

# PERSPECTIVE

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## **ASEAN Trade in Services Agreement (ATISA): Advancing Services Liberalization for ASEAN?**

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### **EXECUTIVE SUMMARY**

- ASEAN has pursued services liberalization since 1995, by expanding the scope and coverage of its commitments in the ASEAN Framework Agreement on Services (AFAS) that was used to guide services liberalization.
- The shift from AFAS to ATISA in 2019 is envisaged to advance services liberalization, and ultimately closer regional economic integration, because of the adoption of the “negative” listing approach which assumes that all sectors are liberalized unless otherwise specified.
- The “negative” listing locks in existing non-conforming measures and enhances transparency since investors can see the non-conforming measures in each service sub-sector.
- However, this approach will not automatically lead to greater liberalization as a long list of non-conforming measures can still be used to restrict entry for both domestic and foreign investors.
- It is not the form (or approach used), but the substance of the agreement that will determine whether or not ATISA can advance services liberalization for the region.

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## INTRODUCTION

The growing importance of services can be attributed to the increasing fragmentation in production. As production disperses geographically, there is increased demand for services to connect different production locations. Logistics services, for example, play an important role in the movement of goods in and out of countries, especially in parts and components trade. Concurrently, every developing country which is connected to the region and the globe through global value chains (GVCs) also aspire to shift towards higher value-added production in manufacturing by increasing their share of manufacturing-related services such as research and development (R&D) and design. Services, which used to be considered as non-tradable are progressively traded across borders with advances in information, communication and technology (ICT), as for example, cross-border financial services when transactions can be conducted via internet banking.

In recognition of the growing importance of services, the ASEAN Economic Community (AEC) 2015 plan included the goal of a free flow of services in its proposal for establishing a single market and production base. This was to be achieved through the progressive liberalization of the services sector within ASEAN as well as with the extra-ASEAN partners, namely Australia, China, India, Japan, New Zealand, South Korea and Hong Kong. Within ASEAN, the ASEAN Framework Agreement on Services (AFAS) signed in 1995 was used to guide the liberalization of services, while a services chapter was included in each of the extra-ASEAN, or what is known as ASEAN+1, agreements, except Japan. Despite these efforts, the share of intra-ASEAN in ASEAN's trade in services remains relatively constant at around 17 percent.<sup>1</sup> The share of intra-ASEAN exports has declined from 21.1 percent to 17.0 percent, while there was almost no change in the share of intra-ASEAN imports, which has remained around 16.0 percent from 2005 to 2017. ASEAN's trade remains largely dominated by trade in goods (USD 2,574, billion), which is 3.7 times more than its trade in services (USD 703 billion) in 2017.<sup>2</sup>

The arrival of the ASEAN Economic Community (AEC) in 2015 and numerous assessments on the achievements of the AEC Blueprint that was used to guide the development of the AEC, led to negotiations to upgrade the services agreement from a framework agreement to a full-fledged agreement, namely the ASEAN Trade in Services Agreement (ATISA). Negotiations on the ATISA were concluded in November 2018. This article examines the potential of the ATISA to accelerate services liberalization in the region, and the key challenges involved.

## SERVICES LIBERALIZATION: FROM AFAS TO ATISA

The ATISA signed at the 25<sup>th</sup> ASEAN Economic Ministers (AEM) Meeting in Phuket, Thailand in April 2019 and will replace the AFAS for guiding the future development of services liberalization towards 2025. The AFAS adopts the current WTO General Agreement on Trade in Services (GATS) as a baseline for integration, with ASEAN members agreeing to apply Most-Favored-Nation (MFN) and National Treatment (NT) to cross-border services trade. It is essentially a modular agreement, with consecutive packages of commitments signed into agreement, based on an "ASEAN Minus X" approach. This approach provides the flexibility needed for liberalization to progress, while allowing member states which are not yet ready, to opt out.

Based on the AEC 2015 Blueprint Strategic Measures, the progressive liberalization packages are aimed at removing restrictions in services trade in the priority and non-priority sectors according to a timeline that is scheduled over ten packages of commitments. GATS's four modes of delivery for services trade are used to guide the commitments in each package.<sup>3</sup> Although the AFAS was supposed to complete its rounds by 2015, only nine packages of commitments were completed by 2015 while the tenth package was signed in 2018. The commitments made over these nine AFAS packages<sup>4</sup> have increased in scope<sup>5</sup> and coverage<sup>6</sup> indicating an improvement in policy certainty in ASEAN's services sector. However, this does not necessarily imply greater liberalization since the bound commitments may cover less than existing practice or what is known as "water"<sup>7</sup> in the schedules, as AFAS is based on GATS. For example, an AMS may bind its foreign equity cap at less than 100 percent while in reality, 100 percent foreign equity has already been allowed in that sub-sector. More importantly, ASEAN has, on average, more restrictive policies in the services sector, compared to other regions. The World Bank's Services Trade Restrictiveness Index (STRI),<sup>8</sup> which measures the extent of policy restrictiveness in services, indicates that the average STRI for ASEAN was 60 percent higher than the global average in 2012.<sup>9</sup> Within ASEAN, there is considerable variation, with Cambodia, Myanmar and Singapore having more liberal policies compared to Indonesia, the Philippines and Thailand.<sup>10</sup> Since AFAS does not deal with domestic regulatory measures in the AMS, the commitments may not be meaningful as the services sector is regulated by licensing requirements that are quite disparate in terms of their transparency and intentionality across the ten AMS.

Due to the above-mentioned limitations of AFAS, the AEC 2025 Blueprint, which replaced the AEC 2015 Blueprint after the launch of the ASEAN Economic Community (AEC) in 2015, affirmed the need to further broaden and deepen services integration. Consequently, negotiations were started to replace AFAS with an ASEAN Trade in Services Agreement (ATISA). ATISA aims to extend services integration in the region beyond what has been achieved in AFAS. Reportedly, the 10<sup>th</sup> AFAS package, the 9<sup>th</sup> AFAS Finance Package, and the 11<sup>th</sup> AFAS Air Transport Package commitments will be transposed to ATISA.<sup>11</sup> The close links between trade and investments imply that the ATISA will complement the goods-only agreement or the ASEAN Trade in Goods Agreement (ATIGA) and the ASEAN Comprehensive Investment Agreement (ACIA), which does not include the services sector, with the exception of services that are incidental to the main sectors.

The ATISA heralds an important new phase in services liberalization and integration for the region for several reasons. First, the shift from being guided by a framework agreement to a full-fledged agreement signals that ASEAN has been able to move forward in its services negotiations. Second, it aims to create a more stable and predictable environment and to set the stage for future services integration and liberalisation by establishing commitments that can serve to reduce discriminatory regulatory barriers, thereby facilitating a move towards a more transparent regime.<sup>12</sup> This is to be achieved by shifting from the "positive list" approach<sup>13</sup> used in AFAS's sectoral commitments to a "negative list approach", which is considered to be the best practice for services liberalization, as adopted in the Trans Pacific Partnership (TPP) agreement. In the case of "positive" listing, sectors are listed by choice so that commitments do not apply unless a sector or sub-sector is specifically inscribed in the schedule. By contrast, in the "negative" list approach, the presumption is the converse,

whereby everything is liberalized, unless otherwise specified. A member state then lists measures that run counter to its obligations or the non-conforming measures. This approach locks in the current level of regulations so that there will be no “water” in the schedules as in the “positive” approach used in AFAS, thereby lending greater clarity to investors. Transparency is enhanced by the need to show non-conforming regulations and where discrimination is practiced. Therefore, the “negative” list approach is generally deemed to be associated with stronger disciplines on a member state.

## CHALLENGES IN ADVANCING LIBERALIZATION

Not all AMS have used a “negative” approach before in their past trade agreements. Table 2 indicates the prevalence in the use of the “positive” list approach in ASEAN-wide agreements as well as the bilateral free trade agreements of member states. This is not surprising as this approach allows each member state to open up at a pace with which it is comfortable, thereby allowing the state to maintain “policy space” over service activities. For developing countries, some service activities may be deemed to be under-developed or lacking data and information, especially in the case of emerging new service activities such as e-commerce, so that it is difficult to ascertain the impact of liberalization on those service activities. Inadequate domestic information, in turn, contributes to the reluctance of member states to commit towards liberalizing a particular sector.

**Table 1. FTAs/RTAs in ASEAN-wide and bilateral agreements of AMS, with positive list for the services sector**

Lao PDR-US BTA	Australia-Thailand FTA	ASEAN-Korea FTA
Mainland-Hong Kong CEPA	Indonesia-Japan EPA	EFTA-Singapore FTA
Mainland-Macao CEPA	Japan-Brunei EPA	Jordan-Singapore FTA
AFAS	Japan-Malaysia EPA	New Zealand-Singapore FTA
ASEAN-China FTA	Japan-Philippines EPA	Vietnam-US BTA
ASEAN-Korea FTA	Japan-Thailand EPA	
ASEAN-Australia New Zealand FTA	India-Singapore ECA	

Source: Adapted from Sigit Setiawan (2018)<sup>14</sup>

The AMS which have used a “negative” list for the services sector are Brunei, Malaysia, Singapore and Vietnam (Table 2). Comparing Tables 1 and 2, it can be seen with the exception of Singapore that AMS have mainly used a “positive” list approach in their services’ commitments at the regional or bilateral level. But this does not mean that these countries do not have any experience at all with “negative” listing as this approach has already been utilized in the ACIA and at the domestic level, as some AMS have used this approach in their domestic investment laws.

**Table 2. FTAs/RTAs and bilateral agreements of AMS, with negative list for the services sector**

Australia-Singapore FTA	CPTPP – Brunei, Malaysia, Singapore and Vietnam (AMS which are members of the agreement)
Panama-Singapore FTA	
US-Singapore FTA	
Korea-Singapore FTA	

Source: Adapted from Sigit Setiawan (2018)<sup>15</sup>

The first challenge for member states with no prior commitments in “negative” listing, is in the transiting from “positive” to “negative” listing. This would require the individual AMS to conduct a review and audit of national regulations that affect their respective services sector as preparations for entering into “negative” listing. An incomplete listing of all non-conforming measures will reduce the transparency and credibility of these commitments and may automatically liberalize measures which are not captured in the list of non-conforming measures. That said, the administrative burden can be quite onerous for AMS which have not conducted such a comprehensive review before. For example, Malaysia had to identify and present specific laws and regulations for about 80 percent of its services sub-sectors that were not covered in previous agreements, for the adoption of the “negative” list approach in the Trans-Pacific Partnership (TPP) Agreement.<sup>16</sup>

Despite claims that a “negative” list approach can lead to deeper liberalization than agreements that are predicated on a “positive” listing, this is not necessarily the case. Using the Hoekman Index<sup>17</sup> as a measurement of the degree of liberalization of trade in services, Table 3 indicates that this is not necessarily the case for the four AMS that have made commitments in both approaches under the AFAS as well as the TPP. Mode 3 is highlighted as it is the most important mode of trade in services.

**Table 3. Hoekman Index, AFAS-9 and TPP for Mode 3**

Trade Agreements	Brunei	Malaysia	Singapore	Vietnam
<b>AFAS-9</b>	0.22	0.32	0.58	0.47
<b>TPP</b>	0.57	0.32	0.56	0.50

Note: A higher value of the index (or closer to 1), indicates a higher level of liberalization. Source: Hikari Ishido, undated.<sup>18</sup>

Full services liberalization, which requires the absence of any reservations for existing non-conforming measures, is difficult to achieve for many in the services sector in ASEAN due to infant industry arguments as well as a lack of conviction on the positive impact of liberalization on the domestic economy. Instead, reservations in services are typically inscribed for existing non-conforming measures in Annex 1 and for future measures in Annex 2 of service agreements for AMS, which have used the “negative” list approach in their respective bilateral or regional agreements. Therefore, the greatest challenge in using ATISA to advance services liberalization in ASEAN is to use the change in approach to increase the depth of each AMS’s commitments, since a long list of reservations can clearly

undermine the value of this approach. This will imply that each country will have to undertake necessary domestic regulatory reforms that can in the end facilitate the entry of domestic as well as foreign players, thereby creating greater competition and efficiencies in their respective services sector.

## CONCLUSION

ASEAN has pursued services liberalization since 1995. In the long and arduous journey towards a free flow of services, ASEAN has progressively expanded the scope and coverage of its commitments in AFAS. The shift from AFAS to ATISA is envisaged to advance services liberalization that will ultimately lead to closer regional economic integration. It is hoped that the change in approach from a “positive” to a “negative” listing will yield benefits in terms of greater transparency and liberalization efforts. But the latter approach does not automatically lead to greater liberalization as reservations can be used to exclude a broad range of measures from meaningful liberalization. Consequently, in theory both the “positive” and “negative” approach can be used to attain the same level of liberalization, as in the end what counts are the commitments and the limitations in the “positive” list as well as the reservations in the “negative” list.

Regardless of the approach used, the expressed intention to liberalize is the most important factor that will determine the extent of liberalization that can be achieved. The intention to liberalize requires each AMS to consider carefully the justification for each non-conforming measure listed in the reservations lists. In other words, it is not the form (or approach used), but the substance of the agreement that will determine whether or not ATISA can advance services liberalization for the region.

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<sup>1</sup> ASEAN Secretariat undated. *ASEAN Key Figures 2018*. <https://www.aseanstats.org/wp-content/uploads/2018/12/ASEAN-Key-Figures-2018.pdf> (accessed 28 May 2019).

<sup>2</sup> ASEAN Secretariat undated. *ASEAN Statistical Yearbook 2018*. <https://asean.org/storage/2018/12/asyb-2018.pdf> (accessed 28 May 2019).

<sup>3</sup> The four modes of trade in services are: Mode 1: movement of services across borders without movement of the natural person as consumer or producer nor the movement of the juridical person; Mode 2, where the consumer moves across borders; Mode 3 where the juridical person moves across borders and Mode 4, where the service provider in the form of the natural person moves across borders.

<sup>4</sup> At the point of writing, the tenth AFAS package commitments are not available publicly.

<sup>5</sup> Such as the increase in minimum foreign equity participation and no limitations in Modes 1 and 2.

<sup>6</sup> The number of sub-sectors committed have increased from 80 to 104 from AFAS 7 to AFAS 9 (see CIMB ASEAN Research Institute 2016. “AEC Blueprint 2025 Analysis: Liberalization of the Trade in Services”, Vol.1, Paper 3, 3 March.

<sup>7</sup> The water in the GATS refers to the difference between the bound level of trade restrictiveness permitted by the GATS and the actual trade regime.

<sup>8</sup> The STRI is an index constructed to measure policy barriers to international trade for 103 countries. See <http://iresearch.worldbank.org/servicetrade/aboutData.htm> (accessed 24 May 2019).

<sup>9</sup> See ASEAN Secretariat and World Bank, 2015. *ASEAN Services Integration Report: A Joint Report by the ASEAN Secretariat and the World Bank*.

<http://documents.worldbank.org/curated/en/759841468178459585/pdf/100637-Revised-WP-PUBLIC-Box393257B-ASEAN-Report-web.pdf> (accessed 24 May 2019).

<sup>10</sup> Gootiitz Batshur 2018. *Services Negotiations in Southeast Asia: Implications for Low Income Countries in the Region*. Geneva: ICTSD.

<sup>11</sup> See Netral English 2019. “ASEAN Economic Ministers Sign ASEAN Trade in Services Agreement”, 24 April.

<https://en.netralnews.com/news/business/read/26604/asean.economic.ministers.sign.asean.trade.in.services.agreement> (accessed 24 May 2019).

<sup>12</sup> See The Straits Times 2019. “ASEAN Leaders sign pacts to reduce trade barriers, promote investments”, 24 April. <https://www.straitstimes.com/business/economy/asean-leaders-sign-pacts-to-reduce-trade-barriers-promote-investment> (accessed 24 May 2019).

<sup>13</sup> AFAS follows GATS’ scheduling approach, which is typically described as “positive” listing for its sectoral commitment, but “negative” elements are used in the inscription of limitations on market access and national treatment in each committed sector. See Carsen Fink and Martin Molinuevo, 2007. *East Asia Free Trade Agreements in Services: Roaring Tigers or Timid Pandas*. Washington, D.C.: The World Bank.

<sup>14</sup> Sigit Setiawan 2018. “Negative List in Services Liberalization for ASEAN Developing Countries”,

*International Journal of Economics and Financial Issues*, 2018, 8(5): 11-20.

<sup>15</sup> Ibid.

<sup>16</sup> See Rokiah Alavi 2018. “Services Sector Reforms in Malaysia”. Chapter 4 in *Malaysia’s Trade Governance at a CrossRoads*, Kuala Lumpur: Khazanah Research Institute.

<sup>17</sup> The method assigns values to each of 8 cells (4 modes and 2 aspects – market access and national treatment), as follows: first assign the value 1 when the sector at issue is “fully liberalized”; 0.5 when “limited (but bound)”; 0 when “unbound” (or when the government has not committed to liberalize) by sub-sector, by mode and by aspect (market access or national treatment), and take the simple average for aggregation; then calculate the average value by services sector and by country. The higher the figure, the greater the degree of liberalization that is awarded to the FTA members.

<sup>18</sup> Hikari Ishido undated. “Liberalisation of the Trade in Services in ASEAN, China, and the TPP Negotiating Members”.

[http://www.ide.go.jp/library/English/Publish/Download/Brc/pdf/15\\_03.pdf](http://www.ide.go.jp/library/English/Publish/Download/Brc/pdf/15_03.pdf) (accessed 28 May 2019).

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