sporting Services**

Discussing this sector is important because **Lao PDR has not yet taken any commitments on it, neither in GATS nor under AFAS**. Recreational, cultural and sporting service is a very broad sector that includes a mix of sensitive and not-so-sensitive segments and sub-sectors. Cultural sectors often remain closed in many countries due to concerns about the protection of national culture, traditions and heritage. However, it is common to see commitments in recreational and sporting services. Opening up parts of this sector requires a thorough analysis of potential sensitivities.

### *A Entertainment services (including theatre, live bands and circus services) (CPC 9619)*

This sub-sector is basically about performing artists being able to enter the country to provide entertainment services. In negotiations, it tends to be more about Mode 4 (movement of people), although Mode 3 could include foreign investment in performing arts or other entertainment services such as discos or live events.

### *B News agency services (CPC 962)*

This sector is about journalism and journalists and is probably a bit more sensitive. Modes 1 and 2 are usually not a problem to liberalise. However, opening up news agency services to foreign investment might be delicate. Foreign journalists usually have to go through an accreditation process; this is more related to Mode 4.. .

### *C Libraries, archives, museums, and other cultural services (CPC 963)*

This is a potential area to consider for additional commitments since parts of this subsector do not seem to be overly sensitive. . Indeed the government might be interested in motivating experts to come and help preserve Lao culture through new, high-technology methods, including multimedia presentation to the world, etc.

### *D Sporting and other recreational services (CPC 964)*

As mentioned above, many countries have started to take commitments in this area. Liberalisation allows for athletes to participate in events in Laos or for entrepreneurs to organise sporting events. Liberalisation may also help attract foreign investment to develop nature parks, and sporting facilities, etc. Hence it might be interesting for Lao PDR to take commitments here.

### Recreational services in the WTO<sup>23</sup>

Around 70 countries have taken commitments on recreational, cultural and sporting services in the GATS. This compares with some 140 making commitments in tourism and fewer than 60 taking commitments in the more sensitive health and education sectors.

Among LDCs, the tourism sector is particularly popular; more than 30 LDCs have taken commitments in this sector, followed by 18 countries with commitments in professional services. 13 LDCs took commitments on the recreational, cultural and sporting services.

### Options for Lao PDR

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<sup>23</sup> The full presentation on tourism and recreational services can be found in Annex 10.

Several key points emerged from the discussion among participants:

- **Existing regulation:** A consensus emerged that as a first step it would be necessary to look at existing regulation on performing artists, visiting athletes or journalists, to understand what restrictions exist.
  - A key problem for liberalisation of the sports sector is that the sector is relatively underdeveloped and under-regulated. The lack of regulation is the main reason for placing the sector on a sensitive list.
  - Different categories of recreational services are handled by different ministries, including tourism, education and sports, construction, information, etc. – which makes decision-making more difficult.
- **Foreign investment needs:** In addition, it is questioned by some whether Lao PDR needs foreign involvement in sports since the limited amount of tournaments and competitions taking place at the moment seems to be very well handled by Lao sport organizers. But overall, it was agreed that it could be useful to attract assistance from the international level to further develop the professional sport sectors, including building training centres and facilities
- **Offensive strategy:** For Mode 4 (in another forum, but important for this sector), Lao PDR could pressure other countries to open their sectors – providing t more opportunities for Lao singers, performing artists, event specialists, journalists or athletes to work abroad. Before this, the negotiators should consult to see if there are any barriers to such services in other ASEAN countries.

## **11. Transport Services**

Transport services were not discussed in detail during the training. Lao PDR has made the following commitments:

- GATS: commitments were made only on the three allowable air transport services: maintenance and repair of aircraft, selling and marketing of air transport services, and computer reservation systems. The only restriction was a 51% foreign equity ceiling in MA, Mode 3 for aircraft repair and maintenance.
- AFAS: Lao PDR has fully liberalised maritime internal waterways and rail services. Multiple restrictions apply for road transport services.

Below, the Logistics Priority areas of transport services are covered in some detail.

### **Maritime cargo handling (CPC 741)**

This sector is important since it is a key link to global value chains, despite not having access to an ocean itself. It might be beneficial to allow foreign investors, large maritime logistics providers, to come into the country and build up capacity. Those large companies would be hiring local companies in any case but they are experienced in handling container freight appropriately, which could be very beneficial for Lao exporters and importers. A particular problem in landlocked countries is the fact that containers often arrive full and leave empty – requiring the importer to pay for the roundtrip of the container adding considerably to costs.

One of the reasons why Lao PDR has not fully liberalised maritime cargo handling is that there is an open question on how to define the Mekong River. It has been defined as a

maritime area in ASEAN, as opposed to an internal waterway which seems more adequate. This is a legal issue that needs to be resolved, possibly by an international ruling.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS</i>
Maritime cargo handling (CPC 741)	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) Unbound. <b>Limitations to NT:</b> (1) None. (2) None. (3) Unbound.

### **Storage and warehousing (CPC 742)**

Lao PDR is sending a good signal by not having any restrictions – there is still a huge need for warehouses, as well as for freight transport agency services (brokerage, forwarding, renting cargo space on carrier, etc.) This freight transport agency services subsector has faced some particular difficulties in FTA negotiations (not AFAS) since a number of countries (e.g., Japan) consider it part of air services, not logistics, maintaining it is fundamentally about traffic rights. In reality, however, the subsector is not part of the GATS exclusion of air services directly related to bilateral traffic rights.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS</i>
Storage and warehousing (CPC 742)	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) None. <b>Limitations to NT:</b> (1) None. (2) None. (3) None.

### **Freight transport agency services (CPC 748)<sup>24</sup>**

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS</i>
Freight transport agency services (CPC 748)	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) None. <b>Limitations to NT:</b> (1) None. (2) None. (3) None.

<sup>24</sup> Freight brokerage services, freight forwarding services (primarily transport organisation or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break bulk

**Other auxiliary services (CPC 74)<sup>25</sup>**

The “unbound” for Mode 3 will need to be replaced with “none” to conform to requirements of complete liberalisation – but this might actually be beneficial for Lao PDR.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS</i>
Other auxiliary services (CPC 749)	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) Unbound. <b>Limitations to NT:</b> (1) None. (2) None. (3) Unbound.

**Freight transport under each transportation sector (CPC 7512 excluding cabotage, CPC 7112, 7123, 7222)**

The open issue regarding the classification of the Mekong River as maritime or internal waterway (and thus determining if regulation for maritime transport or internal waterway transport applies) will be a key discussion point for the Lao delegation at the next AFAS Logistics meeting. Lao PDR may wish to request legal advice from objective Law of the Sea experts (e.g. the UN or Australia) to better understand classification issues relevant to the Mekong River.

<i>Sub-sectors (if applicable)</i>	<i>Commitments/Limitations under WTO/GATS</i>	<i>Commitments/Limitations under AFAS</i>
Maritime freight transport (CPC 7212), internal waterway freight transport (CPC 7222) & rail freight transport (CPC 7112)	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) None. <b>Limitations to NT:</b> (1) None. (2) None. (3) None.
Road freight transport (CPC 7123)	No commitments	<b>Limitations to MA:</b> (1) None. (2) None. (3) Foreign equity participation is 100% for domestic transportation For Cross border transportation: joint venture with local service provider(s) is required, with foreign equity limited to 49%. <b>Limitations to NT:</b> (1) None. (2) None. (3) None.

<sup>25</sup> Freight brokerage services; bill auditing and freight rate information services; transportation document preparation services; packing and crating and unpacking and de-crating services; freight inspection, weighing and sampling services; and freight receiving and acceptance including local pick-up and delivery.

### **Customs clearance services (no CPC code)**

Lao PDR has not taken any commitments under AFAS

### **Air freight services (implement ASEAN Multilateral Agreement of the Full Liberalisation of Air Freight Services)**

Separate negotiation and agreement (implementing body is the Senior Transport Officials meeting (STOM))

## **Session 10. Trade negotiations – good practices and tips<sup>26</sup>**

The most successful negotiators have learned from *experience*: to engage in thorough preparation; to interpret and respond to bargaining conditions in a timely and accurate fashion; to utilise a negotiating style they are comfortable with; and to recognise that negotiation is not about who is right, but it is about 'doing business'. Below is a brief summary of the 'Negotiating Basics' presentation in Annex xx.

### **Preparation (see 'Negotiating Checklist' on the next page for more details)**

A common problem in negotiations is that parties have different expectations, different information and different perspectives on reality. Thorough preparation - evaluating all sides of the issues at stake - is a necessary prerequisite for an effective negotiation and a commercially meaningful outcome. 'Know your adversary' and 'know your market' are imperative.

- ✓ Analyse and consult, develop offensive and defensive strategies, set goals and red lines reflecting the national interest
- ✓ Study the counterpart
- ✓ Build a good team with complementary skills and a common vision
- ✓ Understand the risks and agree how to handle them
- ✓ Plan thoroughly, but at the same time be flexible and prepared for unexpected circumstances
- ✓ Stay focused on the target, constantly refining the analysis and strategy until you reach your goal.

It is equally important to design a process that all sides are comfortable with. In the end, negotiators feel good about the deal because they feel good about the process.

### **Interpreting and responding to bargaining conditions**

It is important to build trust and be seen as a reliable negotiating partner. Being prepared is a big part of this. However, negotiating psychology and behaviour are equally important. The 'Negotiating Basics' presentation offers tips to build credibility and professionalism, manage expectations, and advance stalled negotiations.

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<sup>26</sup> Presented by Andrea Spear, Senior Trade and Investment Advisor. The presentation for this session can be found in Annex 11.

## Good and poor negotiators

Good negotiators have certain characteristics that make them particularly effective. For example, they:

- are very well prepared and constantly seek opportunities to improve their preparation and understanding of the issues at stake and the people on the other side of the table
- are confident team players
- are good listeners and intuitive, getting the other side to open up and divulge information, without giving away their own key information
- ask the right questions at the right time in the right way
- sustain an environment of mutual respect
- take sensible, calculated risks
- don't lie
- remain on guard at all times
- achieve a fairly accurate picture of the level of compromise the other side can accept, etc.

Poor negotiators, by contrast, are unprepared, impatient, careless, negative; miss the black holes; argue, threaten, pound the table, etc.

## Do's and don'ts

Trade negotiations can take several years. It is important to step back and take stock of the process from time to time and think about different approaches and options. It is a mistake to feel that there must be a deal at all costs - this is part of managing expectations – especially political expectations! A good Cabinet Process is crucial. At the negotiating table, it is important to offer constructive suggestions and maintain a positive, respectful environment around the table, even if this means calling for breaks when tempers rise. Again, the presentation offers some tips.

## Implementation

A trade agreement is only meaningful if it is implemented properly. This includes an awareness campaign to publicise key messages and opportunities (especially for the private sector), and an implementation action plan featuring strong interagency coordination and regular monitoring.

### Box 7. Step-by-step checklists for preparing negotiations

<p style="text-align: center;"><b>Step-by-Step Checklist for:</b> <b>Defining Negotiating Interests, Priorities and Strategies, and Taking Action</b></p> <p><b>Preparations before Actual Negotiations: Defining Objectives, Priorities, Strategies</b> <i>(all steps confidential vis-à-vis negotiating partner in bilateral negotiations; #8-9 confidential in regional and multilateral negotiations)</i></p> <p>I. <u>Coordination and Consultation</u></p> <ul style="list-style-type: none"><li>- Set up interagency coordination system (focal points) to facilitate consultation, analysis, decision-making</li><li>- Establish links with other relevant stakeholders (business, research institutes, NGOs, etc)</li><li>- Establish the necessary mechanisms/processes to secure quick decisions at the top during negotiations.</li></ul> <p>II. <u>Negotiating Priorities</u></p> <ul style="list-style-type: none"><li>- Identify <i>national</i> interests and priorities through analysis and consultation.</li><li>- Identify <i>priorities by sector</i> in consultation with relevant stakeholders.</li><li>- Test sectoral priorities against national policy goals/interests (<i>qualitative/quantitative analyses</i>)</li></ul>
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*required).*

- Link to bilateral, regional, multilateral goals and interests (*econometric analysis required to quantify; qualitative analysis to measure broader political, economic, social impacts*).
- Study negotiating partners' overall and sectoral interests and likely positions (*need qualitative & quantitative analyses*).

### III. Special Interests/Special Products

- Identify items of 'special interest' in consultation with stakeholders (*specific quantitative analyses useful*).
- Set negotiating objectives for these, in consultation with stakeholders.

### IV. Bottom Line

- Develop bottom-line/red-line positions, taking into consideration both *national* and negotiating partners' key interests (*quantitative analysis required to assess relative impact of different negotiating decisions*).

#### V. Negotiating Objectives and Strategies

- Define negotiating scope and objectives
- Develop negotiating strategies for each sector:
  - *offensive* to secure better market access abroad
  - *defensive* to protect
- Build negotiating coalitions (internal, external) around shared interests where possible (*strength in numbers*).

### **During Negotiations: Keep analysing, refining strategies, consulting**

*(the following should all be confidential processes vis-à-vis negotiating partner)*

1. Seek regular updates of information and analysis to support decision-making as negotiations develop. This includes analysing the negotiating partners' positions and 'bottom lines/red lines'.
2. Provide feedback and seek further input from stakeholders, as necessary.
3. Commission rapid-turnaround impact analysis on negotiating partners' positions.
4. Refine negotiating strategies and possible trade-offs.
5. Understand the balance between existing and new commitments and concessions.
6. Keep stakeholders and any coalition partners *focused* on key interests and desired outcomes.
7. As bottom lines become clearer and nearer commission analyses to show how final negotiating options link into national policies and original negotiating objectives; highlight costs and benefits for the country; evaluate capacity to implement (*ie, don't take on what you can't handle*).
8. Secure approval from the top for final commitments and concessions.
9. As sectoral negotiations conclude, start preparing an implementation action plan (*plan policy/legislative/ regulatory changes, identify resource requirements, division of labour, timeframes, etc*).

### **After Negotiations**

1. Evaluate the negotiating process for effectiveness and lessons learned. Analyse your negotiating partners' style for future reference; examine critically your own negotiating style and process, and suggest improvements for next time.
2. Finalise the implementation action plan (*policy/legislative/regulatory changes, allocation of tasks, timeframes, etc*).
3. Commission analyses to show costs and benefits of final concessions and commitments.
4. Prepare briefings for Government, media, business groups, using results of analyses.
5. Monitor trade agreements, implementation of mutual commitments, etc, on an ongoing basis; consult private sector.

Source: Andrea Spear

## Timeline and steps ahead

Four main processes have evolved as possible follow-up activities to the training course on services trade negotiation skills.

- 1) The draft schedule of commitments for the 10<sup>th</sup> AFAS package is due in August 2015. For the preparation and finalization of scheduling, IPD will hold bilateral meetings with each line ministry between May and August 2015. In these meetings, individual sub-sectors are discussed and considered for further liberalisation.

A total of 128 sectors need to be liberalised by the end of 2015. IPD will help line ministries to identify sectors that they can offer for opening up. The line ministries need to send a letter to the IPD coordination point, informing it officially of the commitment to liberalise a certain sector or sub-sector.

- 2) IPD with the support of GIZ-RELATED will undertake ex-ante impact assessments for sectors that are considered for liberalisation. These studies will allow to elaborate a more informed negotiation strategy, and to base decisions of liberalisation on information regarding how Lao companies and consumers within and particularly beyond a certain sector would be affected by its liberalisation.
- 3) GIZ-RELATED will support IPD in the preparations and negotiations of ATISA, the new ASEAN Trade in Services Agreement, which will replace AFAS in the future. Discussions with line ministries on ATISA are also envisioned.
- 4) IPD with the support of GIZ-RELATED will elaborate a comprehensive reader on ASEAN trade in services in both English and Lao language. This reader will comprise all important documents on trade in services for Lao PDR, including background documents and international agreements related to WTO/GATS, AFAS/ATISA, and other ongoing trade negotiations in the realm of FTAs.

## ANNEX

### 1. Agenda of the Training Course on Trade in Services Negotiations

#### **DAY 1 Tuesday, 21 April 2015: Trade in Services ‘Fundamentals’**

*Welcome, Tour de Table*

*Day 1 will focus on the underlying concepts for Trade in Services. It will commence with the vital importance of Services for trade and competitiveness. It will explore the conceptual basis for Services negotiations and trading rules, and relate this to the basic agreements involving Laos (WTO, ASEAN). Each session will be followed by 10 minutes for discussion and questions.*

#### ***Underlying concepts for Trade in Services negotiations***

##### **Session 1. Why are Services so important for trade and development?**

- Trade in Services
- Services and International Competitiveness
- The Lao PDR Economy: Structure, Services Sector Development and Aspirations

*Morning coffee break (15”)*

##### **Session 2. The Conceptual Basis of Services Negotiations:**

- The General Agreement on Trade in Services
- Classifications, definitions, exclusions: CPC, W/120, etc
  - The 12 Sectors
  - The 4 Modes of Supply
- The GATS, its principles and objectives in brief
  - Most-Favoured Nation (MFN)
  - National Treatment
  - Transparency
  - Right to regulate
  - Developing countries
- GATS vs GATT
- Why is the GATS misunderstood?
- Scope and coverage
- Modes of supply
- Rights and obligations
- Key GATS Articles
  - MFN
  - National Treatment
  - Transparency
  - Special and differential treatment
  - FTAs/RTAs
  - Domestic Regulation
  - Monopolies
  - Unfair Business Practices

##### **Session 2 continues:**

- Market Access
- Schedules of commitments
- Negotiating approaches (in GATS, RTAs and FTAs): Options and Effects
- Positive list, negative list and hybrid lists

#### ***Agreements on Trade in Services involving Laos***

##### **Session 3: WTO**

- Laos's WTO Commitments
- Options and constraints of these for Laos's AFAS negotiations

#### **Session 4: ASEAN Framework Agreement on Services (AFAS)**

- Structure of Trade in Services in ASEAN
- Background on AFAS and AEC: 2015 Services targets
- How AFAS differs from the GATS
  - The Modes (Modes 3 and 4 managed differently)
  - The Sectors (Finance managed separately; Logistics package approach, etc)
  - Negotiating approaches (structure/approach of negotiations : calendar of progressive liberalisation to 2015; schedules of commitments: unilateral concession targets, negotiating sessions, role of Secretariat, Coordinating Committees)
  - MRAs
  - S&D

*Afternoon tea break*

Achievements to date

- Framework agreement
- 9 negotiating 'packages'
- 7 MRAs
- etc.

Next steps

- 10<sup>th</sup> Package (*brief mention; details to be discussed on Day 2*)

**Worksheet 1:** *Strategic Thinking about Services Negotiations and National Interests*

#### **Day 2 Wednesday, 22 April 2015 : Lao Experience in Negotiating Services in ASEAN and Steps toward Developing Sectoral Negotiating Positions**

*Day 2 will continue to present basic agreements involving Laos (ATISA, RCEP). Then, it will focus on Laos's experience in negotiating Services in ASEAN, linking this to the country's national development priorities, and its commercial and national interests in key sectors. ASEAN services negotiations are different from other Services negotiations. Therefore, during the second day, discussions will start to explore the key areas where concessions are due. It will examine Laos's and other members' positions, and discuss what positions, strategies and actions would deliver the best outcome for Laos, within the framework.*

#### ***Agreements on Trade in Services involving Laos (continued)***

##### **Session 1: Specific gains for Laos from the first 8 Packages and MRAs**

##### **Session 2: Laos's experience in negotiating the 9<sup>th</sup> Package**

- Consulting stakeholders
- Analysing legislation and regulation
- Dealing with the AFAS Secretariat, Coordinating Committee for Services (CCS)
- Negotiating with other ASEAN members
- Getting agreement at home
- etc

#### ***What Options should Laos consider for the future?***

**Worksheet 1:** *Strategic Thinking about Services Negotiations and National Interests (complete only partially at this point; it will set the scene for the rest of the presentations during Day 2)*

*Morning coffee break (15 minutes)*

##### **Session 3: Challenges of the 10<sup>th</sup> Package**

- Requirements, deadlines
- Laos's progress to date on meeting the 2015 targets

- Main challenges in meeting the remaining ones
- Members' positions
- Options for Laos to negotiate, and their potential effects (*to be revisited after the Sectoral discussions*)

#### **Session 4. ASEAN Trade in Services Agreement (ATiSA)**

- What is ATiSA and how does it differ from AFAS and the GATS?
- How is it progressing?
- How will it change AFAS and members' AFAS schedules?
- What will it mean for Laos?

#### **Session 5. Services in the Regional Comprehensive Economic Partnership (RCEP)**

- What is RCEP and why is it being negotiated?
- How is it progressing?
- What are the key issues in RCEP Services negotiations and their implications for AFAS and ATiSA?
- What will this mean for Laos?

*Lunch break (1 hour)*

#### **Session 6: Steps towards Lao positions for negotiations on individual Services sectors**

*This session will use Laos's current schedule of AFAS commitments to identify key negotiating issues and options. A detailed examination of sectoral trends and issues will incorporate discussion on the possible options for negotiating on services, with the aim of securing the maximum benefit for individual sectors and for overall development and competitiveness. This session will continue as necessary into Day 3, which will build on these discussions with practical exercises aimed at developing positions for future negotiations.*

1. Detailed look at sectoral trends and negotiating issues for individual services sectors  
*Laos's AFAS Schedule of Commitments and related issues, including requests to other ASEAN trading partners and outstanding crossborder and regulatory issues*
2. Options for Services negotiations, to benefit individual Lao services sectors  
*What are the negotiating options and which ones would best support sectoral development and competitiveness?*

#### **Tools for this session:**

- Laos's current schedule of AFAS commitments
- **Worksheet 1:** *Strategic Thinking about Services Negotiations and National Interests*
- **Worksheet 2:** *Brainstorming on the Existing and Potential Openness of Services Sectors*
- W/120 and CPC classification lists

Thorough examination of:

- **The Modes**
  - Mode 1 : crossborder trade
  - Mode 2 : consumption of services abroad
  - Mode 3 : investment
  - Mode 4 : movement of people
- **The Sectors:**
  1. **Business Services**
  2. **Communications Services**
  3. **Construction and Related Engineering Services**
  4. **Distribution Services**
  5. **Education Services**
  6. **Environmental Services**
  7. **Financial Services**
  8. **Health-Related and Social Services**
  9. **Tourism and Travel Services**
  10. **Recreational, Cultural and Sporting Services**

## **11. Transport Services**

- Marine transport
- Internal waterways
- Air transport
- Space
- Rail
- Road
- Pipeline
- Services auxiliary to all modes of transport
  - cargo-handling
  - storage and warehousing
  - freight transport agency services (eg, freight forwarding)
  - other

### **Plus: ASEAN Logistics Services Package**

## **Day 3 Thursday, 23 April 2015: Developing Sectoral Positions (cont.) & Designing Negotiating Strategies**

*During Day 3, participants will continue to take steps towards the elaboration of Lao positions for future Services negotiations for individual sectors. Participants will apply practical exercises to analyse further Laos's commercial, strategic, regional and national priorities and interests. These exercises will cover good practices, reality checks, managing expectations, and developing negotiating strategies aimed at achieving the best outcomes for Laos and its development aspirations in the increasingly broad and complex trade agreements of the 21<sup>st</sup> Century*

### **Session 1: Steps towards Lao positions for negotiations on individual Services sectors (continued from Day 2)**

- Detailed look at sectoral trends and negotiating issues for individual services sectors (cont.)
- Options for Services negotiations, to benefit individual Lao services sectors (cont.)
- Sum up of priorities and possible negotiating options for 10th Package and other negotiations

### **Session 2: Negotiating good practices and tips :**

- Negotiating Good Practices Checklist: *What to Do Before, During and After Negotiations*
- Negotiating Basics: *How to be a Good Negotiator* (fun interactive session, if time permits)

### **Session 3: Developing negotiating strategies for priority sectors:**

1. Areas of 'special interest' and key objectives for these
2. Consultation with stakeholders
3. Coalitions of shared interests
4. Offensive and defensive strategies and positions
5. Red lines and bottom lines
6. Implementation considerations and how these can affect negotiating positions and decisions
7. Key elements of a negotiating strategy for each priority sector.

## ANNEX

### 2. List of Participants

No.	Name and Surname	Position	Organization
1.	Mr. Phouthasack Souvannasao	Deputy Director	Investment Promotion Department, Ministry of Planning and Investment (IPD, MPI)
2.	Ms. Souphaphone Saignaleuth	Technical Staff	IPD, MPI
3.	Ms. Sompith Kingsackda		MPI
4.	Ms. Manysone		MPI
5.	Mr. Phonethavong Singhalath	Director	IPD, MPI
6.	Ms. Thidavanh Chongchit	Technical Staff	IPD, MPI
7.	Mr. Peter Kim	KOICA Expert	IPD, MPI
8.	Amphaphone Sayasenh		National Economic Research Institute, Ministry of Planning and Investment (NERI, MPI)
9.	Bounnaphone Sengkhamyong		NERI, MPI
10.	Bounchanh Vongkhaisy		Ministry of Industry and Commerce (MOIC)
11.	Mr. Nongchith		MOIC
12.	Ms. Onida Vinavong	Deputy Director of Trade in Service (TIS) Division	Foreign Trade Policy Department (FTPD, MOIC)
13.	Mr. Phakpaseuth		Department of Enterprise Registration Management (DERM), MOIC
14.	Ms. Nittaya Visonnavong	Technical Staff	Department of External Relation (DER), MOES
15.	Nilinthone Sacklokham	Technical Staff	Department of Higher Education (DHE), MOES
16.	Khamphiew Chanthapouvong	Technical Staff	Technical Vocational Education Department, Ministry of Education and Sport (TVED, MOES)
17.	Mr. Thongsavath Vongsavang		Sports for All Department, MOES
18.	Mr. Chanthavong		Eletic Sports Department, MOES
19.	Vongphachanh Boualaphanh		Department of Roads, Ministry of Public Work and Transport (MPWT)
20.	Lieng Monthalath		Department of Transport (DOT), MPWT
21.	Mr. Hinphet		Railway Department, MPWT
22.	Ms. Khanthaly Vangnalath		Department of Planning and Cooperation (DPC), MPWT
23.	Mr. Kongmy Sayasouk		Department of Waterway, MPWT
24.	Mr. Thepsavanh Khoudphaithong		Ministry of Agricultural and Forestry (MAF)
25.	Mr. Sengphachanh Lathsachack		Department of Land Management, MAF
26.	Mr. Oudone Thammavongsa		Accounting Department, Ministry of Finance (MOF)
27.	Mr. Phonesavanh		Tax Department, MOF
28.	Mr. Sompadith Volachit		Bank of Lao (BOL)
29.	Manolith		BOL
30.	Mr. Bivang Chongcher	Deputy Director	Ministry of Justice (MOJ)

		General	
31.	Kitsana Singhavath		Publishing Department, Ministry of Information, Cultural and Tourism (MOICT)
32.	Ms. Alounny Panhyasith		MOICT
33.	Mr. Vandy Chaleunsak		MOICT
34.	Mr. Inpone		MOICT
35.	Souvankham Chindavong		Planning and Finance Department, MOICT
36.	Simmany Keokene		Department of Cinema, MOICT
37.	Mr. Souksakhone		Ministry of Post and Communication
38.	Mr. Vivatthana Khieovongphachanh	Deputy Director of Telecom Division	Department of Telecom, Ministry of Post and Communication
39.	Mr. Sourisack Souphanthong		Department of Skills, Ministry of Labour and Social Welfare (MOLSW)
40.	Ms. Vatsaly Mysavath		Cabinet of Lao Academic of Science, Ministry of Science and Technology (LAS, MOST)
41.	Mr. Sombounmy Phomthong		ASEAN Division, MOST
42.	Mr. Souliya		MOST
43.	Mr. Tong Nakkasen	Technical Officer	Cabinet, Ministry of Energy and Mines (MEM)
44.	Ms. Phengdy Inthaphanith		Ministry of Health (MoH)
45.	Mr. Bounnhong Sidaphone	Vice Dean	University of Health Sciences
46.	Mr. Khamtanh Inthavong	Technical Staff	Lao Academy of Social Sciences (LASS)
47.	Duangmany Luangmany	Technical Staff	Lao National Mekong Committee Secretariat
48.	Dr. Hartmut Janus	Project Director	RELATED Project, GIZ
49.	Ms. Lisa Eifert	Associate Expert	RELATED Project, GIZ
50.	Ms. Souphavanh Duangkhamphai	Admin Officer	RELATED Project, GIZ
51.	Mrs. Andrea Spear	Consultant	

**ANNEX**

**3. Group Picture**



## **ANNEX**

### 4. Presentation on the Importance of Trade in Services (Session 1)

By Andrea Spear

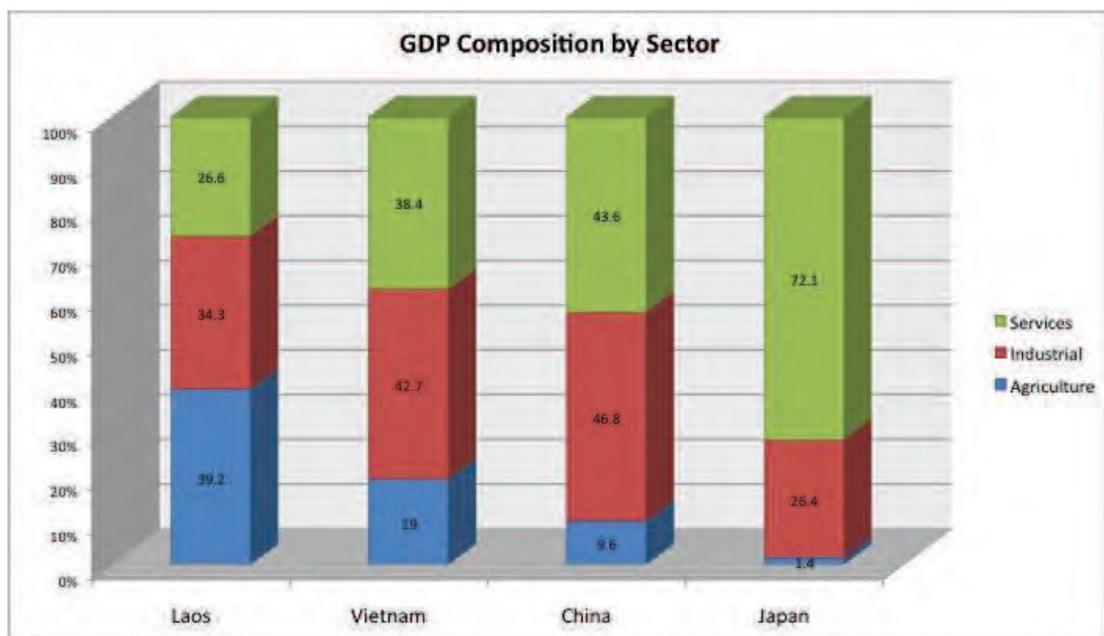
# Trade & Competitiveness

## Andrea Spear

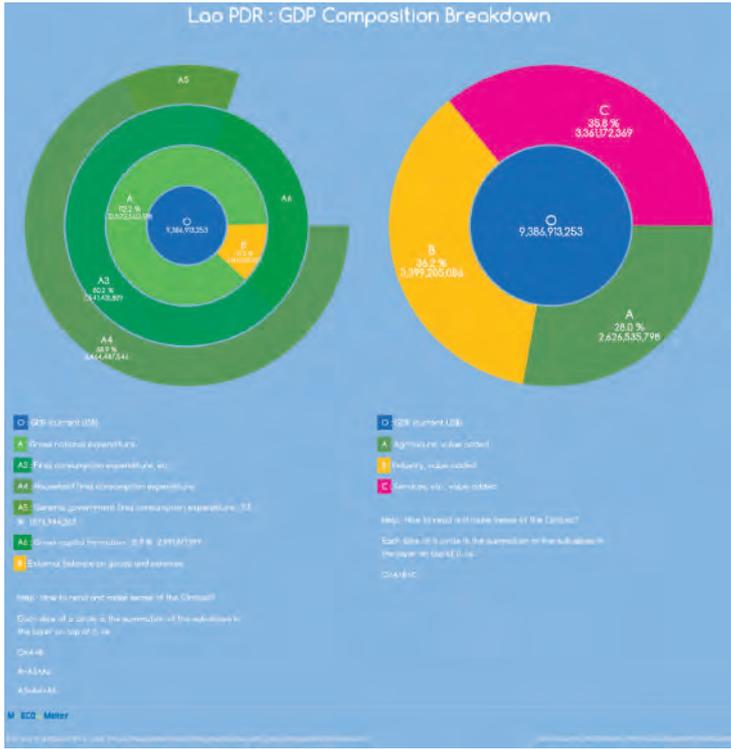
### 21 April 2015

MPI-GIZ conference on trade in services  
Lao Plaza hotel, Vientiane, 21-24 april 2015

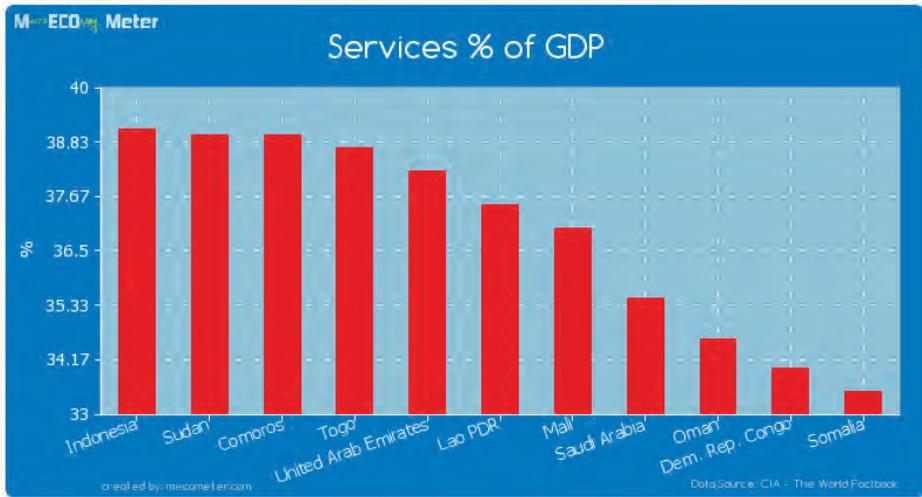
## Progression toward Services Economy



# Laos: GDP Composition



## Laos vs. Other Countries with similar % of GDP



## Laos: Services Exports 2010-2013

Source: Trade Map: ITC, UNCTAD, WTO joint dataset, estimates  
US\$ thousands

Code	Service label	Exported Value in 2010	Exported Value in 2011	Exported Value in 2012	Exported Value in 2013	% of Total in 2013
S	Services	510,994	549,643	577,219	781,187	100
SC	Transport	55,841	51,307	54,309	69,972	9
SD	Travel	381,669	406,185	451,055	595,909	76
SPX1	Other commercial services (eg, business services, communications, etc)	73,484	92,151	71,855	115,306	15
SOX	Memo item: Commercial services	488,794	525,588	552,939	761,047	97

## Laos: Services Imports 2010-2013

Source: Trade Map: ITC, UNCTAD, WTO joint dataset, estimates  
US\$ thousands

Code	Service label	Imported Value in 2010	Imported Value in 2011	Imported Value in 2012	Imported Value in 2013	% of Total in 2013
S	Services	263,121	330,711	339,208	533,782	100
SC	Transport	22,074	22,772	22,135	17,514	3
SD	Travel	202,669	237,123	232,038	398,029	75
SPX1	Other commercial services (eg, business services, communications, etc)	38,378	70,816	85,035	118,239	22
SOX	Memo item: Commercial services	257,521	325,016	333,026	522,536	98

# World Trade in Commercial Services: 2000-2013

World Trade in Commercial Services by Category, 2000-2013 (US\$ billion and %)						
	Value	Share				
		2000	2005	2011	2012	2013
	2013					
<b>Exports</b>						
All commercial services	4645	100.0	100.0	100.0	100.0	100.0
Transportation services	905	23.2	22.6	20.5	20.2	19.5
Travel	1185	32.0	27.9	24.8	25.1	25.5
Other commercial services	2550	44.8	49.3	54.5	54.5	54.9
<b>Imports</b>						
All commercial services	4380	100.0	100.0	100.0	100.0	100.0
Transportation services	1165	28.6	28.6	27.4	27.3	26.6
Travel	1070	30.1	27.4	23.4	23.9	24.5
Other commercial services	2085	41.2	44.0	48.0	47.5	47.6
<small>Note: Total commercial services do not add up to the sum of components due to unallocated services, accounting for 0.1 per cent of world exports and 0.2 per cent of world imports in 2013. For more information on asymmetries, see the Metadata.</small>						

## Solar Panels: Services Value Added

### Case study by ITC on Chinese solar panel manufacturing

#### Services as % of total cost

Material inputs: 75%

Services: 20-25%

Material inputs excluded

Services: 70%

Loan interest + wage for manufacturing workers: 30%

Manufacturing posts: 70% of total workforce

Wage share: less than 7% of total cost

# Solar Panels – Services Value Added

## 40 (or 68) types of services

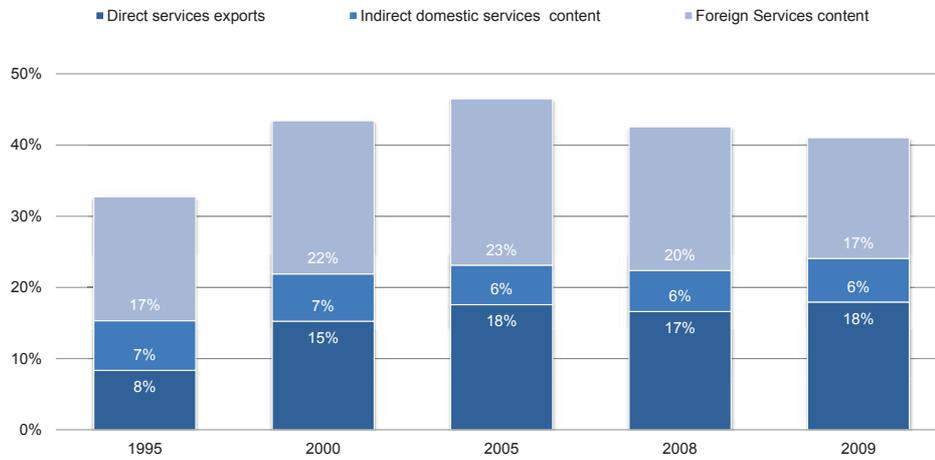
Importation of material inputs	In factory and factory-related services	Sales and export-related services	Operation and management-related services
Customs-related services	Production administration	Product testing for obtaining certifications	Company registration and licensing services
Procurement services	Utilities	Transport and logistics	Financial services
Technical testing	Installation, maintenance, and repair	Freight insurance	Social and commercial insurance
Freight transportation	Storage	Warehousing	Legal consulting
	Technical testing (quality control)	Design, Advertising & Marketing	IPO related services
	R&D	Wholesale & retail	Accounting, auditing and bookkeeping
	Packaging	Market research & consulting	Public relations (PR)
	Accommodation and Canteen services	News and information	Business hospitality
	Training services		Human resources
	Security, cleaning, sewage treatment		IT & Telecom
	Government inspections		Visa and travel services

# Solar Panels: Services Outsourced

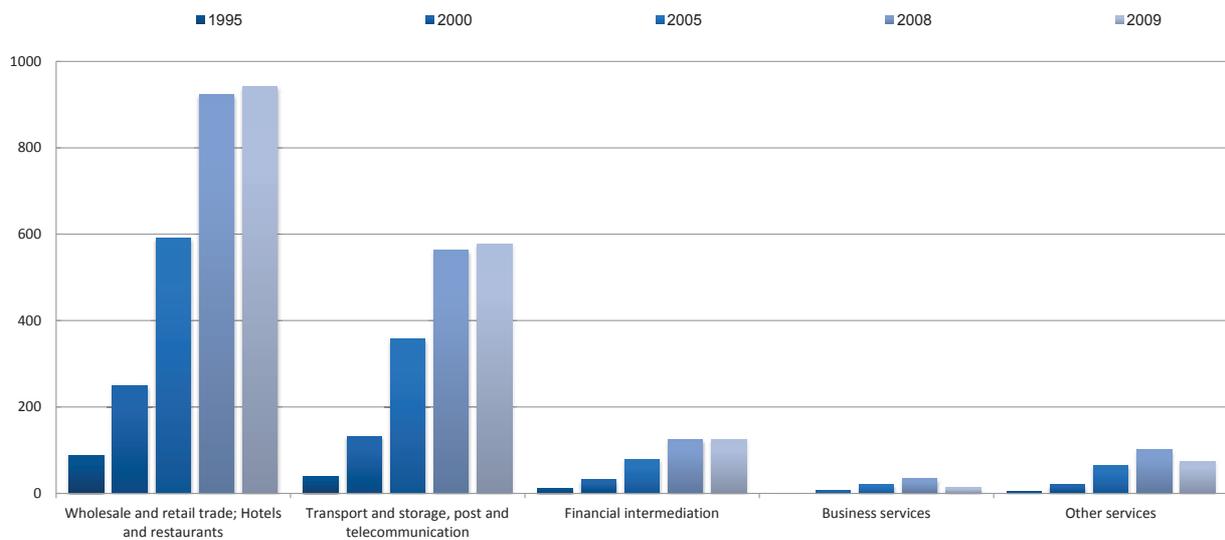
## 2/3 services outsourced

Outsourced			In-house
Customs-related services	Government inspection	Social and commercial insurance	Procurement services
Technical testing	Product testing for obtaining certifications	Legal consulting	Production administration
Freight transportation	Transportation & logistics	IPO related services	Quality control
Utilities	Freight insurance	Auditing	Storage
Installation, maintenance and repair	Warehousing	Public Relations (PR)	Packaging
Storage	Design, Advertising & Marketing	Business hospitality	Human resources / training
Technical testing	Wholesale & retail	IT&Telecom	Accounting and bookkeeping
R&D	Market research & Consulting	Visa and Travel services	R&D
Packaging	News and information		Accommodation
Accommodation and Canteen services	Company registration and licensing services		Security, sewage treatment
Labour supply services	Financial services		

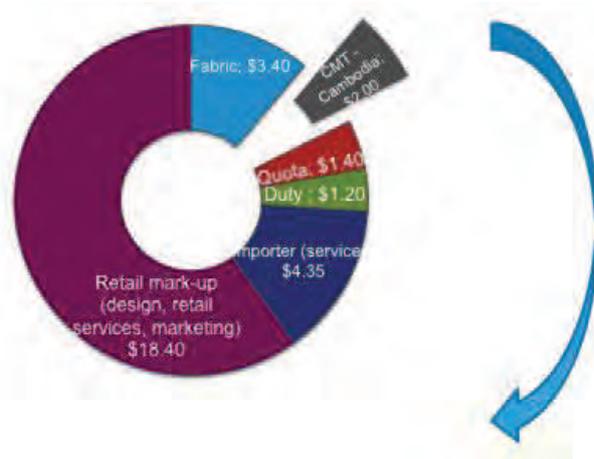
## Cambodia Services Exports: 1995-2009



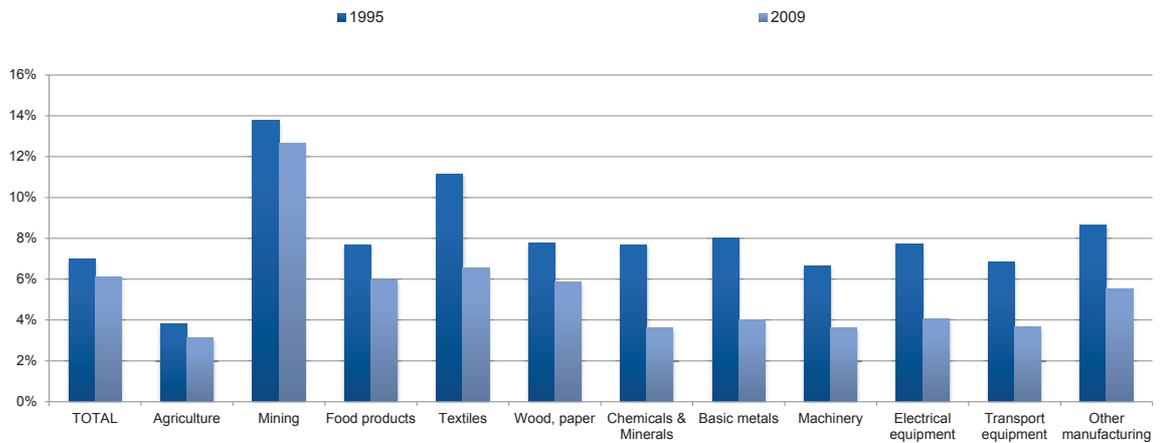
## Cambodia: Direct Services Exports: 1995-99



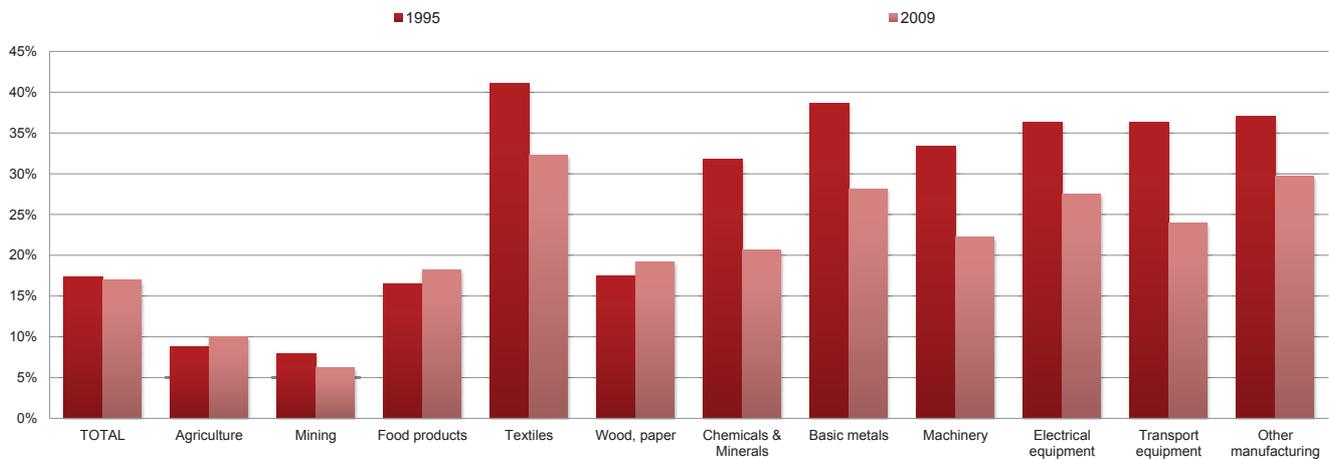
## Cambodia: T-Shirt Value-Added



## Indirect Domestic Services Content in Cambodia's Goods Exports, 1995 and 2009



## Foreign Services Content in Cambodia's Goods Exports, 1995 and 2009



### Factors Influencing International Competitiveness in Services

- Human and intellectual capital
- Investment in intangible assets
- Digital infrastructure
- Quality of institutions
- Efficiency of domestic regulation
- Efficiency of the financial system
- Trade policy

## **ANNEX**

### **5. Presentation on the Lao PDR Economy and Service Sector (Session 2)**

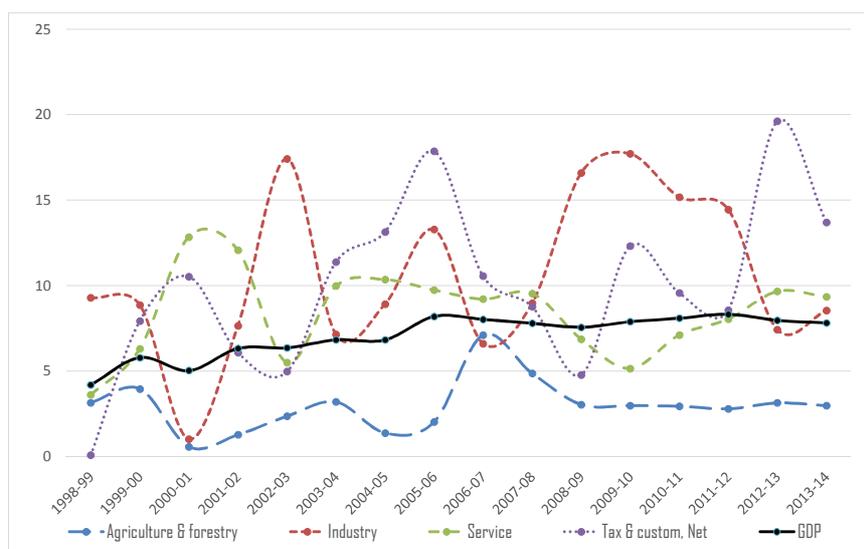
**By Sitthiroth Rasphone**

**International Economic Research Division, National  
Economic Research Institute (NERI)**

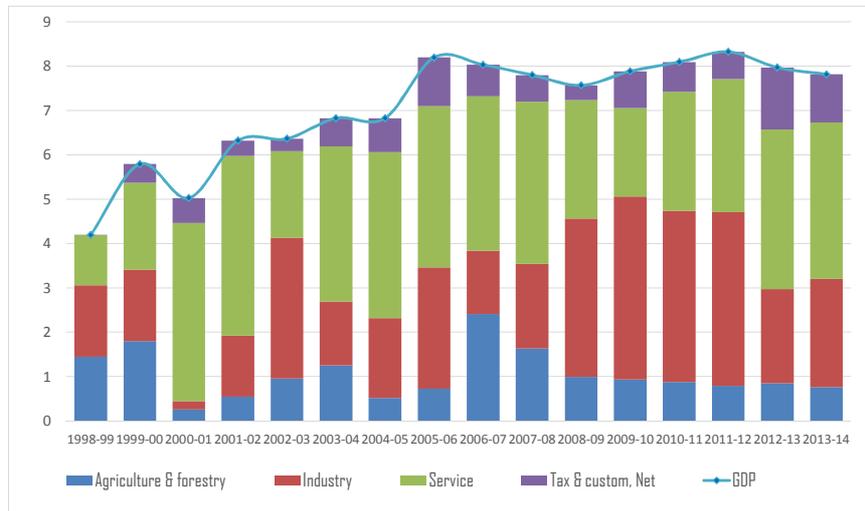
# The Lao PDR Economy: Services

By  
Siththiroth RASPHONE  
International Economic Research Division  
National Economic Research Institute  
(NERI)

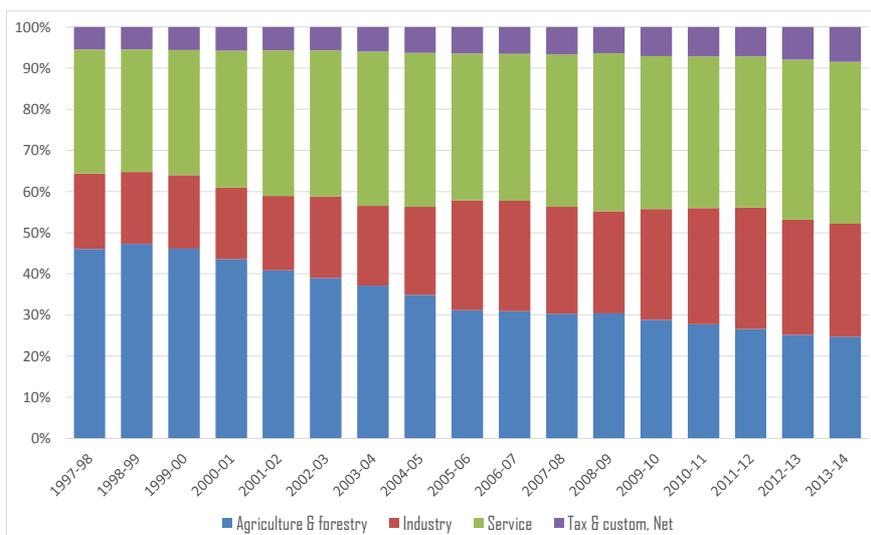
## GDP Growth (%)



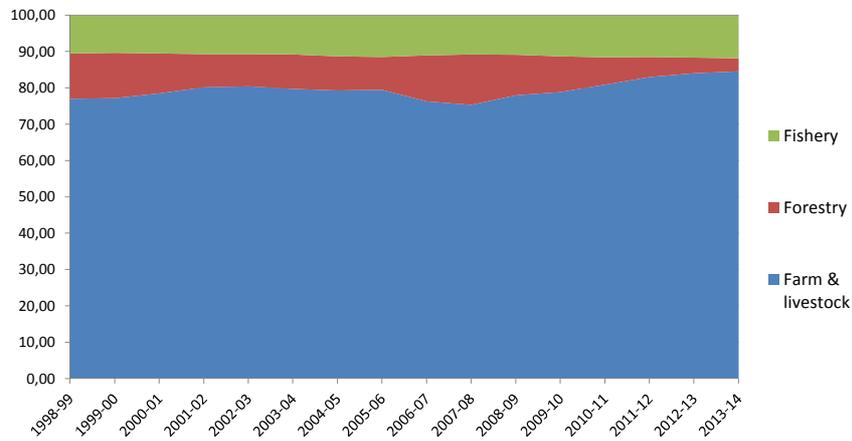
## Contributions to GDP Growth (%)



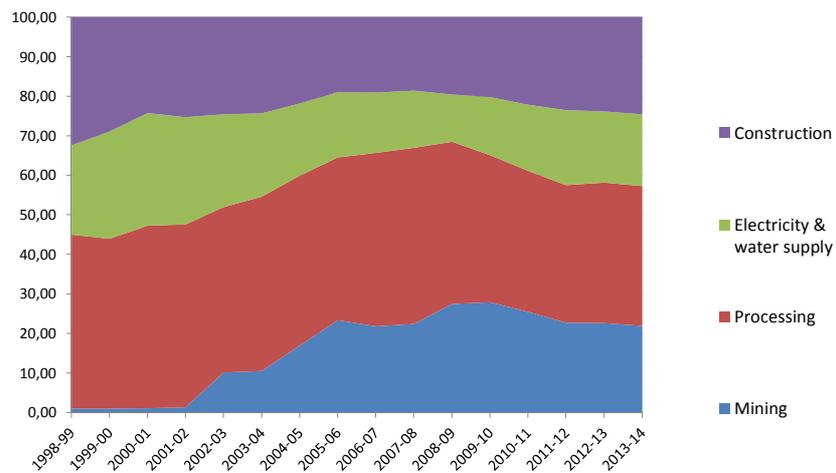
## Sectoral structure of GDP



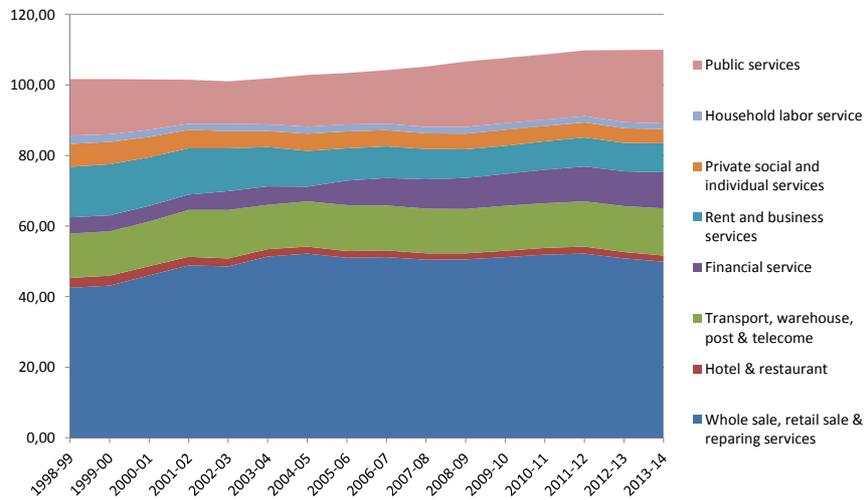
## Structure of agriculture & forestry



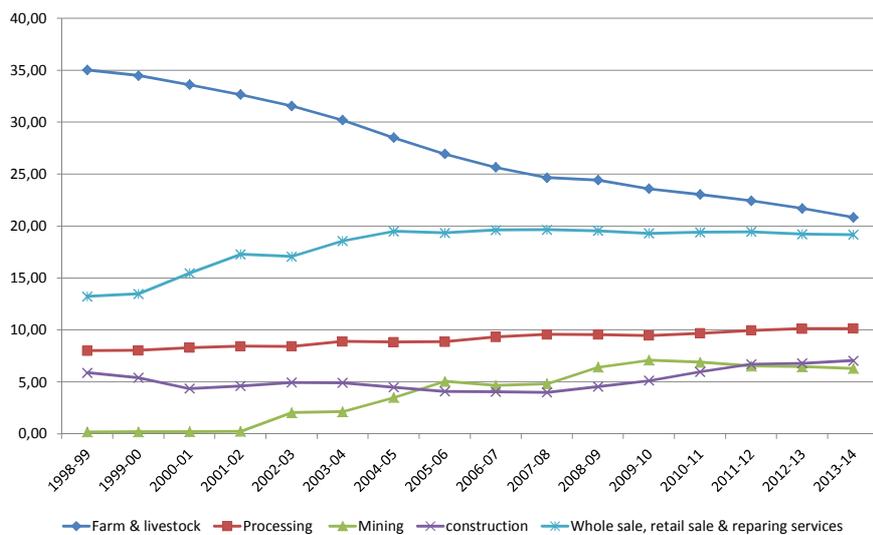
## Structure of industry sector



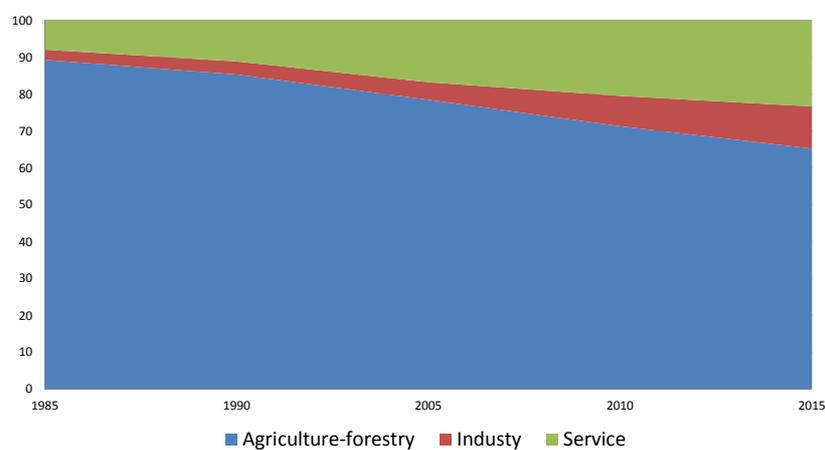
## Structure of service sector



## Share of main sub-sectors (% of GDP)



## The changing structure of employment during economic development

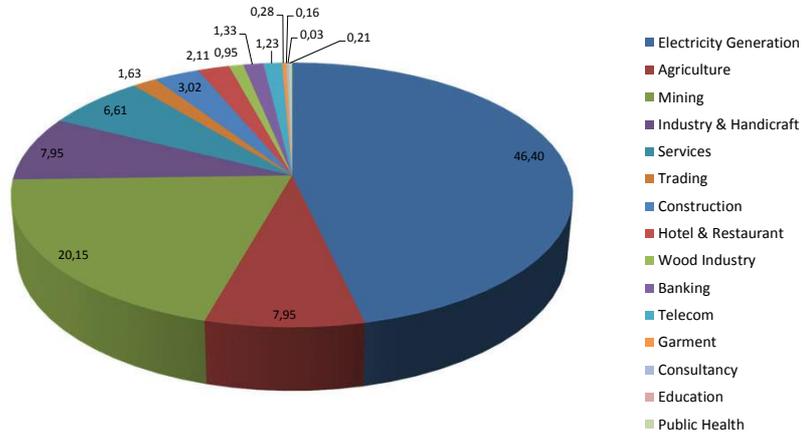


## FDI by sector

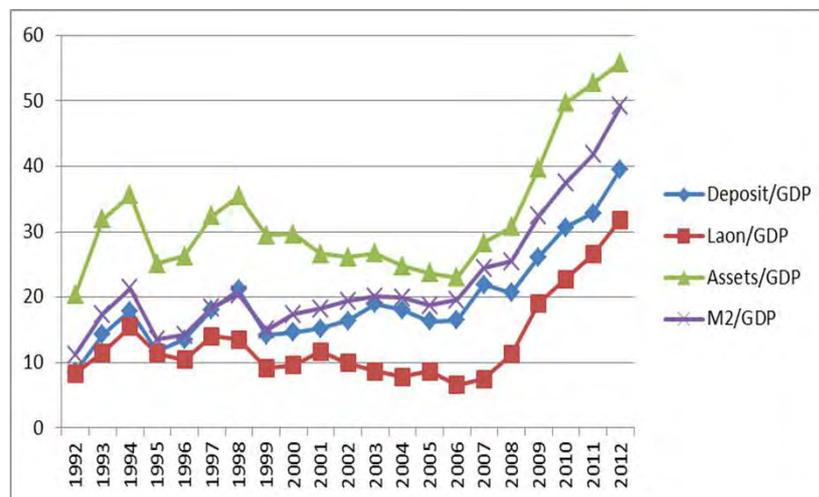
	2001-2005	2006-2010	2011-2013
Committed FDI by sector			
Agriculture (%)	2.72	11.46	10.28
Electricity (%)	63.94	34.97	29.94
Mining (%)	16.47	15.60	40.69
Manufacturing (%)	6.58	18.50	9.59
Service (%)	10.29	19.47	9.50
- Banking sector (%)	0.46	1.29	2.25

Source: Data from the Department of Investment Promotion, calculated by NERI staffs

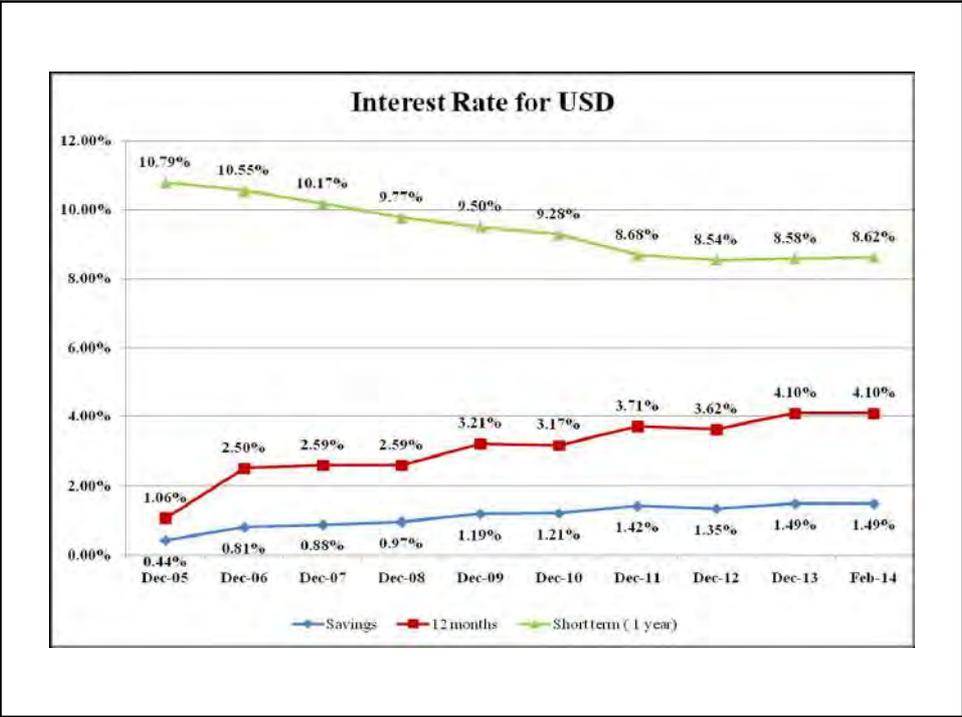
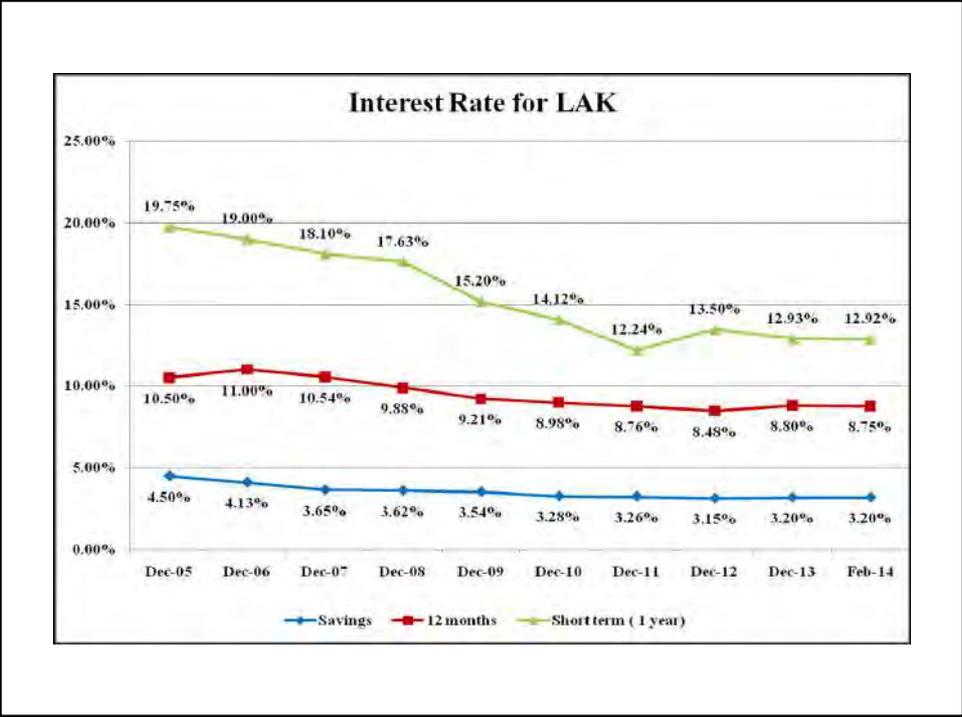
### Total value of FDI, 1989-2013



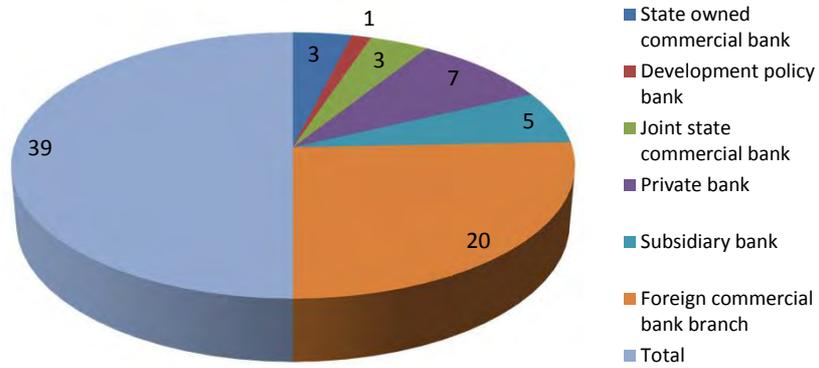
### Performance of monetary sector 1992-2012 (%)



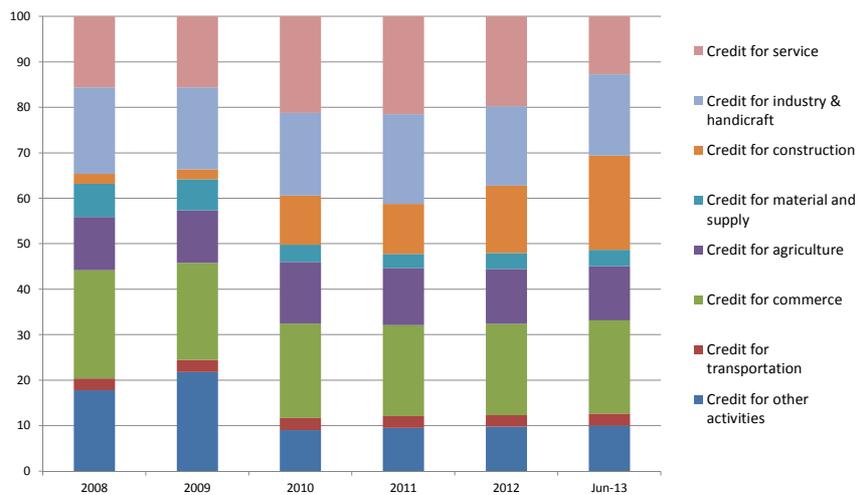
Source: IMF



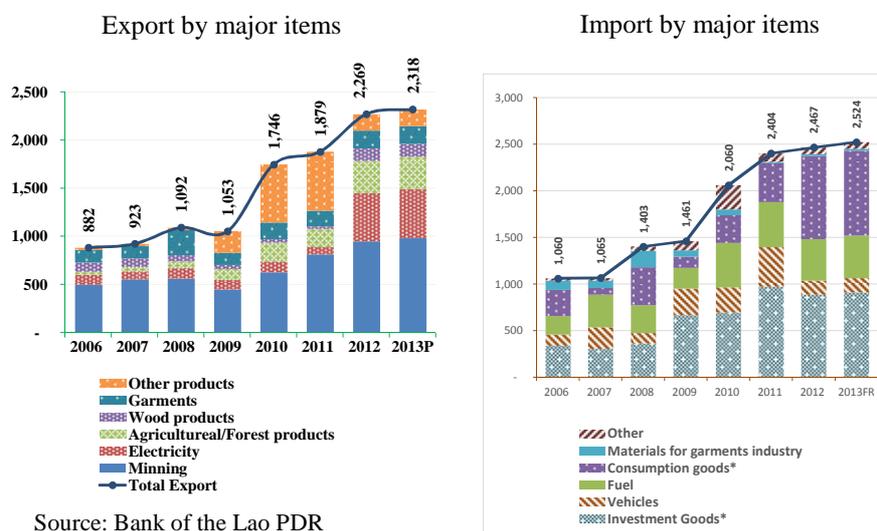
## Size of banking sector (2014)



## Credit by sector



***Resource sector continued to cover the largest share of total export while import for consumption increases rapidly***



## Conclusion

- Service sector plays very significant role in driving the economic growth recently
- However, the sector continues to be dominated by traditional activities including whole sale & retail sale, hotel & restaurant. The growth of modern services including communication, finance & business service is very limited and at the beginning stage of development.
- Limited local capacity might be a key cause for weak link between service and poverty reduction

## **ANNEX**

6. Presentation on the WTO General Agreement on Trade in Services (GATS)  
(Session 3)

Andrea Spear

# Introduction to the General Agreement on Trade in Services

Andrea Spear

April 2015

## **GATS: 12 Service Sectors...+**

- 1. Business Services** (Professional, Computer, R&D, Real estate, Rental/leasing of machinery & equipment, Other)
- 2. Communication Services** (Postal, Courier, Telecoms, Audiovisual, Other)
- 3. Construction & Related Engineering Services**
- 4. Distribution Services** (Agents, Wholesale, Retail, Franchising)
- 5. Educational Services** (Primary, Secondary, Higher, Adult Ed, Other)
- 6. Environmental Services** (Sewerage, Refuse-disposal, Sanitation, Other)

## **GATS Sectoral Coverage cont.**

- 7. Financial Services** (Insurance, Banking & finance, Other)
- 8. Health & Social Services** (Hospitals, Other human health, Social services, Other)
- 9. Tourism & Travel Services** (Hotels & restaurants, Travel agencies & tour operators, Tourist guides, Other)
- 10. Recreational, Cultural & Sporting Services** (Entertainment, News agencies, Culture, Sport, Other)
- 11. Transport Services** (Maritime, Internal Water-ways, Air, Space, Rail, Road, Pipeline, Auxiliary services, Other)
- 12. All Other Services n.i.e.**

3

## **Nondiscrimination**

- **Most-Favoured Nation Treatment (MFN)** = *favour one, favour all*. Treat all members and all members' products and services equally well.
- **National Treatment** = treat all members and their products and services as well as you treat locally supplied goods and services.

# *GATS is Good for Business*

The GATS - more than any other agreement - aims for a **strong business- and trade-enabling environment.**

5

## **GATS Principles & Aims**

- GATS seeks:
  - expansion of services trade through growing **progressive liberalisation** and increasingly **transparent** and **predictable rules and regulations**
  - to promote all members' interests on a **mutually advantageous basis**
  - to secure a **balance of rights and obligations**
  - to respect members' **right to regulate** the supply of services within their territories in order to meet national policy objectives
  - Growing participation of **developing countries** in services trade.

6

# **GATS Applies to Measures**

- In any form:
  - laws, rules, regulations, procedures, decisions, administrative guidance, etc.
- Any measure that affects production, distribution, marketing, sale or delivery of a service
- Any measure made by central, regional and local authorities and by non-governmental bodies exercising delegated powers

7

## *Impediments to Services Trade*

- **Access to Reliable Infrastructure**
- **Limitations on Foreign Investment**
- **Restrictions on Type of Business**
- **Access to Reasonable Financing**
- **Access to Skilled Professionals and Workers**
- **Access to Internationally Recognised Service Quality Standards**
- **Adequate Protection of Intellectual Property**
- **Access to Affordable Information and Communication Technology Equipment**
- **Monopolies and Exclusive Service Providers**
- **Lack of E-Government**
- **Discriminatory Tax Policy**
- **Discriminatory Procurement Practices**

8

# Four Modes of Supply

- **Mode 1: cross-border trade** (services flow across the border via telecommunications, post, etc)
- **Mode 2: consumption abroad** (eg, residents of one member country travel to another for tourism, education, healthcare)
- **Mode 3: commercial presence** (service providers of one member set up operations in another – foreign investment)
- **Mode 4: movement of natural persons** (temporary entry of individual service suppliers)

9

## Mode 4

- **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

10

## **General Obligations**

- Most-favoured nation (MFN) treatment
- Transparency
- Fairness of domestic regulation
- Recognition of qualifications
- Economic integration arrangements
- Monopolies
- Business practices
- Payments and transfers
- General exceptions (*health, order, morals, privacy, etc*)
- Security exceptions

## **Specific Obligations**

- Guaranteed market access and national treatment
- Apply only to commitments inscribed in GATS Schedules of Specific Commitments

# Rights

- Waivers
- Access to mediation and dispute settlement
- Measures reversing obligations/commitments when needed to:
  - protect public morals or maintain public order
  - protect human, animal or plant life or health
  - secure compliance with laws or regulations not inconsistent with the Agreement, including, measures necessary to prevent deceptive or fraudulent practices
- Prudential measures to protect the integrity and stability of the financial system
- Temporary trade restrictions (nondiscriminatory) to deal with BoP difficulties.

13

## Key GATS Articles

- Article I: Scope, sectoral coverage and definitions
- Article II: MFN (& review MFN exemptions)
- Article III: Transparency
- Article IV: Increasing DCs' Participation
- Article V: Economic Integration/RTAs/BTAs
- Article VI: Domestic Regulation
- Article VII: Recognition
- Article VIII: Monopolies/Exclusive Suppliers
- Article IX: Business Practices
- Article X: Emergency Safeguards
- Article XI: Payments & Transfers
- Article XII: Balance of Payments Safeguards
- Article XIII: Government Procurement
- Article XIV: Exceptions
- Article XV: Subsidies

14

# Key GATS Articles, continued

- Article XVI: Market Access
- Article XVII: National Treatment
- Article XVIII: Additional Commitments
- Article XIX: Negotiations (guidelines, etc)
- Article XX: Specific Commitments Schedules
- Article XXI: Modification of Schedules
- Article XXII: Consultation
- Article XXIII: Dispute Settlement
- Article XXIV: Council for Trade in Services
- Article XXV: Technical Cooperation

15

## Article II: MFN

- WTO Principle of Nondiscrimination:  
Treat *all* nations as you would treat your most-favoured nation: favour one, favour all

Exceptions from MFN apply to:

1. Members of WTO-consistent RTAs
2. Listed MFN exemptions
3. Recognition of professional qualifications

16

# National Treatment

- Treat imported services and foreign service providers as you treat local services and service providers
- Sensitive issue – especially for Modes 3 and 4
- Public policy issue as regards subsidies, incentives

17

## Article III: Transparency

- Prompt publication or wide notification of measures affecting trade in services
- Prompt notification to WTO
- Prompt response to enquiries from other WTO members
- Notification to WTO if other members not complying
- Exceptions: confidential information that would impede law enforcement, damage public interest or prejudice specific commercial interests

18

# Developing Countries

- **Article IV** – special and differential treatment (S&D) for developing and - especially -least developed members
- Developed members should facilitate access:
  - to technology, distribution channels, information networks and export markets
  - to information on commercial and technical aspects of supply; registration, recognition and obtaining professional qualifications; and technology

19

## Art. VI: Domestic Regulation

- **Professional qualification and licensing** requirements and procedures, and **technical standards**, should **not constitute unnecessary barriers to trade**.
- WPDR to develop necessary **disciplines** to ensure that such requirements:
  - are based on **objective, transparent criteria** (eg, competence)
  - are **not more burdensome than necessary** to ensure quality
  - **do not restrict supply**.

20

## **Council for Trade in Services (CTS) & Its Subsidiaries**

- **CTS** (*oversees ongoing work, reports to WTO General Council*)
- **CTS in Special Session** (*Doha Round negotiations*)
- **Committee on Specific Commitments** (*classifications, scheduling, modifying schedules*)
- **Committee on Trade in Financial Services** (*Fifth Protocol, Doha Round negotiations*)
- **Working Party on GATS Rules** (*government procurement, subsidies, emergency safeguards*)
- **Working Party on Domestic Regulation** (*disciplines for qualifications and licensing requirements, technical standards*)

21

## **Recipe to Benefit from WTO**

***Implement*** all WTO commitments and obligations, especially those that encourage streamlining procedures, increasing transparency, and enforcing laws and regulations. This will help business and trade development, and generate employment.

***Strategically seek technical assistance*** to help meet obligations, improve trade-related infrastructure, increase awareness and develop strategies to maximise membership.

## **GATS Negotiations**

- Ongoing 'intellectual' work
- Accessions
- 'Market Access' negotiations  
(Request-Offer)

23

## **Schedules of Specific Commitments**

- number of service suppliers
- total value of service transactions or assets
- total number of service operations
- total number of foreign natural persons
- measures restricting or requiring specific types of legal entity
- maximum % limit on foreign shareholding or the total value of investment

24

## **‘NONE’**

- When is ‘none’, ‘none’?.
- This refers to grey areas where policies and measures may overlap, and where market access limitations may override a ‘none’ in the national treatment column.
- This underlines the importance of involving all relevant ministries in making commitments.

25

## **Positive, Negative, Hybrid Lists**

- Use a positive/hybrid-list approach for lightly or non-regulated sectors and subsectors where a government wishes to maintain its policy space.
- Use a negative list only for well regulated sectors, such as Telecommunications and Financial Services, which tend to be covered in separate Annexes.

26

# Strategic Thinking on Negotiating Priorities

- Which service sectors do you want to develop?
  - At home:
  - For 'export' (foreign exchange-generating activities):
- Which sectors are fully liberalised in the 4 Modes?
- Which restrictions remain?
- How can you use Services negotiations to support economic and trade development?

## **ANNEX**

7. Presentation on ASEAN Framework Agreement on Services (AFAS) (Session 4)

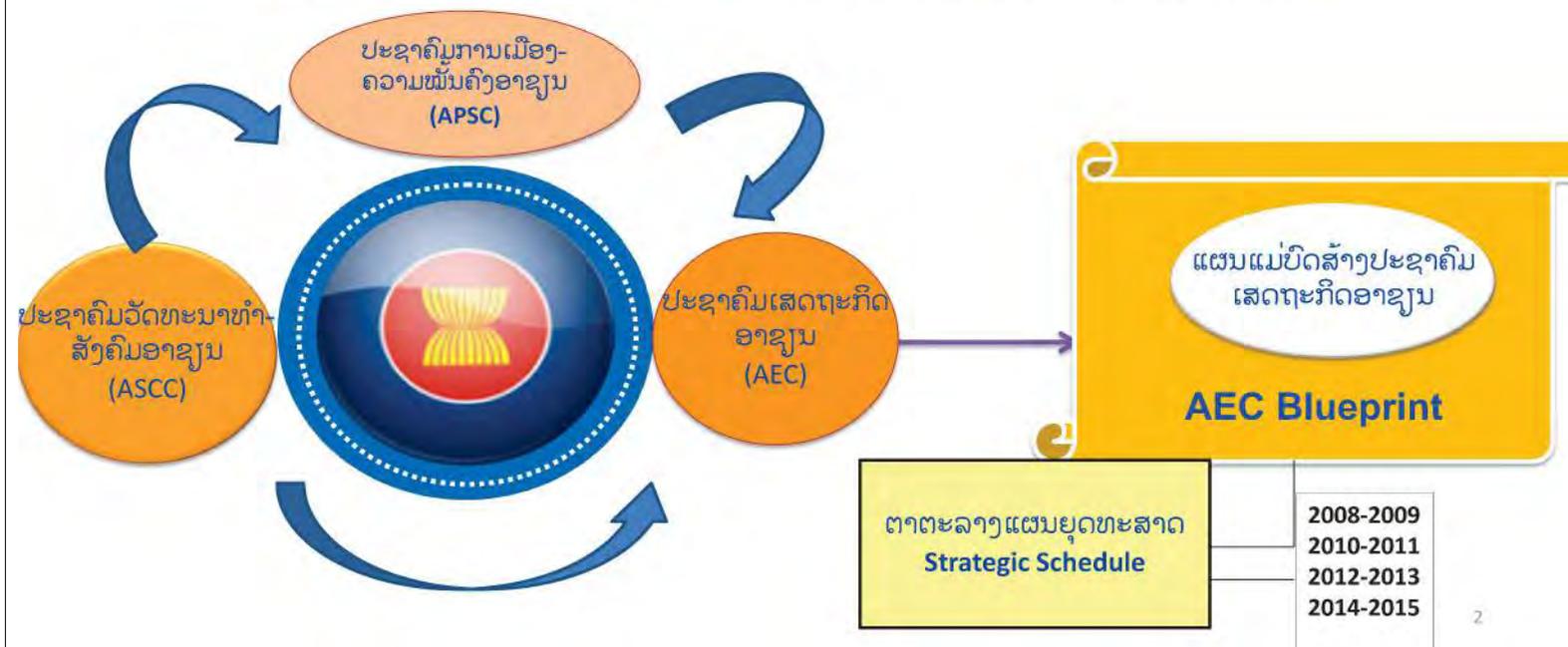
Dr. Souphaphone Saignaleuth

Investment Promotion Department, Ministry of Planning  
and Investment

# ການຄ້າດ້ານບໍລິການຂອງອາຊຽນ (ASEAN Trade in Services)

ພະແນກຮ່ວມມືການລົງທຶນສາກົນ  
ກົມສົ່ງເສີມການລົງທຶນ  
ກະຊວງແຜນການ ແລະ ການລົງທຶນ

## ປະຊາຄົມເສດຖະກິດອາຊຽນ (ASEAN Economic Community) 2015



ປະຊາຄົມເສດຖະກິດອາຊຽນ (AEC)

ຕາຕະລາງແຜນຍຸດທະສາດຂອງ AEC (2008-2015)



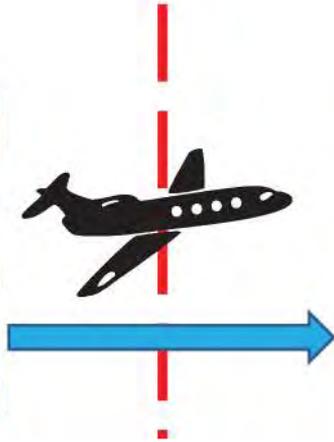


## Mode 2 : ການໃຊ້ບໍລິການຢູ່ຕ່າງປະເທດ (Consumption aboard)

ຜູ້ສະໜອງບໍລິການຢູ່ຕ່າງປະເທດ:  
ຕົວຢ່າງ: ການທ່ອງທ່ຽວ, ການສຶກສາ, ການປີນປົວ

ປະເທດ A

ຜູ້ຊົມໃຊ້



ປະເທດ B

ຜູ້ສະໜອງ



## Mode 3 : ການສ້າງຕັ້ງວິສາຫະກິດ (Commercial Presence)

“ການສະໜອງບໍລິການໂດຍການສ້າງຕັ້ງວິສາຫະກິດຢູ່ອີກປະເທດໜຶ່ງ”

- ໃນຮູບແບບ: ການສ້າງຕັ້ງສາຂາ, ລົງທຶນຮ່ວມ, ຫ້ອງການຜູ້ຕ່າງໜ້າ ແລະ ອື່ນໆ
- ຕົວຢ່າງ: ບໍລິສັດໂທລະຄົມ, ທະນາຄານຕ່າງປະເທດ....

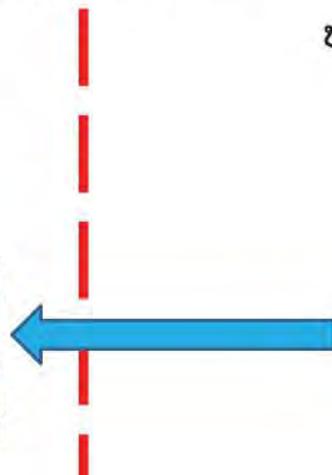
ປະເທດ A

ຜູ້ຊົມໃຊ້



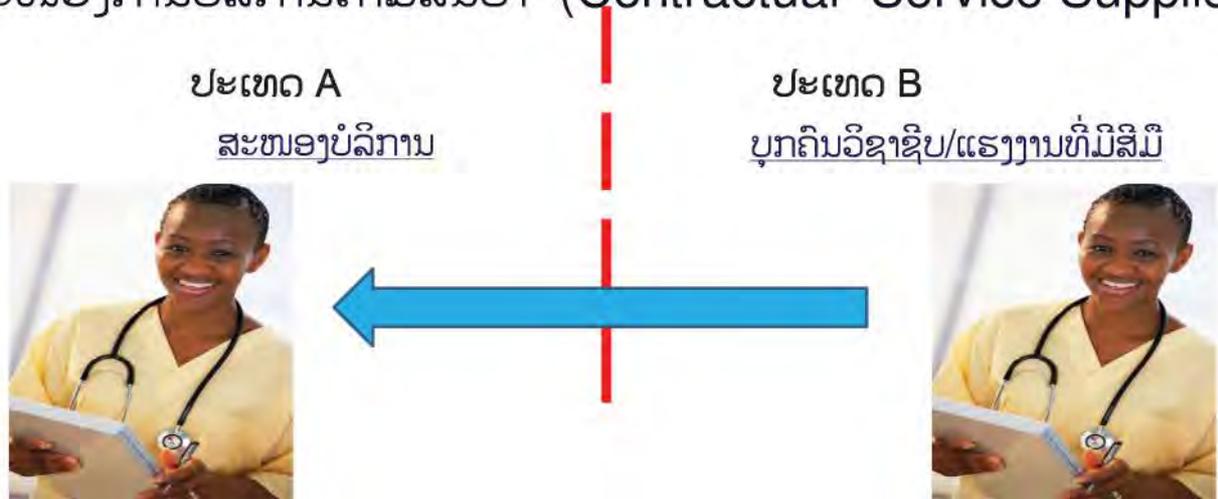
ປະເທດ B

ບໍລິສັດ



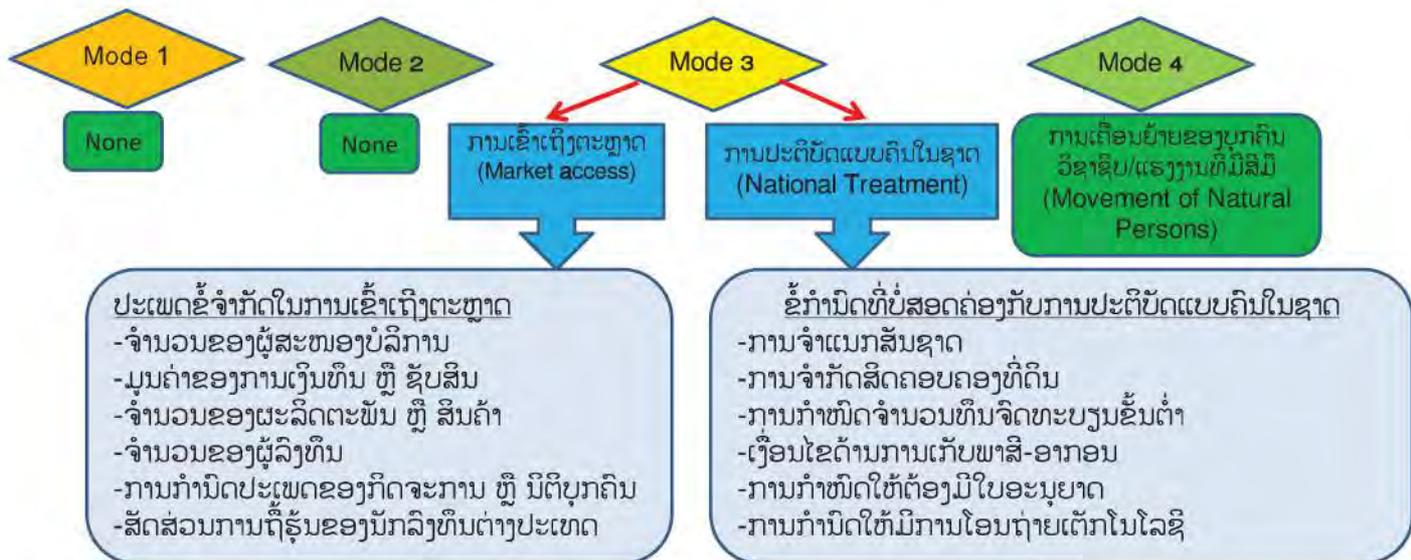
Mode 4: ການເຄື່ອນຍ້າຍຂອງບຸກຄົນວິຊາຊີບ/ແຮງງານທີ່ມີສິມີ  
(Movement of Natural Persons)

- ຜູ້ຢ້ຽມຢາມທີ່ມີຈຸດປະສົງທາງທຸລະກິດ (Business visitors)
- ຜູ້ຈັດການ, ຊ່ຽວຊານ, ວິຊາການ
- ຜູ້ສະໜອງການບໍລິການຕາມສັນຍາ (Contractual Service Suppliers)



ຈຸດປະສົງຫຼັກໃນການເປີດເສລີການບໍລິການອາຊຽນ

- ເພື່ອຫຼຸດຜ່ອນ ຫຼື ລົບລ້າງຂໍ້ຈຳກັດຕ່າງໆໃນການໃຫ້ບໍລິການຂອງ ຜູ້ສະໜອງການບໍລິການ. ຊຶ່ງປະກອບມີລາຍລະອຽດດັ່ງລຸ່ມນີ້:



## ຂະແໜງການບໍລິການທີ່ມີການເຈລະຈາເປີດເສລີໃນອາຊຽນ

1. ຂະແໜງການບໍລິການດ້ານທຸລະກິດ (Business Services)
2. ຂະແໜງການໂທລະຄົມມະນາຄົມ (Telecommunication Services)
3. ຂະແໜງການກໍ່ສ້າງ ແລະ ວິສະວະກຳ (Construction and Engineering)
4. ການບໍລິການຈໍລະຈອນສິນຄ້າ (Distribution Services)
5. ຂະແໜງການສຶກສາ (Education Services)
6. ຂະແໜງການສິ່ງແວດລ້ອມ (Environmental Services)
7. ຂະແໜງການເງິນ (Finance)
8. ຂະແໜງການສາທາລະນະສຸກ (Healthcare Services)
9. ຂະແໜງທ່ອງທ່ຽວ (Tourism Services)
10. ຂະແໜງການດ້ານວັດຖະນະທຳ ແລະ ກິລາ (Recreation, Culture, sport)
11. ຂະແໜງການຂົນສົ່ງ (Transportation Services)
12. ຂະແໜງການອື່ນໆ (Others).

(ຊຶ່ງໃນນີ້ປະກອບມີທັງໝົດ 128 ຂະແໜງການຍ່ອຍ)

## ເຄື່ອງມືໃນການເປີດເສລີການບໍລິການອາຊຽນ

- ແຜນແມ່ບົດອາຊຽນ ຊຶ່ງບັນດາປະເທດສະມາຊິກ ຈະຕ້ອງໄດ້ຈັດຕັ້ງປະຕິບັດຕາມພາຍໃນປີ 2015.
- ສັນຍາການເປີດເສລີດ້ານການບໍລິການອາຊຽນ (AFAS) ທີ່ລົງນາມໃນປີ 1995, ເປັນກົດລະບຽບຈັດຕັ້ງປະຕິບັດສໍາລັບປະເທດສະມາຊິກໃນການດໍາເນີນການເຈລະຈາເພື່ອກ້າວໄປສູ່ການເປີດເສລີການບໍລິການໃນອາຊຽນ.
- ຄະນະກຳມາທິການປະສານງານດ້ານການບໍລິການອາຊຽນ (Coordinating Committee on Services- CCS) ເປັນໜ່ວຍງານຊຶ່ງມີໜ້າທີ່ໃນການດໍາເນີນການເຈລະຈາ ເພື່ອເປີດເສລີໃນຂະແໜງການບໍລິການໂດຍສະເພາະ. ນອກຈາກນັ້ນຍັງມີໜ່ວຍງານທີ່ເຈລະຈາໃນຂະແໜງການສະເພາະທາງເຊັ່ນ:
  - ການຂົນສົ່ງທາງອາກາດ (Air Transport Working Group)
  - ການບໍລິການດ້ານການເງິນ (Financial, WCFSL)
  - ການບໍລິການຂົນສົ່ງ (Logistic)
  - ການບໍລິການດ້ານໂທລະຄົມມະນາຄົມ (Telecommunication services)

## ASEAN Framework Agreement on Services (AFAS)

**All AFAS rules are consistent with GATS  
Nearly all provisions missing from AFAS  
may be referred to GATS**

**The objective of AFAS is considered as a  
GATS plus principle.**

**Package of Schedule of Commitments  
under AFAS is similar to GATS  
Schedule.**

### ແນວທາງໃນການເປີດເສລີດ້ານການບໍລິການອາຊຽນ

- ຜູ້ສະໜອງບໍລິການໃນທຸກປະເທດສະມາຊິກ ສາມາດສະໜອງບໍລິການ ຫຼື ສ້າງຕັ້ງກິດຈະການໃນຂົງເຂດອາຊຽນໄດ້ຢ່າງສະດວກ, ໂດຍບໍ່ມີສິ່ງກົດຂວາງ.
- ລົບລ້າງສິ່ງກົດຂວາງໃນບັນດາຂະແໜງການບໍລິການອາຊຽນ ຊຶ່ງໄດ້ແບ່ງອອກເປັນກຸ່ມຕ່າງໆຊຶ່ງປະກອບມີ:
  - ❖ ຂະແໜງການບຸລິມະສິດ (PIS), 29 ຂະແໜງການຍ່ອຍ
    - ການບໍລິການຂົນສົ່ງທາງອາກາດ (Air Transport)
    - ການບໍລິການດ້ານ IT, (E-ASEAN)
    - ການບໍລິການດ້ານສຸຂະພາບ (Healthcare)
    - ການບໍລິການທ່ອງທ່ຽວ (Tourism)
  - ❖ ຂະແໜງການຂົນສົ່ງ (Logistic), 9 ຂະແໜງການຍ່ອຍ
  - ❖ ທຸກຂະແໜງການບໍລິການອື່ນໆທີ່ບໍ່ເປັນບຸລິມະສິດ (Non-PIS) 90 ຂະແໜງການຍ່ອຍ

## ເປົ້າໝາຍໃນການເປີດເສລີການບໍລິການໃນກຸ່ມຕ່າງໆ

ຂະແໜງການບຸລິມະສິດ (PIS)		
ສັດສ່ວນການຖືຮຸ້ນ	49%	70%
ພາຍໃນປີ	2008	2010-2015
ຂະແໜງອື່ນໆ (Non-PIS)		
ສັດສ່ວນການຖືຮຸ້ນ	51%	70%
ພາຍໃນປີ	2010	2015
ຂະແໜງການຂົນສົ່ງ (LOG)		
ສັດສ່ວນການຖືຮຸ້ນ	51%	70%
ພາຍໃນປີ	2010	2013-2015

- ຄຽງຄູ່ກັບການເຈລະຈາດ້ານການບໍລິການແລ້ວຍັງມີການເຈລະຈາສັ້ນຍາການເຄື່ອນຍ້າຍຂອງ 7 ວິຊາຊີບອາຊຽນໃນຂະແໜງການຕ່າງໆທີ່ເອີ້ນວ່າ: ການຮັບຮູ້ເຊິ່ງກັນ ແລະ ກັນດ້ານວິຊາຊີບອາຊຽນ (MRAs) ເພື່ອອໍານວຍຄວາມສະດວກໃນການປະກອບວິຊາອາຊີບຫຼາຍຂຶ້ນກວ່າເກົ່າ.
- MRA ມີຄວາມສໍາຄັນໃນການເຊື່ອມໂຍງອາຊຽນກ່ຽວກັບການຄ້າດ້ານການບໍລິການ, ເປັນເຄື່ອງມືທີ່ໃຊ້ເພື່ອອໍານວຍຄວາມສະດວກໃຫ້ແກ່ນັກວິຊາຊີບອາຊຽນໃນການຂໍໃບອະນຸຍາດ, ໃບຮັບຮອງວຸດທິການສຶກສາ ຫຼື ຄວາມຮູ້ທາງດ້ານວິຊາຊີບ.
- ນັກວິຊາຊີບໃນອາຊຽນສາມາດຈົດທະບຽນ ຫຼື ຂໍໃບອະນຸຍາດປະກອບວິຊາຊີບໃນປະເທດອາຊຽນອື່ນໄດ້ ແຕ່ຕ້ອງປະຕິບັດຕາມກົດລະບຽບພາຍໃນຂອງປະເທດນັ້ນ.

7 MRAs ປະກອບມີດັ່ງລຸ່ມນີ້:

- ວິຊາຊີບການບໍລິການດ້ານວິສາວະກຳ (MRA on Engineering Services), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 09/12/2005.
- ວິຊາຊີບການບໍລິການດ້ານພະຍາບານ (MRA on Nursing Services), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 08/12/2006.
- ວິຊາຊີບການບໍລິການດ້ານສະຖາປະນິກ (MRA on Architectural Services), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 19/11/2007.
- ວິຊາຊີບການບໍລິການດ້ານການສຳຫຼວດ (MRA on Surveying), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 19/11/2007.
- ວິຊາຊີບການບໍລິການດ້ານການບັນຊີ (MRA on Accountancy services), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 26/02/2009.
- ວິຊາຊີບການບໍລິການດ້ານການແພດ (MRA on Medical Practitioners), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 26/02/2009.
- ວິຊາຊີບການບໍລິການດ້ານທັນຕະແພດ (MRA on Dental Practitioners), ຊຶ່ງລົງນາມກ່ຽວກັບຫຼັກການ ແລະ ກອບເຈລະຈາໃນວັນທີ 26/02/2009.

ສຳລັບ ສປປ ລາວ ແມ່ນໄດ້ລົງນາມໃນທຸກສັນຍາຂ້າງເທິງ ແລະ ປະຈຸບັນ ສປປ ລາວ ກໍ່ຄືຫຼາຍປະເທດສະມາຊິກອາຊຽນ ກຳລັງດຳເນີນການກຽມຄວາມພ້ອມທາງດ້ານສະຖາບັນ ແລະ ລະບົບກົດໝາຍເພື່ອຮອງຮັບກາ ນຈັດຕັ້ງປະຕິບັດບັນດາ 07 ສັນຍາດັ່ງກ່າວ ໃຫ້ເປັນຮູບປະທຳ.

## ຂໍ້ຫຍຸ້ງຍາກ ແລະ ສິ່ງທ້າທາຍ

- ຂາດລະບຽບການຄຸ້ມຄອງ
- ຄວາມຮັບຮູ້ຂອງຂະແໜງການທີ່ກ່ຽວຂ້ອງຕໍ່ກັບວຽກງານການເປີດການບໍລິການ ຍັງບໍ່ຫຼາຍເທົ່າທີ່ຄວນ
- ຂາດງົບປະມານໃນການເຜີຍແຜ່ ແລະ ເພີ່ມຂີດຄວາມສາມາດໃຫ້ກັບພະນັກງານ ແລະ ນັກທຸລະກິດໃນ ສປປ ລາວ.
- ສິ່ງທ້າທາຍໃນການຍື່ນຂໍ້ຜູກພັນພູດທີ 10 (AFAS 10) ທີ່ກຳນົດວ່າຕ້ອງເປີດ 128 ຂະແໜງການ ໃນນັ້ນຕ່າງປະເທດສາມາດຖືກຮັບໄດ້ຢ່າງຕໍ່າ 70%. ຊຶ່ງເປັນສິ່ງທ້າທາຍສຳລັບ ສປປ ລາວ ໃນການສ້າງລະບຽບການຄຸ້ມຄອງ, ບັນດາຂະ ແໜງການທີ່ຈະມີການເປີດ ຫຼື ຢາກສະຫງວນໄວ້.

## ແຜນຕໍ່ໜ້າ ແລະ ຂໍ້ສະເໜີ:

- ກະກຽມຂໍ້ຜູກພັນພູດທີ 10 ທີ່ເປັນພູດສຸດທ້າຍ.
- ຈັດກອງປະຊຸມປຶກສາຫາລືກັບຂະແໜງການກ່ຽວຂ້ອງໃນການເປີດເສລີຂະແໜງການບໍລິການເພີ່ມ, ແລະ ສ້າງລະບຽບການຄຸ້ມຄອງເພື່ອປົກປ້ອງນັກທຸລະກິດພາຍໃນ.
- ຈັດການເຜີຍແຜ່ໃຫ້ນັກທຸລະກິດລາວຮັບຮູ້ ແລະ ກຽມຄວາມພ້ອມເພື່ອເຂົ້າສູ່ປະຊາຄົມອາຊຽນໃນປີ 2015, ແລະ ສາມາດຍາດແຍ່ງເອົາຜົນປະໂຫຍດຈາກການເປີດເສລີດັ່ງໃຫ້ໄດ້ຫຼາຍທີ່ສຸດ.
- ສະເໜີໃຫ້ທຸກຂະແໜງການກ່ຽວຂ້ອງກວດຄືນຕາຕະລາງຂໍ້ຜູກພັນ ຂອງ ສປປ ລາວ ເພື່ອຮັບປະກັນຄວາມຖືກຕ້ອງຕາມລະບຽບການໃນຂະແໜງການຂອງຕົນ.
- ເຈລະຈາຮ່າງສັນຍາການຄ້າດ້ານການບໍລິການອາຊຽນ (ASEAN Trade in Services agreement (ATISA) ທີ່ຈະໃຊ້ແທນສັນຍາ AFAS ຫຼງໃນປີ 2015.

# ຂໍຂອບໃຈ!

ຂໍ້ມູນເພີ່ມເຕີມ: <http://www.aseansec.org/>  
<http://www.wto.org>

ພະແນກຮ່ວມມືການລົງທຶນສາກົນ

ໂທ: 218 3777, 219 568

ແຟັກສ໌: 215 491

## **ANNEX**

8. Presentation on ASEAN Trade in Services Agreement  
(ATISA)  
(Session 6)

Dr. Souphaphone Saignaleuth

Investment Promotion Department, Ministry of Planning  
and Investment

## ການເລະຈາຮ່າງສັນຍາການຄ້າດ້ານການ ບໍລິການອາຊຽນ

(ASEAN Trade in Services agreement  
(ATISA))

ພະແນກຮ່ວມມືການລົງທຶນສາກົນ  
ກົມສົ່ງເສີມການລົງທຶນ  
ກະຊວງແຜນການ ແລະ ການລົງທຶນ

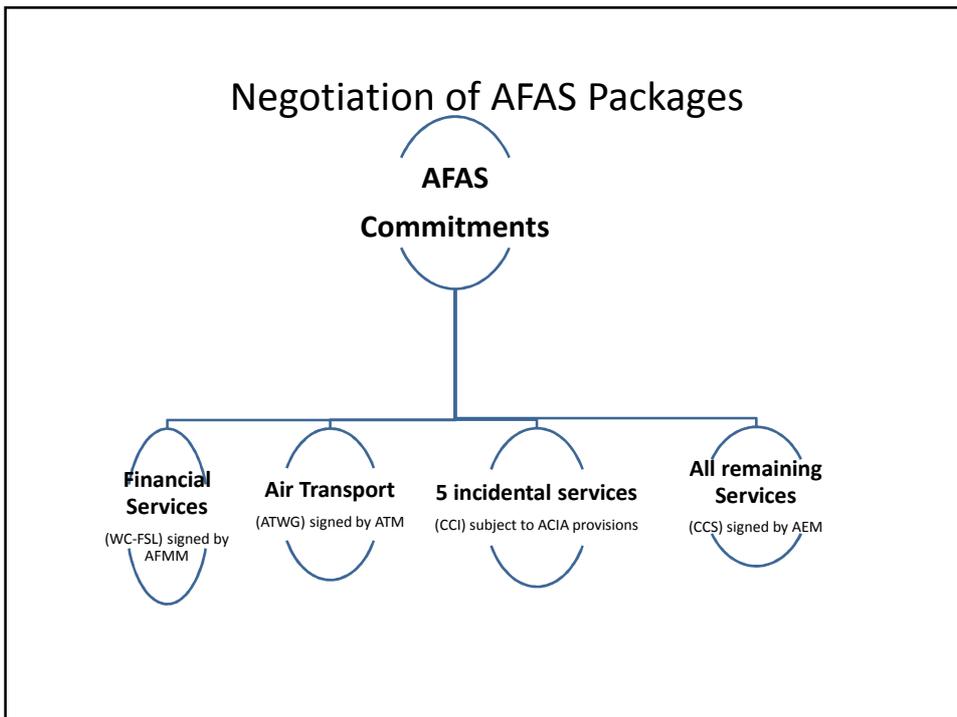
### ການເລະຈາຮ່າງສັນຍາການຄ້າດ້ານການບໍລິການອາຊຽນ (ASEAN Trade in Services agreement (ATISA))

- ສັນຍາ AFAS ໄດ້ມີການລົງນາມໃນປີ 1995.
- ຫຼັງຈາກນັ້ນສັນຍາອາຊຽນບວກຫຼາຍສະບັບໄດ້ຖືກລົງ  
ນາມ.
- ການປ່ຽນແປງທີ່ສໍາຄັນເກີດຂຶ້ນໄປຕາມສະພາບ  
ເສດຖະກິດຂອງອາຊຽນ ແລະ ຂອງໂລກ.
- ສັນຍາອາຊຽນທີ່ກ່ຽວຂ້ອງກັບສິນຄ້າ ແລະ ການລົງທຶນ ໄດ້  
ຮັບການແກ້ໄຂ ແລະ ປັບປຸງ ເພື່ອໃຫ້ຮັດກຸມ ແລະ ຍົກ  
ລະດັບຂຶ້ນ ໂດຍອີງຕາມການຈັດຕັ້ງປະຕິບັດທີ່ດີທີ່ສຸດ  
ຂອງສາກົນ.
- ສັນຍາການຄ້າດ້ານການບໍລິການອາຊຽນ (ATISA) ທີ່  
ຮັດກຸມຂຶ້ນຈະປ່ຽນແທນສັນຍາການເປີດເສລີຂະແໜງບໍ  
ລິການອາຊຽນ AFAS ທັງຫມົດ.

ມາດຕາ XIV (1) ຂອງສັນຍາ AFAS ທີ່ສະເໜີວ່າ  
 ບັນດາເງື່ອນໄຂ, ຄໍານິຍາມ ແລະ ບັນດາຂໍ້ກຳ  
 ນົດອື່ນໆຂອງສັນຍາທົ່ວໄປກ່ຽວກັບການຄ້າດ້ານ  
 ການບໍລິການ (GATS) ຈະຖືກນຳມາອ້າງອີງ ແລະ  
 ນຳໃຊ້ຕໍ່ກັບບັນຫາທີ່ເກີດຂຶ້ນພາຍໃຕ້ສັນຍາ AFAS  
 ທີ່ບໍ່ມີໃນຂໍ້ກຳນົດສະເພາະ ຈະຖືກກຳນົດໃນ  
 ມາດຕານີ ເຊິ່ງປະກອບມີຂໍ້ກຳນົດດັ່ງຕໍ່ໄປນີ້:

- ການປະຕິບັດແບບຊາດທີ່ໄດ້ຮັບອະນຸເຄາະຍິງ (MFN)
- ຄວາມໂປ່ງໃສ
- ລະບຽບການພາຍໃນ
- ນະໂຍບາຍຜູກຂາດ
- ການປະຕິບັດທຸລະກິດ
- ການສໍາລະ ແລະ ໂອນເງິນ
- ບ້ອງກັນດຸນການສໍາລະເງິນ
- ຂໍ້ຍົກເວັ້ນການທົ່ວໄປ ແລະ ຂໍ້ຍົກເວັ້ນດ້ານຄວາມປອດໄພ
- ເຂົ້າເຖິງຕະຫຼາດ, ການປະຕິບັດແບບຄົນໃນຊາດ ແລະ ບັນດາຂໍ້ຜູກພັນເພີ່ມເຕີມ
- ຄວາມຄືບໜ້າຂອງການເປີດເສລີ
- ເອກະສານຊ້ອນທ້າຍ GATS (ລວມທັງເອກະສານຊ້ອນຂອງການຂົນສົ່ງທາງອາກາດ, ການເຈລະຈາກ່ຽວກັບການຂົນສົ່ງທາງທະເລ, ໄທລະຄົມ ແລະ ບໍລິການທາງການເງິນ)

ພັນທະຂອງສັນຍາ AFAS ເກືອບທັງໝົດແມ່ນມາຈາກ GATS



**ການໂອນຂໍ້ຜູກພັນທາງໝົດຂອງສັນຍາ AFAS ໄປ  
ສັນຍາ ATISA**

- ສັນຍາທັງໝົດທີ່ຕິດພັນກັບການເປີດເສລີການ  
ບໍລິການ ຈຳເປັນຕ້ອງໄດ້ລວມເຂົ້າໃນສັນຍາ  
ATISA, ໂດຍສະເພາະ ບັນດາສັນຍາທີ່ກົງກັບ  
ສັນຍາ AFAS.
- ສັນຍາການຂົນສົ່ງທາງອາກາດ ແລະ ການ  
ຂົນສົ່ງທາງທະເລ ຈຳເປັນຕ້ອງໄດ້ເອົາມາລວມ  
ເຂົ້າໃນ ສັນຍາ ATISA ບໍ?

## ການເລະຈາໃນບັດຈຸບັນສູ່ລັບບັນດາ ເອກະສານຊ້ອນທ້າຍຂອງສັນຍາ ATISA

- ສຳລັບການບໍລິການດ້ານການເງິນ → ກຸ່ມເລະຈາການເປີດບໍລິການດ້ານການເງິນ ຕົກລົງເຫັນດີໃຫ້ມີພາກກ່ຽວກັບການບໍລິການທາງການເງິນ (Chapter on Financial Services) ແຍກຕ່າງຫາກພາຍໃຕ້ສັນຍາ ATISA ທີ່ຈະເລະຈາໂດຍກຸ່ມເລະຈາການເປີດບໍລິການດ້ານການເງິນ.
- ສຳລັບການບໍລິການໂທລະຄົມ → ຍັງຈະເປັນເອກະສານຊ້ອນທ້າຍສຳລັບການບໍລິການໂທລະຄົມນາຄົມ (Annex on Telecommunication Services) ພາຍໃຕ້ສັນຍາ ATISA ຊຶ່ງຈະຖືກເລະຈາໂດຍກຸ່ມເລະຈາການເປີດບໍລິການດ້ານໂທລະຄົມ ທີ່ຢູ່ພາຍໃຕ້ ຄະນະກຳມາທິການປະສານງານດ້ານການບໍລິການ (CCS).
- ສະນັ້ນ ທາງ CCS ກຳລັງສະເໜີຕໍ່ກຸ່ມເລະຈາການເປີດບໍລິການຊົນສົ່ງທາງອາກາດ ແລະ ການຂົນສົ່ງທາງທະເລ ຕໍ່ການນຳໃຊ້ວິທີການທີ່ຄ້າຍຄືກັນ ທີ່ເປັນເອກະສານຊ້ອນທ້າຍ (Annex) ສຳລັບການບໍລິການຂົນສົ່ງທາງອາກາດ ແລະ ທາງທະເລ.

## ຄວາມແຕກຕ່າງລະຫວ່າງສັນຍາ AFAS ແລະ ATISA

### AFAS

- ສຳລັບບັນດາຂໍ້ກຳນົດ ແລະ ຄຳນິຍາມແມ່ນມາຈາກສັນຍາ GATS ແລະ ຂໍ້ກຳນົດອື່ນໆທີ່ບັນອນໃນສັນຍາ AFAS. (Article XIV : Final Provision, para 1)
- ການສ້າງຕາຕະລາງຂໍ້ຜູກພັນແມ່ນນຳໃຊ້ຮູບແບບຂອງສັນຍາ GATS (Positive listing)

### ATISA

- ຂໍ້ຕົກລົງ Standalone ທີ່ລວມເອົາສັນຍາ GATS, ອາຊຽນ + 1 ເຂດການຄ້າເສລີຕ່າງໆ ແລະ ການພັດທະນາໃຫມ່ໆ
- ວິທີການປະກອບເອກະສານຊ້ອນຂອງ GATS (ທີ່ສະບັບປັບປຸງຂອງ GATS) ເຂົ້າໃນ ສັນຍາ ATISA. ແລະ
- ວິທີສ້າງຕາຕະລາງຂໍ້ຜູກພັນ ກຳລັງຢູ່ໃນຂັ້ນຕອນຂອງການປຸກສາຫາລື ເຊິ່ງມັນອາດຈະແຕກຕ່າງກັບ AFAS.

**ຮ່າງເນື້ອໃນສັນຍາ ATISA ສະບັບຫຼ້າສຸດມີ 10 ພຽກ (Chapters) ແລະ 42 ມາດຕາ (Articles), ແລະທັງໝົດນີ້ແມ່ນກຳລັງຢູ່ໃນຂັ້ນຕອນຂອງການເຈລະຈາ.**

**- 10 ພາກ (Chapters) ປະກອບມີ:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>i. ຂໍ້ກຳນົດທົ່ວໄປ (ຈຸດປະສົງ ແລະ ຂອບເຂດຂອງ ສັນຍາ)</li> <li>ii. ການກຳນົດພັນທະ ແລະ ລະບຽບການ (MFN, MA, NT)</li> <li>iii. ການກຳນົດຮູບແບບ (Mode 1,2,3)</li> <li>iv. ການຄຸ້ມຄອງ (ຄວາມໂປ່ງໃສ, ລະບຽບການພາຍໃນປະເທດ, ການຮັບຮູ້ ແລະອື່ນໆ)</li> <li>v. ການສ້າງຕາຕະຕາງຂໍ້ຜູກພັນ</li> </ul> | <ul style="list-style-type: none"> <li>vi. ກິດຈະການຂ້າມຂະແໜງການ (ການສະ ໜອງແບບລະບົບຕ່ອງໂສ້, e-Commerce, ການບໍລິການດ້ານວິຊາຊີບ)</li> <li>vii. ການບໍລິການດ້ານການເງິນ</li> <li>viii. ການອຳນວຍຄວາມສະດວກ ແລະ ການຮ່ວມມື (ເພີ່ມການມີສ່ວນຮ່ວມຂອງ SMEs, ການຮ່ວມມືທາງດ້ານການດຳເນີນທຸລະກິດ)</li> <li>ix. ຂໍ້ກຳນົດອື່ນໆ (ກຳສ້າລະ ແລະ ການໂອນ, ນະໂຍບາຍຜູກຂາດ, ບ້ອງກັນດຸນການສ້າລະເງິນ ແລະ ຂໍ້ຍົກເວນທົ່ວໄປ ແລະ ອື່ນໆ)</li> <li>x. ຂໍ້ກຳນົດສຸດທ້າຍ</li> </ul> |
|---|---|

- Currently there are 2 Annexes being negotiated under ATISA:
  1. Annex on **Financial Services** (negotiated separately by WC-FSL)
  2. Annex on **Telecommunication Services** (negotiated by TISSWG under CCS)
  
- The **platform for future negotiations** is not yet decided. One option is to maintain the current arrangements.
  
- **Mechanism to schedule future commitments** under ATISA is also not yet decided. Similar to the above point, one option is to maintain the current practice.

### Updates on ATISA negotiations

1. Should there be annexes on Air Transport and Maritime Transport under ATISA?
2. If so, how the annexes should be? What areas should they cover?
3. Should ATISA include the elements covered under ASEAN Single Aviation Market (ASAM) and ASEAN Single Shipping Market (ASSM)?
4. Are there any other elements need to be included in ATISA?
5. What would be the appropriate platform for future negotiations and mechanism to incorporate future commitments.

### Indicative List of Issue to be discussed

**ຂໍຂອບໃຈ!**

**ຂໍ້ມູນເພີ່ມເຕີມ:**

<http://www.aseansec.org/>

<http://www.wto.org>

**ພະແນກຮ່ວມມືການລົງທຶນສາກົນ**

**ໂທ: 218 377, 219 568**

**ແຟັກສ໌: 215 491**

## **ANNEX**

9. Presentation on Regional Comprehensive Economic Partnership (RCEP) Agreement Negotiations (Session 7)

Onida Vinavong

Deputy Director Trade in Services Division, Foreign Trade Policy Department, Ministry of Industry and Commerce

ການເຈລະຈາພາກພື້ນຮອບດ້ານ  
Regional Comprehensive Economic Partnership  
(RCEP)

ໂດຍ: ໂອນິດາ ວິນາວົງ  
ຮອງຫົວໜ້າພະແນກການຄ້າດ້ານບໍລິການ  
ກົມນະໂຍບາຍການຄ້າຕ່າງປະເທດ  
ກະຊວງອຸດສາຫະກຳ ແລະ ການຄ້າ

## ເນື້ອໃນ

- RCEP ໂດຍຫຍໍ້
- ຄວາມຄືບໜ້າຂອງການເຈລະຈາ
- ສາຍພົວພັນລະຫວ່າງ RCEP ແລະ ການເຈລະຈາຂອບອື່ນ

- ເລີ່ມຈາກຜູ້ນຳ 16 ປະເທດ ເຫັນດີໃຫ້ມີການເຈລະຈາ RCEP ໃນເດືອນ ຕຸລາ 2012
- 16 ປະເທດທີ່ເຂົ້າຮ່ວມ: 10 ສະມາຊິກອາຊຽນ ແລະ 6 ປະເທດຄູ່ຮ່ວມເຈລະຈາ (ອົດສະຕາລີ, ສປ. ຈີນ, ອິນເດຍ, ອີບຸ່ນ, ສ. ເກົາຫຼີແລະ ນິວຊີແລນ)
- ກວມເອົາການເຈລະຈາດ້ານສິນຄ້າ, ການບໍລິການ ແລະ ການລົງທຶນ, ແຫຼ່ງກຳເນີດສິນຄ້າ, ການຮ່ວມມືທາງດ້ານເສດຖະກິດ ແລະ ເຕັກນິກວິຊາການ, ວຽກງານການແຂ່ງຂັນການຄ້າ, ຊັບສິນທາງບັນຍາ, ສຸຂານາໄມ-ສຸຂານາໄມພືດ ແລະ ພາສີ.
- ອາດວ່າຈະໃຫ້ສຳເລັດໃນປີ 2015:

## ຄວາມຄືບໜ້າຂອງການເຈລະຈາ

- ໄດ້ຜ່ານມາແລ້ວ 7 ຮອບ ແລະ ຮອບທີ 8 ຈະຈັດຂຶ້ນທີ່ກຽວໂຕ, ອີບຸ່ນ ໃນເດືອນມິຖຸນານີ.
- ຍັງຢູ່ໃນຂັ້ນຕອນການເຈລະຈາວິທີການສ້າງຂໍ້ຜູກມັດການຄ້າດ້ານບໍລິການ
- ເຈລະຈາ ກ່ຽວກັບອົງປະກອບຂອງເນື້ອໃນສັນຍາການຄ້າ

## ສາຍພົວພັນລະຫວ່າງ RCEP ແລະ ການເຈລະຈາ

### ຂອບອື່ນ

- ຕາມຫຼັກການລວມແລ້ວ ການເປີດຂະແໜງບໍລິການ ພາຍໃນອາຊຽນ ແມ່ນຕ້ອງມີຄວາມກວ້າງ ແລະ ເລິກກວ່າເປີດໃຫ້ປະເທດອື່ນ.
- ສະນັ້ນ, ການສະເໜີເປີດຂອງສະມາຊິກອາຊຽນໃນ ຂອບ RCEP ແລະ ອື່ນໆ ຄວນຈະໜ້ອຍກວ່າໃນ AFAS.

ສົນໃຈຂໍ້ມູນເພີ່ມເຕີມ:

ພະແນກການຄ້າດ້ານບໍລິການ

ກົມນະໂຍບາຍການຄ້າຕ່າງປະເທດ

ໂທ/ແຟກ: 450066 ວັບໂຊ:

<http://www.laoftpd.com/>

## **ANNEX**

### **10. Presentation on Professional Services in Lao PDR (Session 9)**

**Andrea Spear**

**Based on a presentation by Santisouk Phounesavath**

## LDC Services: Geneva Practitioners Seminar Series: “Making Sense of GATS and Applying Good Practices in Services Negotiations”

### Seminar 2: “Key Sectoral Issues and Domestic Regulation”

**Santisouk PHOUNESAVATH**

**“Trade in Professional Services: Experiences from Lao PDR”**

**WTO Building, Room B**

**26 February 2015**



2

## Outlines

1. Overview of Professional Services in Lao PDR
2. Commitments under WTO/ASEAN
3. Issues and Challenges
4. The way Forward

## 1. Overview Professional Services in Lao PDR

- ✓ Services are an important part of the process of economic diversification and development
  - Services accounted for a quarter of all trade & around 37% of GDP.
  - Previously, services sectors - dominated by public sector supply in focused areas: transportation, storage, communication and financial services.
  - Recently, tourism has grown as a source of export revenue and market-oriented reforms have given an impetus to new areas of service activity such as ICT, construction, distribution, education, environment, insurance, banking and tourism.

## 1. Overview Professional Services in Lao PDR

- ✓ Crucial to human capital formation
- ✓ Externality
- ✓ Improving productivity and competitiveness of economy
- ✓ Professional includes:
  - law, accounting, engineering, surveying, veterinary services, architecture and the healthcare professions
- ✓ Presentation Focused:
  - Legal,
  - accountancy and
  - engineering

## 1. Overview Professional Services in Lao PDR

- ✓ Legal services:
  - Essential for proper legal documentation, interpretation and representation to ensure fairness and transparency in judicial decision making, commercial transactions and investment activities.
- ✓ Accounting services:
  - Quality – ensure prudential, transparent, credible and law abiding financial transaction
- ✓ Engineering services:
  - Essential for efficient and technical sustainability of several economic activities e.g. construction, manufacturing, mining and other resource development.
- ✓ Lao PDR – considerable shortage of qualified professionals in all three services – more in legal and accounting.
  - Due to shortcoming academic facilities, institutional arrangement for professional training and development, especially, accountancy and engineering subsectors.

## 1. Overview Professional Services in Lao PDR

- ✓ Trade in Professional services in Lao PDR is still minimal in terms of export (no data)
- ✓ Lao PDR has imported many professional services mainly e.g. architects, construction engineering. This includes informal architects and engineers from neighbouring countries.
- ✓ Many legal and accounting services are provided through foreign firms

## 2. Commitments under WTO/ASEAN

- ✓ These three subsectors are under the AFAS and GATS
  - Under AFAS, no commitment at all in legal services; e.g. but GATS, more liberal commitments in all three services than others.
  - e.g. Accounting Mode 3 “unbound” for 7 years after accession
  
- ✓ ASEAN Agreement on The Movement of Natural Persons in 2012

**Specific Commitments and Horizontal commitments under GATS and AFAS are provided in the Attachment 1 & 2, respectively**

## 3. Issues and challenges

- ✓ Capacity of institutions related to professional services
- ✓ Domestic Regulations
  - Law on Lawyer
  - Accounting Law
- ✓ Mutual Recognition Agreement
  - Recognizing that market access commitments may not, in fact, be sufficient to give any service supplier the right to provide services in a regulated market; particularly in professional service sectors

### 3. Issues and challenges

#### ✓ Mutual Recognition Agreement under ASEAN

*“Each Member State **may** recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. Such recognition **may** be based upon an agreement or arrangement with the Member State concerned or **may** be accorded autonomously.”*

### 3. Issues and challenges

#### ✓ To date, the ASEAN member countries concluded seven MRAs :

- MRA on Engineering Services - 9 December 2005;
- MRA on Nursing Services - 8 December 2006;
- MRA on Architectural Services - 19 November 2007;
- Framework Arrangement for the Mutual Recognition of Surveying Qualifications - 19 November 2007;
- MRA on Medical Practitioners - 26 February 2009;
- MRA on Dental Practitioners - 26 February 2009;
- MRA Framework on Accountancy Services - 26 February 2009.

### 3. Issues and challenges

- ✓ MRAs do not come merely from the mobility of individuals.
- ✓ All of the agreements also stress the objectives of exchanging information and promoting standards and best practice, and a number of the agreements go further in their ambition.

E.g.

- The medical practice, dentistry and nursing MRAs all flag the possibility that MRAs could provide opportunities for professional capacity building and training;
- The architectural services agreement contains the objective of promoting collaborative research and the transfer of technology.

### 3. Issues and challenges

- ✓ Common constraints across all of the MRA sectors:
  - A lack of local experience in regulating,
  - A lack of familiarity with the role of the regulated professions,
  - A lack of capacity and systems to manage, monitor and enforce regulation in the various MRA professions,
  - Further work required to strengthen Lao national professional qualifications.

### 3. Issues and challenges

- ✓ All responsible line ministries are aware of the MRAs and appear to be well versed in their obligations under them;
- ✓ All have been undertaking basic preparatory work in the form of establishing an improved legislative framework, even if this is not yet in all cases complete.
- ✓ All are aware of the need to create a Professional Regulatory Authority (PRA) structure to regulate the profession for which they are responsible.
  - Plans are at various stages of advancement but in general, remain sketchy, with most needing to draft detailed regulations to implement the high level of regulation introduced by legislation.

### 4. The way forward

- ✓ Strengthening the coordination among relevant ministries to strategize the enhancement of qualification of locals
- ✓ Strengthening capacity building for institutions in terms of qualification enhancement through trainings and curriculum in the University/higher education.
- ✓ Development of domestic regulations, including qualification, certification & accreditation

Thank you for your attention !



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## **ANNEX**

### **11. Presentation on Tourism and Recreational Services under GATS (Session 9)**

Andrea Spear

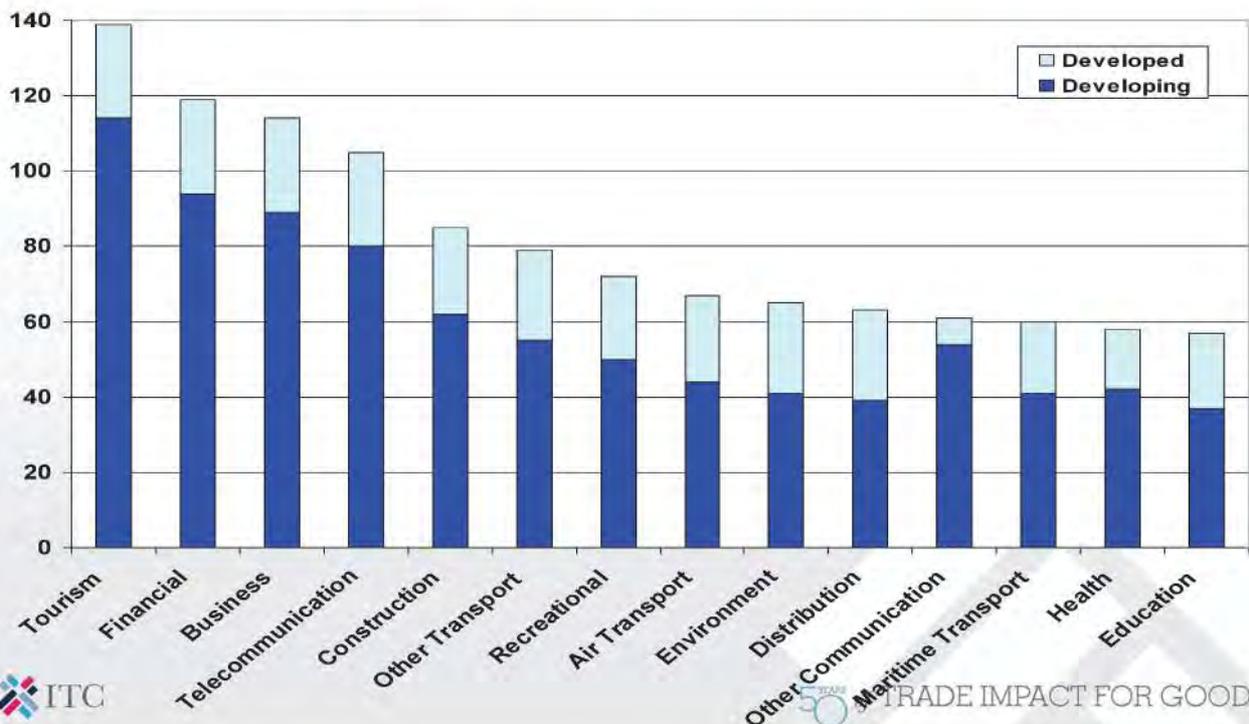
## LDC Services: Geneva Practitioners Seminar Series: “Making Sense of GATS and Applying Good Practices in Services Negotiations”

### Seminar 3: “Key Sectoral Rules and Negotiating Issues”

Dale Honeck, WTO Trade in Services Division  
 Tourism Services  
 WTO Building, Room B  
 27 February 2015



## Tourism Sector has Greatest Number of GATS Commitments





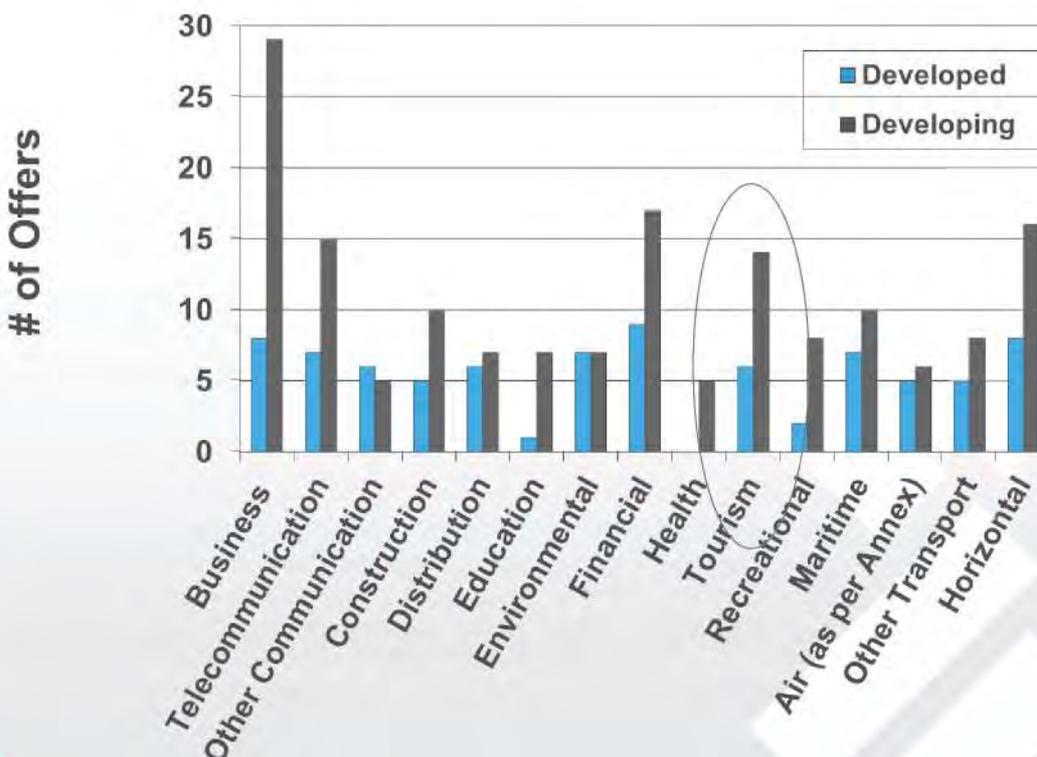
# Overview of LDC Specific commitments



Source: WTO LDC sector distribution  
ITC

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## New GATS Offers for Tourism



ITC

50 years of TRADE IMPACT FOR GOOD

## **GATS Tourism Definition Limited to Three Main Sectors**

Hotels and restaurants

Travel agencies and tour operators

Tourist guides

## **Is Tourism Being Neglected in the Services Negotiations?**

Most recent formal GATS tourism document dates back to 2004 (TN/S/W/23).

New Offers in tourism are primarily modest improvements on existing commitments.

Plurilateral negotiations for tourism, and a “Tourism Friends Group,” were late to be organized.

## Potential LDC Tourism Issues in the Services Negotiations?

- Linkages between GATS tourism commitments and poverty alleviation;
- Role of GATS commitments in promoting sustainable tourism development;
- Tourism checklist / model schedule approaches for Requests and Offers;
- Examination of Offers on the basis of an expanded tourism classification;

## Potential LDC Tourism Issues in the Services Negotiations? (cont.)

- Mode 4 aspects, including the recognition of tourism professional qualifications;
- Linkages with air transport;
- Technical standards in tourism;
- Travel warnings / Possibility of scheduling Additional Commitments.

# Thank you!

[dale.honeck@wto.org](mailto:dale.honeck@wto.org)

9



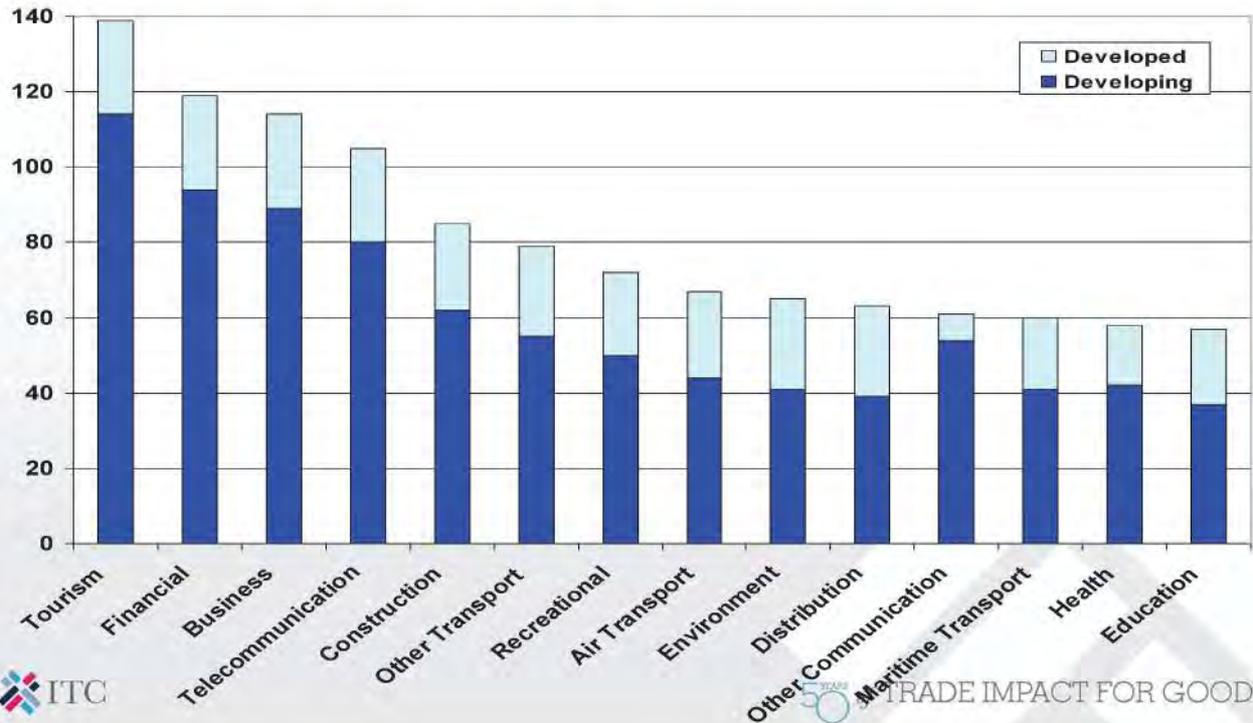
## LDC Services: Geneva Practitioners Seminar Series: “Making Sense of GATS and Applying Good Practices in Services Negotiations”

### Seminar 3: “Key Sectoral Rules and Negotiating Issues”

Dale Honeck, WTO Trade in Services Division  
Recreation, Entertainment and Culture-related Services  
WTO Building, Room B  
27 February 2015



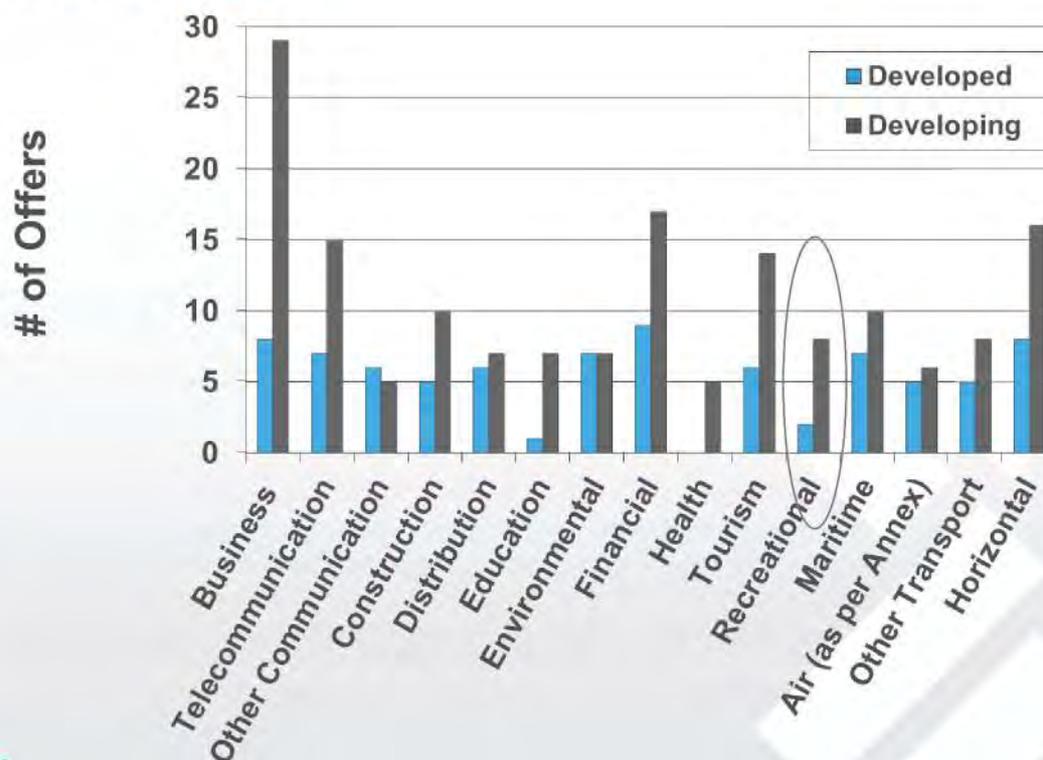
# Recreation Sector has Average Number of GATS Commitments



## Overview of LDC Specific commitments



# New GATS Offers for Recreational Services



## GATS Recreational Services Definition Includes Four Main Sectors

Entertainment services (including theatre, live bands and circus services)

News agency services

Libraries, archives, museums and other cultural services

Sporting and other recreational services

## Selected Categories from CPC Version 2

### Services of performing artists

This subclass includes:

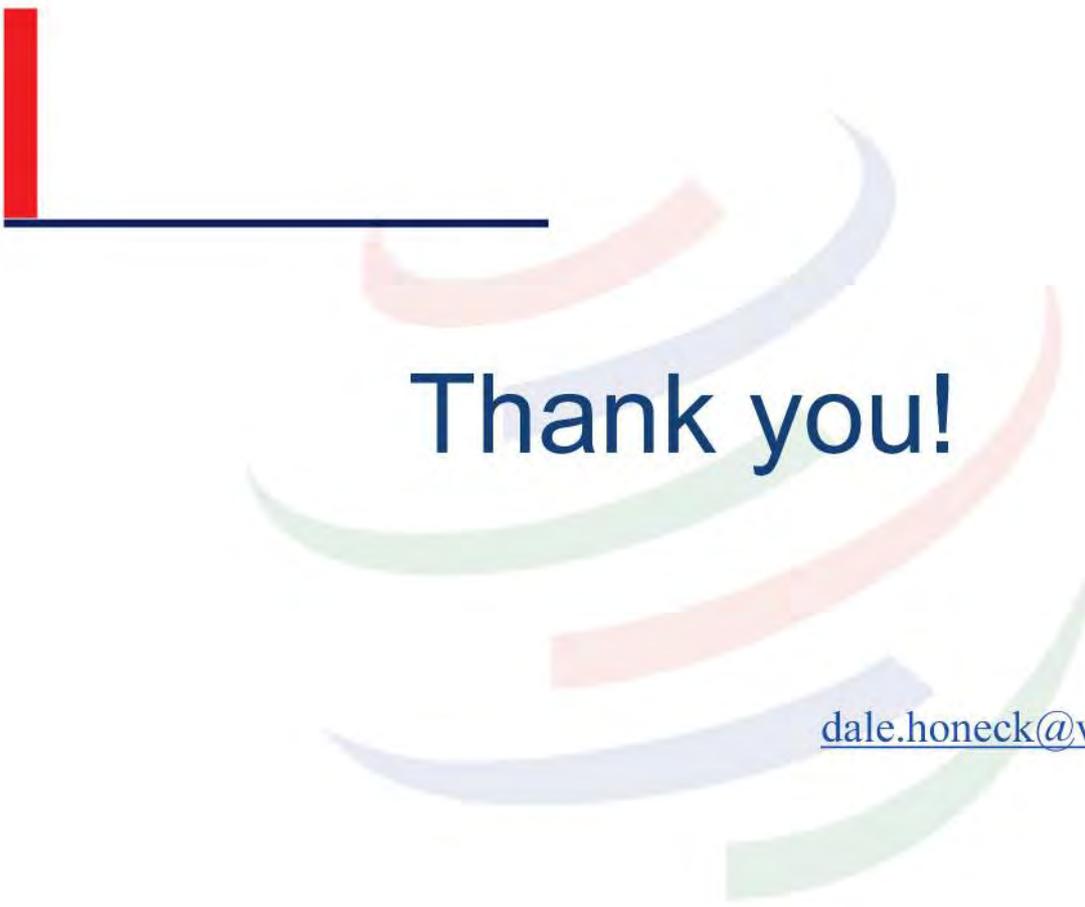
- services of actors, readers, singers, musicians, dancers, stunt people, television personality hosts/presenters and other performing artists
- services of independent models

## Selected Categories from CPC Version 2

### Services of athletes

This subclass includes:

- services provided by individual own-account sportsmen and athletes



# Thank you!

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## **ANNEX**

### 12. Good practices and tips for trade negotiations (Session 10)

Andrea Spear



# **TRADE NEGOTIATIONS**

## **The Basics, The Do's and Don't's & Checklists**

**Andrea Spear  
Trade and Investment Adviser  
Geneva, Switzerland**

## The Basics

What characterises a good negotiator? Some think that it is interpersonal chemistry, - intuition and magic touch. Others think it is more scientific: applying set principles and negotiating tactics. In fact, the most successful negotiators have learned from *experience*:

1. to engage in thorough preparation
2. to interpret and respond to bargaining conditions in a timely and accurate fashion
3. to utilise a negotiating style they are comfortable with.

**Most importantly, a good negotiator recognises that negotiation  
is *not* about *who is right*;  
it's about 'doing business'.**

### I. Preparation

- A common problem in negotiations is that parties have different expectations, different information and different perspectives on reality.
- In negotiation, the saying '*know your adversary*' is an imperative. Try to get as much information as possible on their personalities, the context in which they are operating and what underlies their positions (eg, economic challenges, political pressures, vested interests, etc). Try to get a feeling for their bottom line, and any time constraints they may face. Also gauge their level of preparation, including how much they know about you.
- '*Know your market*' is just as important. A good negotiator will know the 'fair market value' and the opportunity cost/benefit of the issue or deal being negotiated. Often, the opportunity cost and benefit can be quite subjective. In the multilateral context, 'knowing the market' could mean knowing the broad membership's or particular coalitions' needs and aspirations.
- A good negotiator will look for gaps in information before the negotiation. He will keep careful notes or records of the facts that emerge during the process, using it to further refine strategies.

### II. Interpreting and Responding to Bargaining Conditions

- Once you have identified the relative value of the stakes to each side, start the process of moving closer to the more objective, underlying true value, or the 'common value'.
- Understand the subjective factors. These are major determinants, and must be handled sensitively.
- Moving too fast can compromise the scope of negotiations.
- Managing expectations is essential.
- To do so, it is important to *review and update negotiating strategies* regularly during the process.
- Build your credibility: be professional, respectful, reliable.
- Feed them what they said, what they know; what they want to hear, in order to move things forward.
- Always treat your negotiating partners with respect, even when you are frustrated or angry. Stay calm, cool and collected.
- Assure them and reassure them; show them you are *not* trying to cheat them.

- Build on what they say (eg, say: "*In addition,.....*")
- Don't be patronising; ie. **don't** say things like:
  - "*Yes, but.....*"
  - "*With all due respect...*"
  - "*I hear what you say...*"
- Don't haggle over isolated issues.
- Don't expect a 50:50 win-win solution, but *do* work towards a result in which both sides feel they have achieved a benefit.

**It is important to design a process that all sides are comfortable with.  
In the end, negotiators feel good about the deal because they feel good about the process.**

### III. Steps to Advance a Stalled Negotiation

When a negotiation stalls, as they frequently tend to do, a few key phrases can be employed to help get things moving again, eg:

- "You can do better than that."
- "How important is this to you?"
- "What additional parameters would you consider?"
- "Why should I accept this now?" (*instil doubt*)
- "We have a problem." (*hint at sharing and at working together to find a solution*)
- "We've been involved in tough negotiations before and we've always been able to work out an arrangement we've been able to live with. We're confident we'll be able to find a constructive solution to that problem as part of the global package."
- "What do you think about this approach?"

### Good and Poor Negotiators\*

#### Good Negotiators:

- Are smart, sensitive, intuitive, good listeners, confident team players with diversified experience.
- Prepare thoroughly for negotiations and continue preparing during negotiations, to develop a clear understanding of each side's objectives, positions, bottom lines, and potential areas of compromise.
- Ask the right questions at the right time in the right way.
- Analyse the partner's requests and make well informed decisions on which requests are appropriate and which are not (eg, based on agreed principles and areas for negotiation).
- Encourage their negotiating partners to open up and divulge essential information.
- Identify and rectify gaps in information at all stages.
- Don't lie, but don't give away key information either.
- Establish and sustain an atmosphere of mutual respect.

- Take sensible, calculated risks. For example, throw in little fish in order to catch a big one (the 'big fish' is the other's bottom line!).
- Create 'positive pressure', once the negotiating partner must conclude the negotiation for political reasons.
- Be 'sensitive', able to 'figure' fairly accurately what compromise level the partner can accept, and whether this may be where the negotiation can conclude or not.
- Remain on guard at all times.

#### **Poor Negotiators:**

- Are unprepared.
- Are complacent.
- Miss the black holes.
- Are impatient.
- Are blunt and offensive, putting the other side off.
- Show off. Talk too much.
- Are careless.
- Say *NO*, no matter what.
- Argue.
- Threaten.
- Apply undue pressure.
- Build adrenaline and confrontation. Pound the table.

\* This is only an illustrative list – a sample of the many qualities that can characterise good and poor negotiators.

#### **IV. Negotiating Do's and Don't's**

- Don't become obsessed by the outcome. Step back and observe the process from time to time. Take a break to think about different approaches and options.
- Don't feel that you have to do the deal at all costs.
- Do be patient, constructive and positive that a solution can be found.
- Don't improvise - rehearse ahead of time.
- Do ask questions conversationally, protecting your intention where possible.
- Do answer questions without divulging too much, but don't lie.
- Don't argue. Don't threaten.
- Be encouraging and respectful. Say:

*"I'm listening."*

*"I understand."*

*"Go on."*

*"Exactly."*

*"Absolutely!"*

*"Am I correct i thinking that you are asking us to ....?"*

*"If we were to do this ....., .....?"*

## V. Implementation

- The negotiation is not over when the Agreement is signed.
- Design an awareness-building campaign to publicise the key messages – especially to the private sector.
- Design a clear implementation action plan, maintain strong interagency coordination linkages.
- Be ‘clean’, be consistent in implementation and practice - no surprises to your negotiating partners.
- No backtracking.
- However, if circumstances should change in unforeseen ways and one of the parties has difficulties meeting implementation objectives, do not be inflexible. In fact, how to deal with such eventualities should be built into the Agreement.

**Negotiating a trade agreement is like climbing a mountain – the secret is in the preparation:**

- ✓ study the counterpart (ie, the mountain)
- ✓ build a good team with complementary skills and a common vision
- ✓ understand the risks and how to handle them
- ✓ plan thoroughly, but at the same time be flexible and prepared for unexpected circumstances
- ✓ and then stay focused on the target, constantly refining the analysis and strategy until you reach your goal.

### ***Step-by-Step Checklist for:***

## ***Defining Negotiating Interests, Priorities and Strategies, and Taking Action***

### **Preparations before Actual Negotiations: Defining Objectives, Priorities, Strategies**

*(all steps confidential vis-à-vis negotiating partner in bilateral negotiations; #8-9 confidential in regional and multilateral negotiations)*

- I. Coordination and Consultation
  - Set up interagency coordination system (focal points) to facilitate consultation, analysis, decision-making
  - Establish links with other relevant stakeholders (business, research institutes, NGOs, etc)
  - Establish the necessary mechanisms/processes to secure quick decisions at the top during negotiations.
- II. Negotiating Priorities
  - Identify *national* interests and priorities through analysis and consultation.
  - Identify *priorities by sector* in consultation with relevant stakeholders.
  - Test sectoral priorities against national policy goals/interests (*qualitative/quantitative analyses required*).
  - Link to bilateral, regional, multilateral goals and interests (*econometric analysis required to quantify; qualitative analysis to measure broader political, economic, social impacts*).
  - Study negotiating partners' overall and sectoral interests and likely positions (*need qualitative & quantitative analyses*).
- III. Special Interests/Special Products
  - Identify items of 'special interest' in consultation with stakeholders (*specific quantitative analyses useful*).
  - Set negotiating objectives for these, in consultation with stakeholders.
- IV. Bottom Line
  - Develop bottom-line/red-line positions, taking into consideration both *national* and negotiating partners' key interests (*quantitative analysis required to assess relative impact of different negotiating decisions*).
- V. Negotiating Objectives and Strategies
  - Define negotiating scope and objectives
  - Develop negotiating strategies for each sector:
    - *offensive* to secure better market access abroad
    - *defensive* to protect
  - Build negotiating coalitions (internal, external) around shared interests where possible (*strength in numbers*).

### **During Negotiations: Keep analysing, refining strategies, consulting**

*(the following should all be confidential processes vis-à-vis negotiating partner)*

1. Seek regular updates of information and analysis to support decision-making as negotiations develop. This includes analysing the negotiating partners' positions and 'bottom lines/red lines'.
2. Provide feedback and seek further input from stakeholders, as necessary.
3. Commission rapid-turnaround impact analysis on negotiating partners' positions.
4. Refine negotiating strategies and possible trade-offs.
5. Understand the balance between existing and new commitments and concessions.
6. Keep stakeholders and any coalition partners *focused* on key interests and desired outcomes.
7. As bottom lines become clearer and nearer commission analyses to show how final negotiating options link into national policies and original negotiating objectives; highlight costs and benefits for the country; evaluate capacity to implement (*ie, don't take on what you can't handle*).
8. Secure approval from the top for final commitments and concessions.
9. As sectoral negotiations conclude, start preparing an implementation action plan (*plan policy/legislative/ regulatory changes, identify resource requirements, division of labour, timeframes, etc*).

### **After Negotiations**

1. Evaluate the negotiating process for effectiveness and lessons learned. Analyse your negotiating partners' style for future reference; examine critically your own negotiating style and process, and suggest improvements for next time.
2. Finalise the implementation action plan (*policy/legislative/regulatory changes, allocation of tasks, timeframes, etc*).
3. Commission analyses to show costs and benefits of final concessions and commitments.
4. Prepare briefings for Government, media, business groups, using results of analyses.
5. Monitor trade agreements, implementation of mutual commitments, etc, on an ongoing basis; consult private sector.