

CHAPTER 5

Services Liberalization in the 'ASEAN Plus' Free Trade Agreements

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Reviews of the treatment of services in ASEAN+1 agreements, applying two different methodologies, find that commitments to services reform in these agreements are relatively low compared to what might be possible; whilst they provide some additional commitments to the General Agreement on Trade in Services (GATS), these commitments continue to be circumscribed and fail to deal with issues of domestic regulation. Commitments to reform also vary across economies within an agreement, with generally greater commitments to cross-border trade, mixed commitments to investment, and few commitments to the movement of people. An economy's commitments on services also vary across agreements in what may be a systematic manner, depending on concerns about competition from the partner economy. There are some similarities in agreements, though the correlations appear to be low and agreements involving India and Japan are at early stages of development. Further progress, it is argued, depends not so much on working with the existing agreements but in tackling the resistance of policy-makers to adopt reforms and to commit to them with trading partners. This requires further work on the design of regulatory reform and the institutions to implement regulation. This focus however does not preclude the development of commitments in sectors of particular interest to ASEAN, especially in logistics.

1. Introduction

The trade in services has not historically been granted the same attention as goods in WTO negotiation rounds nor in free trade agreements (FTAs); it took until the Uruguay Round in 1986 for the members of the General Agreement on Tariffs and Trade to even seriously consider services. It is perhaps in part due to this comparatively limited pedigree that services are often seen as less significant to international trade – this being substantiated by trade volumes in services relative to goods. Alternatively, services may also be viewed as being in the ‘too-hard’ policy basket due to the higher level of complexity in addressing the attendant issues. In East Asia and South-East Asia, where developing countries still predominate geographically, services have historically been of less importance than the commodity trade. International trade negotiations require an intense combination of technical expertise that is a scarce resource in many developing countries, keeping services policy ‘on the backburner’ when faced with competing demands upon capacity.

‘Enabling services’ – that is, transport, finance, telecommunication and legal services and logistics – play a crucial role in enabling the structural shift from commodity- or manufacturing-centric economies to information- and knowledge-based economies. They attract more attention in ASEAN as a result. Locking in a less restrictive services trade policy environment will thus be even more important to the transformative modernization of these economies than commodity trade policy was in the past.

Recent research (Nordas, Miroudot and Lanz, 2008) on the benefits of the extensive margin in trade in services (the creation of new trade flows) rather than the intensive margin (expansions of existing trade flows) further points to the potential of services to reduce the costs of international business. For example, the *Master Plan on ASEAN Connectivity* (ASEAN, 2011) recognizes the role of various and specific services in reaching its goal of facilitating the movement of goods, people and services themselves.

Despite their increasing potential and importance, global progress on services reform to date has been sporadic, mixed and slow. In East Asia, the use of bilateral and regional trade agreements has grown rapidly. In this region, the developing economies

stand to benefit greatly from services reform, but are there encouraging signs of higher levels of commitments within these bilateral and regional FTAs?

This paper investigates the level of liberalization in services in that core element of the East Asian trade system, ASEAN, specifically within its FTA partnerships. The focus is on the ‘ASEAN Plus one’ agreements.

The next section provides more background on the results of other research on the impact of various systems of reform and the contribution of preferential trade agreements in particular. The following sections apply two different methodologies to assess the agreements and the final section concludes with a focus on ‘next steps’. Rather than focussing on using existing agreements and looking for ways to build up commitments for reform from within those agreements, the priority should be to build an improved environment – including, but not limited to, increased economic cooperation – that will better support reform. In particular, regional cooperation has a significant role to play in this work. However, this should not rule out or limit progress on particular sectors of key interest in the region.

2. Background

The key question has been the extent of commitments in services in these agreements. The general assessment has been that: ‘...most regional agreements have not been effective mechanisms for liberalizing access to services markets. Instead policy reforms have mostly been unilateral’ (François and Hoekman, p.674).

In this chapter, we carefully review studies on this question. However, we also note that recent presentations from the World Bank have reported that the multilateral process is not contributing to progress on reform. Gootiiz and Mattoo (2009) (whose methodology is reviewed in more detail in section 4), compare commitments to actual policies. They find that Uruguay Round commitments are on average 2.3 times more restrictive than current policies. The best offers submitted so far as part of the Doha negotiations improve on Uruguay Round commitments by about 13 per cent but remain

on average 1.9 times more restrictive than actual policies.¹ Their assessment is that the Doha process does not offer greater access to markets, but a weak assurance that access will not get worse.

They also stress that significant restrictions remain in many services, with restrictions in East Asia being relatively high. The gains from reform are therefore expected to be significant. The extent of these gains is discussed in François and Hoekman (2010) and also evident in recent work for the Policy Support Unit in Asia-Pacific Economic Cooperation (APEC) (Findlay et al., 2010).

Our focus in this paper is the treatment of services in preferential agreements among ASEAN members and their dialogue partners (as listed in Table 1). Some of the agreements have been examined in other work, although at earlier stages of the development of those agreements. However, *timing matters*, as there appears to be significant evolution in agreements over time.

Trewin et al. (2008) asked the question of whether East Asian FTAs in services were facilitating the flow of services in ASEAN. They found among other things that:

- The agreements studied did increase the number of committed sectors beyond the GATS but not dramatically so;
- There was little evidence that these commitments had translated into actual liberalization;
- The largest gains come from non-discriminatory market access and negotiations are ineffective in achieving liberalization that requires unilateral action;
- Whilst most intra-Asia agreements adopt a positive list approach, the negative list approach appears to be more liberalizing; however, they recognize that the contribution of the architecture to this result is difficult to identify; and
- There are identifiable differences in commitments among ASEAN members under the various agreements.

¹ Other studies find instances of preferential commitments which are more restrictive than those in the GATS (see papers discussed by Dee and McNaughton, 2011)

Ochiai, Dee and Findlay (ODF) (2010) reviewed the treatment of services in a number of East Asian FTAs (their methodology is also discussed in more detail in section 3). They found that the extent of commitments does not appear to be related to the architecture of the agreements examined. Some adopt the positive list approach and others the negative list approach. In the sample of agreements studied here for example that between ASEAN and China is a positive list agreement, while the ASEAN--ANZ agreement and the ASEAN--S. Korea agreements are negative list agreements. While ODF note that in principle both approaches could be used to document the same level of commitment, the negative list agreements tend to have text that promotes future liberalization (and those agreements tend to limit protection against new services).

Relative to the GATS, ODF find that preferential agreements tend to have a wider coverage. At the same time, they stress the number of sectors which are excluded in the agreements they examine, although, as just noted, they report that the rate of exclusion is generally better than that in the GATS for the same economy.

ODF also highlight the use of horizontal commitments, but as sources of restriction. Limitations dismantling the effectiveness of liberalization are imposed in horizontal commitments; for instance, restrictions on the form of establishment and the dominance of domestic labour law are explicitly designated. The consequence is that the number of sectors committed to liberalization may not always be a proper indicator of the *degree* of liberalization. ODF report that this situation is more likely to be an issue for commitments related to the movement of people (mode 4)².

²The modes of supply in the GATS are the following (quoted from http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm)

1. **Cross-border supply** is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);
2. **Consumption abroad** refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;
3. **Commercial presence** implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and
4. **Presence of natural persons** consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers).

In other remarks related to modes of supply, they find that the elimination of barriers is more likely in cross border supply and consumption abroad (modes 1 and 2), while investment and commercial presence (mode 3) remains subject to limitations which are similar to those at the multilateral level and mode 4 obligations are small (see also the results of Ishido (2011) later in this section). Investment is sometimes treated in two parts of the same agreement (and in one agreement using a negative list approach in the investment chapter and a positive list in the services chapter).

With respect to domestic regulation (including matters such as mutual recognition, transfer payments, transparency, subsidies and business practices), ODF find that the agreements do not offer much beyond the commitments in the GATS. Fink and Molinuevo (2007) likewise report that East Asian FTAs have not made significant progress in areas of rule-making that remain unresolved in the WTO. Roy, Marchetti and Lim (2007) also find that preferential agreements offer little over the GATS disciplines with respect to these areas.

Dee (2009) and Dee and McNaughton (2011) report research on the commitments in services in the ASEAN Framework Agreement on Services (AFAS). To some extent countries have introduced genuine trade reforms in response to either that agreement or the GATS but the conclusion is that in general the more significant reforms have been made unilaterally. However, it was also found that reforms so far have made a only a slight difference to the overall prevalence of restrictions on foreign suppliers and no difference to the prevalence of restrictions on domestic suppliers.

A couple of other aspects of agreements deserve attention. These are the rules of origin and the inclusion of a most favoured nation (MFN) clause.

A rule of origin is required to identify eligibility to access the terms of the agreement. Generally in a services agreement, the rule is based on the identity of the supplier rather than being based on the process of production of the service. The rule can either be the more liberal version based on the location of the substantial business operations of the provider, or the less liberal rule of ownership. Fink and Jansen (2009) find that generally liberal rules are used, and by implication any commitments that are made in preferential agreements are likely to involve only weak degrees of discrimination. They suggest that contributors to this outcome are the political treatment of foreign investors and the networking characteristics of services production.

Fink and Jansen also study the use of MFN clauses within an agreement, so that when a new agreement is signed by a country it should extend to its existing partners any more liberal treatment offered to the most recent partner. This clause facilitates liberalization and reduces the extent of disparities among a set of interconnected countries. Of the agreements they examine, half have such a clause although such agreements are more likely to involve developed countries

Ishido (2011) examined the ASEAN+1 agreements, applying the earlier methodology of Hoekman (1995) which was developed to assess GATS commitments. A database is created for each sub-sector by mode and by aspect of liberalization (that is, market access or national treatment) and commitments are rated as N (no limitation and bound); L (limited or restricted but bound); and U (unbound). These results are scored as N=1, L=0.5 and U=0. Simple averages are then calculated. Ishido reviews and compares AFAS, the ASEAN--Australia--New Zealand FTA, the ASEAN--China FTA and the ASEAN--Korea FTA. A strength of his work is his treatment of the detail within each agreement by sub-sector and by country. Findings include:

- Low overall scores, which are all less than 0.33;
- Mode 1 and mode 3 have various 'country- and sector-specific commitment patterns' but (in all but one case) mode 4 shows the least commitments and mode 2 shows the most;
- There is not much difference in commitments with respect to market access and national treatment across these agreements;
- There is considerable variation in average scores: AFAS – 0.33, AANZFAT – 0.23, AKFTA – 0.20 and ACFTA – 0.12;
- There are some examples of high correlations in commitments among participating economies within agreements but overall they are low (interpreted as differences in sensitive sectors among economies, although with no negative correlations);
- In terms of correlations at the agreement level, AFAS is an outlier while the other three agreements have more similar patterns of commitment; and
- Looking at the commitments by the same country under different FTAs, Ishida finds that overall 'there is no 'convergence' of country level commitments under different FTAs as they currently stand, and the degree of similarity differs greatly

across different countries and also across different pairs of FTAs' (p.28), although the correlations are generally positive.

Stephenson and Robert (2011) ask a series of questions about the impact of the regional agreements on services trade. To the question of whether regional agreements promote reform in services policy they respond with 'yes and no'. For example, they refer to treatment of government procurement of services as a case where regional agreements have gone further than the WTO. Other areas where contributions might be found are in provisions for future liberalization, chapters on electronic commerce and treatment of movement of people. At the same time, they note the lack of more extensive treatment of subsidies or domestic regulation. Their conclusion is that regional agreements have not been able to push countries to liberalize services faster than might otherwise have been done on their own. Their observation is that countries have organized reform domestically first, and then committed to those changes in trade agreements 'where appropriate' (p.26).

We now return to our question of the coverage of services in the ASEAN+1 agreements. Our purpose is to determine an indicator of the overall level of liberalization in each of the +1 agreements and to note their similarities and differences. In this paper we do not compare the treatment of the agreements with actual policy, nor with commitments in the WTO. Rather our purpose is to comment on issues in extending and aligning commitments within these agreements.

Two distinct methodologies were chosen to measure the liberalization in the trade in services in FTAs: the ODF approach and the Gootiiz and Mattoo (2009) approach. These are reported in the following sections.

4. The Ochiai, Dee and Findlay Methodology

The Ochiai, Dee and Findlay (ODF) methodology assesses the level of liberalization in FTAs by rating the restrictiveness of the various modes of supply. The most important and indicative clauses in the actual text have been chosen and given their own rating scale (with some scales reused) between zero and one, with ‘0’ being the most restrictive and ‘1’ being the least restrictive. All of the significant metrics of liberalization are covered, including, but not limited to: sectoral coverage, most-favoured nation exemptions, national treatment, market access, transparency and safeguards.

A final score and simple average for each mode of supply – with modes 1 and 2 combined – is then calculated for each agreement and the numbers compared. We also comment on country exceptions and variations below.

The key strength of the ODF method is that it grants an immediate and simple snapshot of the level of restrictiveness, both overall and by mode of supply, but also against critical individual clauses. The method behaves itself as a quick reference tool, highlighting the critical areas of the agreement that can be targeted for future progress towards liberalization. The methodology is relatively straightforward to apply, although it is a time-consuming process that requires close scrutiny and deep understanding of the structure of FTAs.

A critical issue is the arbitrary – although consistent – manner in which the original rating scales have been assigned. The number created at the end of the process can only be used for like-for-like comparisons, as the rating of individual clauses is not weighted according to their relative importance to the liberalization in the trade of services, let alone the level of liberalization that the agreement actually manages to effect in the real-life policy environment.

The simple averages from the ODF method for the ASEAN+1 agreements hold some obvious and intuitive conclusions, but also a few surprises. Summary results are shown in Table 1 and an appendix contains the results by clause.

Table 1. Liberalization in ‘ASEAN Plus’ Free Trade Agreements: ODF Method

	ASEAN--China	ASEAN--ANZ	ASEAN--South Korea	ASEAN--Japan	ASEAN--India
Modes 1 and 2: Cross-border trade in services					
Simple average	0.457	0.420	0.531	0.081	0.109
Mode 3: Investment					
Simple average	0.354	0.538	0.502	0.120	0.120
Mode 4: Movement of people					
Simple average	0.046	0.277	0.123	0.046	0.046
Total averages	0.286	0.412	0.386	0.083	0.092

Source: Author calculations.

Note: 0 is restrictive, and 1 is unrestricted

It should be noted that the ASEAN--India and ASEAN--Japan agreements are highly limited in scope and application and both scored poorly in their agreed commitments to liberalization. However, at the time of writing, neither partnership has yet to conclude a services-specific trade agreement. Thus, hereafter, we concentrate primarily on the other agreements:

- Whilst the ASEAN--Japan ‘Agreement on Comprehensive Economic Partnership’ does include a specific chapter on investment, it nonetheless makes no significant steps towards liberalization in mode 3 supply;
- The most restricted mode of supply is mode 4 as it requires the presence of a natural person. Interestingly, some limited freedom of movement of professional labour is responsible for the noticeably higher mode 4 score in the ASEAN--Australia--New Zealand (ASEAN--ANZ) agreement, with a small spike also recorded in the ASEAN--South Korea agreement;
- The three agreements, ASEAN--China, ASEAN--ANZ and ASEAN--South Korea all record significant levels of liberalization in cross-border trade in services, with ASEAN--South Korea with a slight but noticeable lead;
- ASEAN--China lags somewhat behind the others in the liberalization of investment in mode 3, although the rating has risen significantly – by a factor of three – since it was reviewed at an earlier date by ODF; and

- The most comprehensive – and longest by far – of the agreements, ASEAN--ANZ, holds a slight lead over the ASEAN--South Korea agreement, but significantly ahead of the remaining three agreements.

There is significant variation between country commitments in these agreements. To illustrate, we examined more closely differences in commitments in ASEAN--China and ASEAN--ANZ (locating details of commitments by economy and by sector for the agreement with Korea has been more difficult). Results of our assessments of examples of sectors in which restrictions remain are summarized in Table 2. These two cases show:

Table 2. Sectors for which Restrictions are Retained, by Economy

Country schedules	ASEAN--China	ASEAN--ANZ
Indonesia	Construction and assembly work, tourism, energy	Professional services, telecommunications, construction, education, finance and banking, health, tourism, transport
Brunei	Tourism, transport	Professional services, telecommunications, construction, financial, tourism, transport
Vietnam	Professional services, R&D, courier, telecommunications, construction, distribution, environmental, educational, financial, health, transport (all)	Professional services, courier, telecommunications, construction, distribution, environmental, financial, tourism, transport (all)
Lao PDR	Banking, insurance	Professional services, telecommunications, education, tourism
Myanmar	Air transport, communication, finance, printing/publishing, maritime services	Professional, communication, construction, education, transport (all)
Cambodia	Construction, professional services, telecommunications, distribution, education, environment, finance, banking, health, tourism, transport (all)	Construction, banking, finance, tourism
Malaysia	Professional services, IT, education, banking, finance, health, tourism, transport (all)	Prof, telecomm, construction, education, finance, health, tourism, transport (all)
Thailand	Professional services, education, tourism, maritime transport	Financial, transport (all)
Singapore	Professional services, telecommunications distribution, education, environment, financial, health, tourism, cultural, transport (all)	<i>Limited</i> restrictiveness in courier, environment, financial
Philippines	Mining, construction environmental, tourism, [applies 'reciprocity test']	Professional services, mining, telecommunications, education, environmental, financial, tourism, transport (all)
China	Construction, environmental, transport	N/A
	Australia	<i>Some</i> limited restrictions on financial services, commercial presence required for real estate
	New Zealand	None of note

Source: Author calculations.

Note: simple list, does not account for *level* of restrictions.

- Nearly all participating economies (except New Zealand) retain restrictions on some sectors;
- The sectors included in the list of those in which restrictions remain vary across economies within an agreement;
- Only some countries have consistent sectoral restrictions across the ASEAN--China and ASEAN--ANZ agreements (the degrees of similarity are strongest for Vietnam, Malaysia, Philippines and Myanmar);

However, there is also significant asymmetry between the ASEAN--China and ASEAN--ANZ agreements; for example:

- Indonesia, Brunei, Vietnam, Lao, Myanmar, Malaysia and the Philippines all restrict professional services in the ASEAN--ANZ agreement;
- Vietnam, Malaysia, Thailand, Cambodia and Singapore restrict professional services in the ASEAN--China agreement; and
- There is particularly asymmetric treatment between the two agreements for Indonesia, Cambodia, Thailand, Singapore, Brunei and Lao PDR.

It is also found that Australia and New Zealand have little restrictions of note; Singapore has a more extensive list in the agreement with China; and China retains relatively few restrictions.

With respect to the rule of origin, the agreements with Australia and New Zealand, with China and with South Korea all say that ‘the terms of the agreement may be denied to the supply of a service, if it establishes that the service is supplied from or in the territory of’ an economy which is not a party to the agreement. This is a relatively liberal ‘place of business rule’. However there are variations by mode of supply and by sector which are evident in the schedules and these variations are taken into account in the scoring system. For example, in the ASEAN--ANZ agreement, there is total denial of benefits for cross-border trade in services where there is ownership by a third party. Summary scores are provided in the appendix table.

With respect to the MFN clause, in the ASEAN--South Korea agreement on investment, each party accords to one another treatment no less favourable than it

affords to any party with whom it has a trade agreement. However, there is no automatic future application of this treatment, only retrospective application. The ASEAN--China agreement would appear to treat MFN status in an identical fashion. The ASEAN--ANZ agreement in regards to services says that any agreement that the parties enter into that provides more favourable treatment to a non-party merely granting the right to request consultative discussions. The parties have committed to future discussions on MFN treatment in investment. No current commitments are yet made in regards to MFN status for services under the ASEAN--India and ASEAN--Japan framework agreements. In summary, whilst the parties to the ASEAN--South Korea agreement are willing to mirror liberalization measures agreed with existing partners, the other agreements do not without the right of reservation. None of the agreements compel the parties to automatically extend any *future* liberalization measure resulting from another agreement – as yet, there is no ‘ratchet’ mechanism.

5. The Gootiiz and Mattoo Methodology

In measuring the level of commitment to liberalization in services in FTAs, the Gootiiz and Mattoo (G&M) method uses a sectoral weighting approach. Services are split into seven separate sectors – banking, insurance, retailing, telecommunications, maritime shipping and auxiliary services, and professional services – and then further split into subsectors and their possible modes of supply and assigned modal and sectoral weightings. Following Hoekman (1995), a standardized five-point rating from zero to one – where ‘1’ is completely restrictive and ‘0’ is without restrictions (the inverse of the ODF method as discussed later in this section) – is then applied to each subsector and weighted against first the mode and then against standardized sectoral weights for an average industrialized country. The aggregate scoring at the agreement level is then on a 0 to 100 scale, with the higher the number the more restrictive the agreement.

Because they reflect the relative importance of each sector to an average industrialized economy, the scale of the final scores is not as arbitrary as in the ODF method, and a real sense of proportion can be achieved when comparing the levels of

liberalization. However, it is less clear how the modal weights have been settled upon and, despite its consistency, arbitrariness remains in the setting of the five-point scale. The ‘broad-brush’ approach of the five-point scale makes its application to sectoral policy more imprecise and less than straightforward.

The application of the method here to only the main-text level (rather than the schedules) of an FTA is an oversimplification for multilateral agreements with many partners – as, for example, with all ‘ASEAN Plus’ agreements – because it does not begin to address the complexity contained within the multiple and distinct individual country schedules of commitments. Conversely, the level of detail required when attempting to capture the sectoral commitments of all countries is overly complex, and does not make for easy comparisons.

The agreements involving India and Japan are not sufficiently detailed yet to make this methodology relevant and hereafter we concentrate on the results of the other three agreements. Results are shown in Table 3.

Table 3. Liberalization in ‘ASEAN Plus’ Free Trade Agreements: G&M Method

Aggregate scores at FTA main-text level							
	Over all	Banking	Insurance	Retailing	Telecommunications	Maritime shipping and aux. services	Professional services
ASEAN--China	9.6	0	0	0	0	0	0.4
ASEAN--ANZ	26.6	0.2	0.2	0.3	0.3	0.1	0.4
ASEAN--S. Korea	14.7	0	0	0	0	0.9	0.4
Average	17.0	0.1	0.1	0.1	0.1	0.3	0.4

Source: Author calculations

The G&M method was only applied here to the main-text level of the ‘ASEAN Plus’ FTAs. The ASEAN--China and ASEAN--South Korea agreements made higher levels of commitment to liberalization in services at the main-text level of the agreement and therefore appear relatively liberal at the main-text level. However they also heavily restrict those aspirations within the individual country schedules. The ASEAN--ANZ agreement, on the other hand, is much more restrictive in the trade of services at the main-text level of the agreement but much more liberal at the country

schedule level, and therefore gives the impression that it is more restrictive than ASEAN--China and ASEAN--South Korea.

In professional services in particular there was no difference recorded between the troika of specifically services FTAs (ASEAN--China, ASEAN--South Korea and ASEAN--ANZ) at the macro-level of the main-text commitment. However there is considerable variation in the provisions for maritime services.

In keeping with the results of the ODF method, cross-border supply of services (modes 1 and 2) faces less restrictions than investment (mode 3) and much more liberal than services requiring the movement of natural persons (mode 4) – namely, professional services.

6. Conclusions

Results of the work undertaken here (and related earlier work) include:

- Significant barriers to trade and investment in services remain in member economies;
- Commitments to services reform in these agreements are relatively low compared to what might be possible, and while they provide some additional commitments to the GATS agreement, they are often circumscribed and continue to fail to deal with issues of domestic regulation;
- Commitments to reform vary across economies within an agreement with generally greater commitments to cross-border trade, mixed commitments to investment and fewer commitments to the movement of people;
- An economy's commitments on services also vary across agreements, in what may be a systematic manner depending on concerns about competition from the partner economy; and
- There are some similarities in agreements, though the correlations appear to be low and agreements involving India and Japan are at early stages of development.

These results, combined with those of the World Bank on the extent of ‘water’ in multilateral commitments as well as the results of other research reviewed above indicate that further progress on services reform in the short run via these routes of negotiated agreement will be difficult. A more fundamental understanding of the reasons for the slow progress is useful in order to suggest some appropriate initiatives. For that purpose, there are important lessons from services negotiations in the WTO where there remain large gaps, as noted above, between commitments and actual policy in services. Hoekman and Mattoo (2010) have identified a number of factors contributing to this result:

- First, governments are concerned that multilateral commitments will deprive them of the freedom to regulate, e.g. cross-border flows of financial and data services and activities such as cross-border gambling services;
- Second, regulators are unprepared for unrestricted entry and competition, especially in the smaller developing countries and especially in financial services; and
- Third, there are inadequate mechanisms for the international regulatory cooperation, such as between financial regulators, competition authorities, and immigration authorities that would be needed to reap the full benefits of liberalization.

Furthermore, business interest has been limited: in industrial countries, services markets are mostly open, except for transport and labour mobility, and developing countries are unilaterally liberalizing their markets. There is growing mutual interdependence in any case and developing countries are increasingly suppliers of outsourced services to OECD nations that are the source of investment and know-how in sectors such as transport, telecommunications, and finance. This is creating a self-enforcing equilibrium of openness with a reduced likelihood of policy reversal. Meanwhile there is pessimism in the business community because regulatory policies are not the focus of attention in the negotiations and it is those policies that matter to them.

Hoekman and Mattoo suggest that therefore the priority is to deal with domestic regulation by working to ‘...strengthen regulatory institutions and identify, design and implement policies that address market failures and ensure wider access to services.’

This might be based on: ‘Services knowledge platforms’ that bring together sectoral regulators, trade officials and stakeholders to assess current policies and identify beneficial reforms could help establish the preconditions for future liberalization commitments.’

They also propose international cooperation to address regulatory externalities. Examples they list are prudential regulation problems arising from differences in regulatory standards and from international oligopolies (e.g. transport and information services) capturing all the gains from liberalization. They suggest cooperation between host and source countries on temporary labour mobility (an area of low commitments in the ASEAN+1 agreements).

This review of experience in the negotiations at the WTO level and the results here and in other research of the assessment of the ASEAN+1 agreements therefore suggests that the next step for progress on services is not to move immediately to a new comprehensive and consolidated agreement but to work on the environment in which that agreement might be built. The focus, in other words, should be on the attitudes of policy-makers to reform and the levels of confidence in regulatory reform. This means a focus on capacity-building in services that deals with the key issues identified above. Considerable work of this type is already in progress in APEC and an important principle for ASEAN and its +1 partners as they seek to consolidate their agreements would be to confirm their commitments to APEC work programmes with specific time lines.

This recommendation does not imply that sectoral commitments in services should be avoided. The supply chain framework and the lessons from the case studies highlight the value of a well-functioning transport and logistics system. The relevant bundle of activities is not readily defined in existing services industry classifications and a recommendation here is that (building on work in the WTO) a model set of commitments on that package of services be defined and implemented, and those commitments cover all the modes of supply including investment. There is further guidance on the relevant scope of this package in the strategies defined in the *Master*

Plan on ASEAN Connectivity. This package could be adopted in advance of wider services and investment commitments. Other sectors might be examined in a similar fashion but the research here indicates that transport and logistics is the priority.

Both services and investment arrangements would also have to confront the question of rules of origin, but generally these are less of an issue compared to the commitments themselves and can be made relatively liberal (e.g. based on commercial presence).

In summary, progress on services reform and international commitments to reform involves not so much work with the existing set of agreements but work on the environment in which those agreements are being negotiated.

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Appendix

Table A1. Template for Cross-Border Trade in Services

	ASEAN--China	ASEAN--ANZ	ASEAN-- S. Korea	ASEAN--Japan	ASEAN--India
(1) Form of Agreement					
Scope	0.8	0.75	0.75	0.2	0.2
MFN	0.75	0.25	0	0	0.75
MFN exemptions	1	0	0	0	0
National treatment	0.75	0.5	1	0	0
Market access (i.e. prohibition on quantitative restrictions as in GATS)	0.5	0.75	0.75	0	0
Local presence not required (right of non-establishment)	0	0	0	0	0
Domestic regulation	0.4	0.4	0.4	0	0
Transparency (scores additive)	0.7	0.7	0.7	0	0
Recognition	0.2	0.2	0.2	0	0
Monopolies and exclusive service providers	0.75	0.75	0.75	0	0
Business practices	0.75	0.75	0.75	0	0
Transfers and payments	1	1	1	0	0
Denial of benefits (i.e. rules of origin)	0.75	0	0.75	0	0
Safeguards	0	0.5	0.5	1	1
Subsidies	0.5	0.5	1	0	0
Government procurement in services	0	0	0	0	0
Ratchet mechanism	1	0	0	0	0
Telecommunications (scores additive)	0	1	0.6	0	0
Financial services (scores additive)	0	0.8	0.7	0	0

(2) Content of Agreement					
Excluded modes	0	0.5	0.5	0	0
Excluded measures	0.5	0	0	0	0
Sectoral exclusions:					
Total sectors: 138 (based on CPC)	0	0	0	0	0
Measures at regional level	1	1	1	0	0
Restrictions on land purchases	0	0	0	0	0
Reservations on minority	0	0	1	0	0
Requirements on the number of domestic employees	0	0	1	0	0
Provisions asymmetric?	1	1	1	1	1
Simple average	0.467	0.420	0.531	0.081	0.109
Total score	12.600	11.350	14.350	2.200	2.950

Table A2. Template for Investment

	ASEAN--China	ASEAN--ANZ	ASEAN-- S. Korea	ASEAN--Japan	ASEAN--India
(1) Form of Agreement					
Sectoral coverage	1	1	1	1	1
Scope of MFN, NT etc. provisions (scores additive)	1	1	1	0	0
MFN	0.75	0	0.75	0	0
MFN exemptions	0	0	0.25	0	0
National treatment	0.5	0.5	0.5	0	0
Nationality (residency) of management and board of directors	0	0	0.5	0	0
Performance requirements	0	0.75	0.75	0	0
Transparency (scores additive)	1	0.7	1	0	0
Denial of benefits (i.e. rules of origin)	0.5	1	1	0	0
Expropriation etc. (scores additive)	0.6	1	0.6	0	0
Transfers and payments	0.5	0.5	0.5	0	0
Investor state dispute settlement	1	1	1	0	0
Safeguards	1	1	1	1	1
Subsidies	0	0	0	0	0
Government procurement	0	0	0	0	0
Ratchet mechanism	0	0	0	0	0

Table A2. (Continued)

(2) Content of Agreement					
Excluded measures	0	0	0	0	0
Sectoral exclusions: Total sectors: 138 (based on CPC)	0	0	0	0	0
Measures at regional level	0	1	0.7	0	0
Restrictions on land purchases	0	0	0	0	0
Reservations on minority	0	0	0	0	0
Requirement of prior residence for establishment	0	1	0	0	0
General restrictions on foreign capital participation	0	1	0	0	0
Review or approvals on large foreign investments (acquisition)	0	1	1	0	0
Provisions asymmetric	1	1	1	1	1
Simple average	0.354	0.538	0.502	0.120	0.120
Total score	8.850	13.450	12.550	3.000	3.000

Table A3. Template for Movement of People

	ASEAN--China	ASEAN--ANZ	ASEAN--S. Korea	ASEAN--Japan	ASEAN--India
(1) Form of Agreement					
Sectoral coverage	0	1	0.5	0	0
Scope	0	0.5	0.25	0	0
Immigration	0	0	0	0	0
MFN for mode 4 delivery	0	0	0	0	0
MFN exemptions	0	0	0	0	0
National treatment for mode 4 delivery	0	0	0	0	0
Market access (i.e. prohibition on quantitative restrictions as in GATS)	0	0	0.5	0	0
Domestic regulation	0	0	0	0	0
Transparency of regulations governing service delivery via mode 4 (scores additive)	0	0.4	0	0	0
Transparency of regulations governing temporary movement of persons (scores additive)	0	0.4	0	0	0
Recognition	0	0	0	0	0
Denial of benefits (i.e. rules of origin)	0	1	0.75	0	0
Ratchet mechanism	0	0	0	0	0

Table A3. (Continued)

(2) Content of Agreement-Service Delivery					
General reservations/exceptions	0	0	0	0	0
Sectoral exclusions: Total sectors:138 (based on CPC)	0.2	0.2	0.2	0.2	0.2
Measures at regional level	0	1	0	0	0
(3) Content of Agreement-Facilitation of Mobility					
Skill coverage (least generous treatment among members of FTA)	0	0.25	0	0	0
Short term entry (least generous treatment among members of FTA)	0	0.25	0	0	0
Long term entry (least generous treatment among members of FTA)	0	0.2	0	0	0
Quotas on numbers of entrants	0	1	0	0	0
Needs test	0	0	0	0	0
Local labour market testing or other criteria	0	0	0	0	0
restrictions on land purchases	0	0	0	0	0
Considerations on minority Requirements on the number of domestic employees	0	0	0	0	0
Provisions asymmetric?	1	1	1	1	1
Simple average	0.046	0.277	0.123	0.046	0.046
Total score	1.200	7.200	3.200	1.200	1.200