

# Regionalism in Services

## A Study of ASEAN

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## Abstract

Can regionalism do what multilateralism has so far failed to do—promote greater openness of services markets? Although previous research has pointed to the wider and deeper legal commitments under regional agreements as proof that it can, no previous study has assessed the impact of such agreements on applied policies. This paper focuses on the Association of Southeast Asian Nations (ASEAN), where regional integration of services markets has been linked to thriving regional supply chains. Drawing on surveys conducted in 2008 and 2012 of applied policies in the key services sectors of ASEAN countries, the paper assesses the impact of the ASEAN Framework Agreement on Services (AFAS) and the ambitious ASEAN Economic Community Blueprint, which envisaged integrated services

markets by 2015. The analysis finds that over this period, ASEAN did not integrate faster internally than vis-à-vis the rest of the world: policies applied to trade with other ASEAN countries were virtually the same as those applied to trade with rest of the world. Moreover, the recent commitments scheduled under AFAS did not produce significant liberalization and, in a few instances, services trade policy actually became more restrictive. The two exceptions are in areas that are not on the multilateral negotiating agenda: steps have been taken toward creating regional open skies in air transport, and a few mutual recognition agreements have been negotiated in professional services. These findings suggest that regional negotiations add the most value when they are focused on areas that are not being addressed multilaterally.

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# **Regionalism in Services: A Study of ASEAN**

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## 1. OVERVIEW

Since the WTO's Doha Agenda failed to deliver meaningful services liberalization, many countries are turning to regional fora in the hope of greater success. That raises the question of whether regionalism can do what multilateralism has failed to do, i.e. promote greater openness of services markets. While previous research has pointed to the wider and deeper legal commitments under regional agreements as evidence that it can (e.g. Marchetti and Roy (2008), Fink and Molinuevo (2008), Mattoo and Sauve (2011)), no previous study has assessed the impact of such agreements on *applied policies*. The ASEAN region is particularly interesting because it is widely believed to be at the frontier of what Baldwin (2011) has called "globalization's second unbundling," with regional integration of services markets linked to the thriving regional supply chains. Drawing upon surveys in 2008 and 2012 of applied policies in the key services sectors of ASEAN countries, we assess the impact of ASEAN Framework Agreement on Services (AFAS) and the ambitious ASEAN Economic Community Blueprint which envisages integrated services markets by 2015.

We address four questions: How open were ASEAN services markets? Did these markets become more open between 2008, when the first policy survey was conducted soon after they agreed on the far reaching ASEAN Economic Community Blueprint, and 2012? Was ASEAN integrating faster internally than with rest of the world? How far did the ASEAN countries implement their commitments under the ASEAN Framework Agreement on Services (AFAS) and how far were they from meeting the market integration goal set out in the Blueprint?

Our stark conclusion is that the recent commitments scheduled under AFAS may have created greater regional policy-certainty but did not, in general, produce significant liberalization (because they were not sufficiently ambitious), and the 2015 deadline stipulated in the Blueprint did not instill the intended sense of urgency. One consequence of these agreements – which cover primarily intra-ASEAN trade - could have been that ASEAN countries would have been more open vis-à-vis each other than vis-à-vis non-ASEAN countries. For the most part, they were not. For the seven broad sectors (and relevant modes) covered by the questionnaire, there was surprisingly little difference between policy treatment of intra-ASEAN and extra-ASEAN trade. That is, the supposedly preferential policies vis-à-vis other ASEAN countries were

virtually the same as non-preferential or “most-favored-nation” (MFN) policies vis-à-vis non-ASEAN countries.<sup>1</sup>

Alternatively, the agreements could have promoted openness generally vis-à-vis all countries. That too seems doubtful. First, because the ASEAN countries had on average more restrictive policies than any other region of the world except the Gulf states. The average Services Trade Restrictions Index (STRI) for the region was 60 percent higher than the global average. But restrictiveness of applied policies varied widely across countries and income levels. Cambodia and Singapore had the most open policies in the sectors covered. Vietnam and Myanmar were virtually open with few restrictions and the rest (Indonesia, Thailand, Philippines, and Malaysia) had significant restrictions.

The second reason that the agreements did not seem to have promoted openness generally was because the ASEAN countries’ did not undertake significant liberalization in the four year period studied. While there were some instances of market opening, there were also instance of reversal of liberalization. For the six ASEAN Member States for which the same surveys were conducted in 2008, there was little change in the overall policy regime as of 2012 (regional average STRI fell only about 16 percent from its high level). As a consequence, even though actual openness was greater than that promised by current AFAS commitments, it was still not close to the ambitious goals specified in the Blueprint. But it is important also to recognize that the limited instances of reversal of liberalization could be because the AFAS commitments have served the valuable purpose of reducing policy risks.

There are two exceptions to these conclusions: in air transport, where ASEAN countries’ have taken some steps towards regional open skies; and in certain professional services, where mutual recognition agreements have been negotiated. Even in these areas, the regional integration efforts were incomplete: in professional services, domestic regulations have not yet been aligned with the ASEAN MRAs; and in air transport further liberalization is necessary to achieve a truly integrated regional air market. Nevertheless, these initiatives suggest that regionalism could have

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<sup>1</sup> “Most-favored-nation” or MFN means the country which is the recipient of this treatment must receive equal trade advantages as the "most favored nation" by the country granting such treatment.

incremental value when it focuses on areas which are not being addressed multilaterally (Mattoo and Fink, 2004).

There are some broad caveats to our analysis. Market access in many of the countries was not predictable due to a discretionary licensing regime. From banking to transport, entry was restricted by the explicit and implicit limits on new licenses and the licensing process tended to be opaque and discretionary. In several ASEAN countries, licenses and foreign equity ownership were decided on a case-by-case basis, subject to requirements or approvals that involved several regulators and ministries. Some countries in certain sectors had no regulation at all, especially the lower income countries in the region and pertaining to the supply of services through the cross border and consumption abroad modes. In some of these cases, the supply of services was allowed in practice, while in others it was prohibited. In general, the high level of discretion and the absence of regulation created a less predictable policy environment and made it hard to define and assess the policy regime.

Section 2 describes the nature of services trade policy data as well as how it was collected and verified. Section 3 presents the ASEAN policy patterns and places them in a global context. Section 4 takes a closer look at the policy measures used by ASEAN countries, highlighting certain aspects of the regulatory environment. Section 5 assesses whether ASEAN countries liberalized their policies between 2008 and 2012. Section 6 examines instances of where ASEAN countries became more open vis-à-vis each other and provides two examples. Section 7 compares the regional and multilateral commitments of ASEAN countries with actual policy. Section 8 concludes.

## **2. SERVICES TRADE POLICY DATA AND MEASUREMENT**

A detailed description of the original World Bank Services Trade Restrictions Database—including details on the data collection process, the policy measures covered and the questionnaire used in the data collection—is provided in Borchert, Gootiiz and Mattoo (2012) and in supplementary material available at <http://iresearch.worldbank.org/servicetrade>. The global policy patterns of services trade policy emerging from the Database are presented in Borchert, Gootiiz and Mattoo (2013). Here we focus on the approach taken to updating

information in 2012 for the six ASEAN countries covered in the original 2008 survey and to collecting information for the four ASEAN countries not previously covered.<sup>2</sup>

The ASEAN survey in 2012 focused, as did the earlier surveys, on policies that affect international trade in services – defined, as is now customary, to include the supply of a service through cross-border delivery, consumption abroad, by establishing a commercial presence, or by the presence of a natural person. The perspective is one of a foreign supplier who wishes to provide services to a particular country, and we focus mainly on policy measures that discriminate against foreign services or service providers.

The 2012 surveys updated the policy information obtained from the previous surveys of 2008 for Thailand, Malaysia, Vietnam, Philippines, Cambodia, and Indonesia, and collected information for the first time for Singapore, Brunei, Myanmar, and Lao PDR.<sup>3</sup> The data collection process follows the same method used by the Services Trade Restrictions Database but with a few changes. First, some new sectors and modes have been added to the questionnaire to reflect the regional liberalization priorities of ASEAN countries.<sup>4</sup> These include education, medical, architecture, engineering, and management consulting, as well as the cross border mode in road transportation. Second, the questionnaire is designed to identify differences in intra-ASEAN and extra-ASEAN policy regime in services, and in particular, instances of regional liberalization and preferences. Third, we examine more closely than in earlier surveys whether there is in fact a regulation or policy in place for each specific subsector mode to take into account the conditions in countries like the Lao People’s Democratic Republic and Myanmar. We also assess the implications of the absence of explicit regulation or policy, such as whether there are any implicit limits on the number of licenses allocated.

The seven major services sectors are disaggregated into further subsector-modes (as shown in Annex Table A5<sup>5</sup>): financial (banking and insurance), education (higher education), medical

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<sup>2</sup> Policy data collected via surveys for ASEAN Member States is not yet publicly available.

<sup>3</sup> The Brunei survey has been delayed and we do not yet have adequate information on its policies.

<sup>4</sup> The choice of sectors in the original Database was based primarily on our assessment of their economic importance from a development perspective and on the existence of meaningful restrictions on services trade.

<sup>5</sup> Regarding policies governing cross-border (mode 1) trade in international air passenger transportation services, we draw on the WTO’s QUASAR database since it represents the most comprehensive source currently available on bilateral air services agreements, covering over 2000 agreements.

(physicians, nurses, hospitals, telemedicine), telecommunications, retail distribution, transportation and professional services (architecture, engineering, accounting, legal, and management consulting). Within each subsector, the database covers the most relevant modes of supplying the respective service: establishing commercial presence or FDI (mode 3 in WTO parlance) in every subsector; cross-border trade in services (mode 1) in financial, transportation and some professional services; consumption abroad in education and medical services, and the presence of service supplying individuals (mode 4) in professional services. The questionnaire focuses on each country's Most-Favored Nation (MFN) policies affecting trade with non-ASEAN member countries, and its intra-ASEAN preferential policies affecting trade with other ASEAN member countries.

The primary focus of the questionnaire is to gather information on policies and regulations that restrict trade in services. Measures that explicitly discriminate against foreign services or service providers impede trade almost by definition, and thus all these measures belong in the database. But these are not the only measures that obstruct trade. Certain measures that on the face of it do not discriminate against foreign services providers may nevertheless restrict trade. First of all, quantitative restrictions, such as those that limit the total number of providers, could hurt trade by preventing foreign entry even though they also limit domestic entry. Secondly, regulations such as qualification and licensing requirements ostensibly address the asymmetric information problem in certain services sectors but can impose a disproportionate burden on foreign providers such as professionals who have already met these requirements in their home countries. Thirdly, in some sectors the *absence* of regulations, such as those that ensure all (domestic and foreign) entrants have access to essential facilities such as ports and telecommunications networks, can be seen as a "sin of omission" because without such access entry may not be feasible. To cover each possible sin of commission or omission in all sectors is virtually impossible, but we attempt to include at least those which are likely to have a significant trade impact.

For each mode, the measures differ depending on the sector. In general, for mode 3 we have a core set of measures across sectors which are supplemented with sector-specific measures, for example limits on the size of loans in retail banking and restrictions on the international gateway in telecom. The core set of measures that pertain to mode 3 fall into the following four broad



categories: requirements on the legal form of entry and restrictions on foreign equity; limits on licenses and discrimination in the allocation of licenses; restrictions on ongoing operations; and relevant aspects of the regulatory environment.

Measures governing mode 1 are slightly different in that they typically stipulate conditions under which cross-border trade may take place, rather than conditions imposed on the service provider. Mode 4 measures, covered only in professional services, focus on qualification and (re-) certification requirements as well as entry and immigration rules, all of which strongly affect the movement of service supplying individuals. The challenge in evaluating policy measures is to assess whether prudential or regulatory measures affect contestability of the market by restricting entry of foreign suppliers (Findlay and Warren, 2000). While we make an effort to capture the important licensing regulations in professional services where they have a significant impact on trade, in future work more could be done to improve the coverage of such measures in areas like financial services. Finally, to understand how the policy was measured and became the services trade restrictiveness indices (STRI), please see the detailed note on the scoring in the Appendix.

First-hand information for ASEAN member states was collected by administering a questionnaire in 2012 which was completed by local law firms familiar with the policy regime in the respective countries and sectors. The information on policies received was evaluated, and its restrictiveness assessed, by a team of World Bank economists. To ensure data accuracy, the policy information was reviewed by government officials between March and May of 2013. Upon receiving government comments, the policy information and scores have been revised. This paper is based on the data that have been reviewed and validated by the government officials.

It is notoriously difficult to measure policies affecting services trade because of their variety and complexity (see, for example, Hoekman (1996) and the overview by Deardoff and Stern (2008)). We rely on a measure of the restrictiveness of a country's policy regime for any subsector-mode, the "services trade restrictions index" (STRI), which has the weakness of being subjective but the virtue of being simple, transparent and robust (Gootiiz et al. 2013).<sup>6</sup> This measure is most

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<sup>6</sup> The OECD has also developed a measure of services trade restrictiveness drawing upon the more detailed data available for industrial and more advanced developing countries (OECD 2009, 2011).

convenient to depict overall patterns in policy, across countries, modes, and sectors. Essentially, we assess policy regimes in their entirety and assign them into five broad categories: completely open, i.e. no restrictions at all; completely closed, i.e. no entry allowed at all; virtually open but with minor restrictions; virtually closed but with very limited opportunities to enter and operate; and a final residual “intermediate” category of regimes which allow entry and operations but impose restrictions that are neither trivial nor stringent. It is convenient to assign a value to each of these five categories of regimes on an openness scale from 0 to 1 with intervals of 0.25. We call the resulting score a services trade restrictions index (STRI). Once a score has been attached to each regime, STRI values can be aggregated across sectors and modes of supply taking weighted averages which reflect the importance of the different modes in each sector and the individual sectors in a standardized country. A detailed description of the quantification method is provided in Annex Section 1.

### **3. HOW OPEN ARE THE SERVICES MARKETS OF ASEAN COUNTRIES?**

The comparison of STRIs shows that ASEAN was on average one of the more restrictive regions in the world. The average Services Trade Restrictions Index (STRI) for the region was 60 percent higher than the global average. Figure 1 compares the sectoral policies of the ASEAN region with other regions of the world. It reveals that the policies of ASEAN countries were less restrictive on average than those of the countries of the Gulf Cooperation Council (GCC), were comparable to those of countries in South Asia, Middle East and North Africa, and were more restrictive than those of countries in Africa, Latin America and Caribbean (LAC), high income OECD countries, and Eastern and Central European countries. The country level STRI shows that most of the individual ASEAN countries had policies more restrictive than the global average at the corresponding levels of income, but Singapore, Cambodia, and Myanmar were relatively open.

Figure 2 provides a comparison of the policies of individual ASEAN countries in five key sectors.<sup>7</sup> It is useful to look more closely at the nature of these policies.

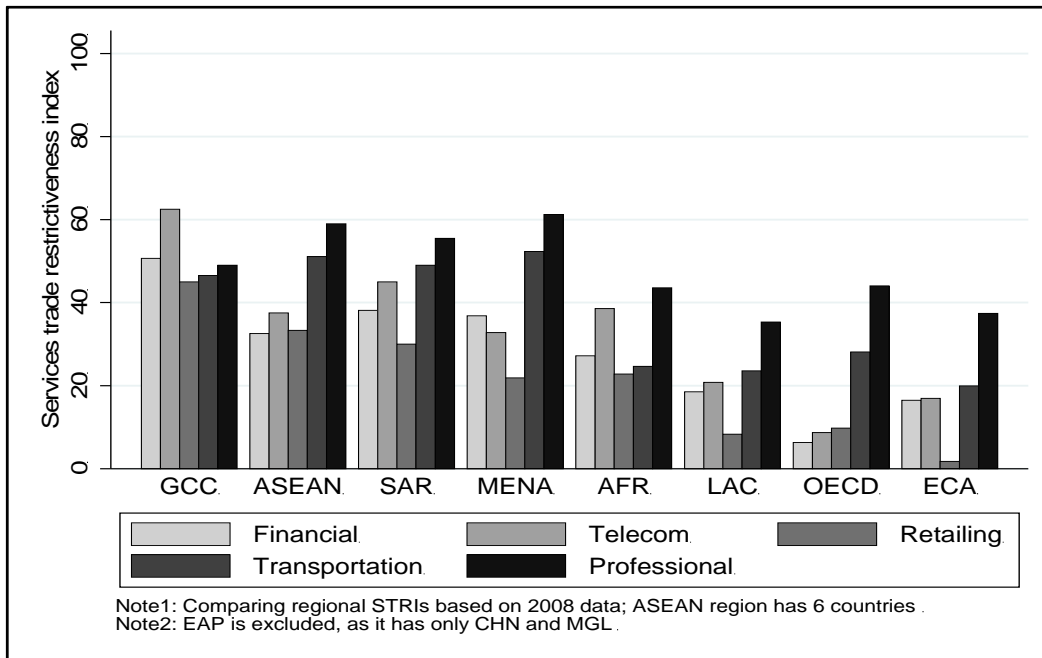
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<sup>7</sup> We focus here on the five main sectors. Annex Figure A1 includes also education and medical services.

**Financial services:** Bank sector policies in Thailand, Philippines, Malaysia, and Vietnam were more restrictive than in the other countries, because they restricted greenfield entry and operations. In Thailand, the limit on foreign ownership in a “local bank” was 49 percent. A foreign-owned subsidiary faced no limit on foreign equity participation, but there was a limit on operations: the number of branches and ATMs allowed per subsidiary was 20. Foreign bank branches could operate up to 3 branches or off-premise ATMs without a location limit. In Philippines, greenfield entry was not possible since the license limit of 10 had been reached, and for acquisition, the foreign ownership limit was 60 percent. In Malaysia, primary entry as a branch was not allowed and entry through a subsidiary was temporarily not allowed, as no new licenses were being issued, although there was no limit on foreign ownership in a subsidiary. For acquisition, the limit was 30 percent and there was a restriction on expanding through additional branches; 10 microfinance branches were allowed per bank and further branches were allowed based on the effectiveness of these branches in serving microenterprises. Vietnam allowed wholly foreign-owned subsidiaries but imposed a limit on the acquisition of banks. To acquire existing banks, the foreign ownership limit was 30 percent for aggregate foreign investment and 20 percent for a single foreign credit institution.

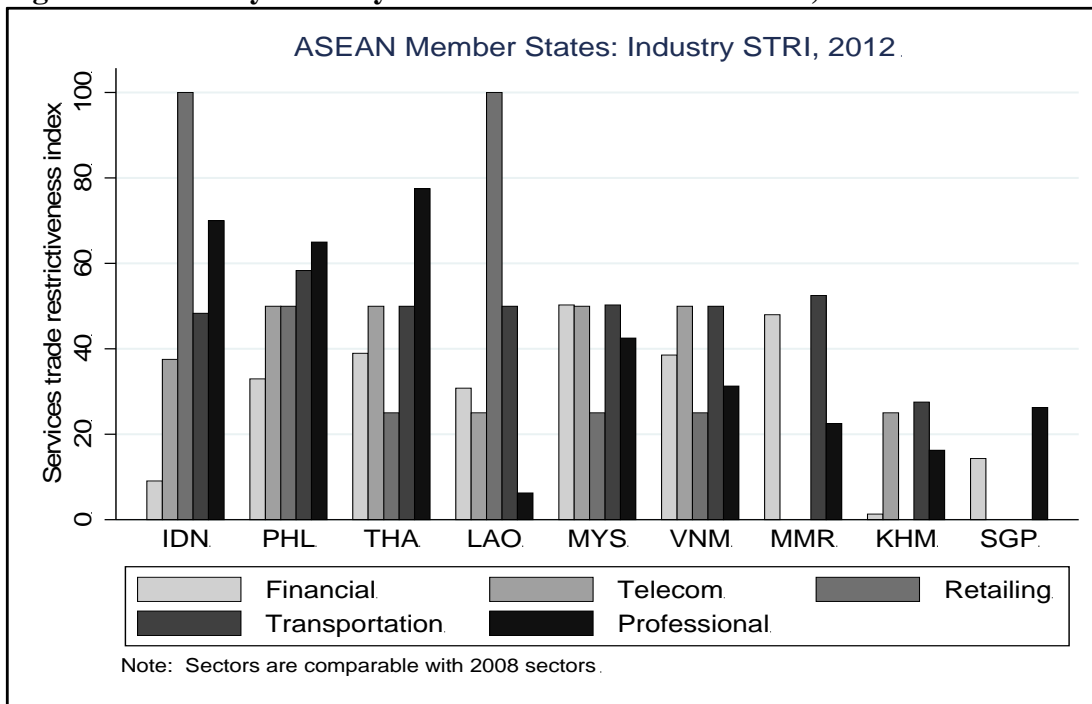
In automobile and life insurance, Malaysia, Thailand, Lao PDR and Myanmar had restrictive policies. Myanmar was still drafting its regulations on the insurance and reinsurance sector, and it was not possible to enter at that stage. In Thailand, the licensing regime was discretionary; the Minister of Finance gave approval for the license and equity participation. In Lao, there was a 49 percent limit on foreign ownership, and the licensing regime seemed burdensome as approval from the Ministry of Planning and Investment, Ministry of Finance and Ministry of Industry and Commerce were required. Malaysia did not allow entry via a branch. Foreign ownership in a subsidiary could be 100 percent, however, no new licenses were being issued but were announced from time to time on an ad hoc basis. The foreign ownership limit in acquiring a share of an existing insurance company was 70 percent. In cross-border reinsurance, Malaysia had a restrictive policy: companies need to demonstrate domestic unavailability in Malaysia before obtaining services abroad. The Philippines required 10 percent of reinsurance to be ceded to the National Reinsurance Corporation of Philippines.

**Figure 1: STRI by industry, ASEAN region compared with other regions (2008)**



Note: The services trade restrictions index (STRI) at the regional level is calculated as a simple average of individual country's STRIs. The STRI in the cross-border air passenger transport subsector is excluded. Regional abbreviations: GCC – Gulf Cooperation Council, ASEAN- ASEAN Member countries, SAR – South Asia Region, MENA – Middle East and Northern Africa, AFR – Sub-Saharan Africa, LAC – Latin America and Caribbean, OECD – High income OECD, ECA – Europe and Central Asia. The financial STRI includes scores for retail banking mode 1 and mode 3, auto mobile, life, and reinsurance mode 1 and mode 3 respectively. Telecom STRI includes scores for fixed line and mobile. Retailing STRI includes scores for retailing mode 3. The transport STRI includes STRIs for air passenger international mode 3, maritime international mode 1 and mode 3, road freight mode 3, and rail freight mode 3. Professional services STRI includes scores for accounting, auditing, legal advisory on domestic law and foreign law in mode 1, mode 3, and mode 4. For comparability, the STRI scores for education, medical services, and some other professional services subsectors are excluded.

**Figure 2: STRIs by industry for ASEAN member countries, 2012**



Note: Above 3 letters stand for abbreviation of the ASEAN Member States. IDN - Indonesia, PHL -Philippines, THA - Thailand, LAO – Lao, PDR ; MYS -Malaysia, VNM - Vietnam, MMR - Myanmar, KHM - Cambodia, and SGP - Singapore. When STRI score is zero, there is no bar.

**Telecommunications:** Most ASEAN countries limited foreign investment in fixed and mobile telecommunications services. The limit on foreign ownership was 49 percent in Indonesia and Malaysia, and 40 percent in the Philippines. The limit was a more relaxed 70 percent in Vietnam but foreign majority control required government approval, and in Thailand foreign majority owned or controlled providers could only offer services on a resale basis. A number of countries allowed full foreign ownership in private companies, but restricted foreign ownership in state-owned telecom operators. Thus, the Philippines did not allow acquisition of a state-owned entity, whereas Cambodia, Lao PDR allowed only a minority foreign share in state entities. In Vietnam, the state held a dominant share in telecommunications service providers with network infrastructure. In terms of the legal form of entry, all countries allowed entry through greenfield and acquisition, except in Malaysia, where entry at that stage was possible only through acquisition because no new greenfield licenses were being issued. Singapore and Myanmar were the two relatively open countries in the region in that they did not limit entry and foreign equity participation. However, Cambodia (like Vietnam) did not allow foreign operators to establish their own international gateway (IG), and Singapore required that the board of directors include at least one Singaporean. Policy in mobile telecommunications was similar to that in fixed telecommunications. For most ASEAN Member States, the foreign equity limits in both areas were the same. The exception was Indonesia, where the foreign equity limit for mobile telecommunications operators was a more relaxed 65 percent compared to the 49 percent limit in fixed telecommunications.

**Retail:** Most countries in the region allowed FDI in retail, except Indonesia and Lao PDR. Indonesia's FDI policies had become more restrictive since 2008 when foreign investment in retail was still allowed. Other countries surveyed allowed investment as long as the foreign retailers meet the minimum capital requirements. In Thailand, the minimum capital requirement for opening the first 5 shops was Baht 100 million (about USD 3.2 million). For each additional shop, capitalization of not less than Baht 20 million (USD 640 thousand) was required. In Philippines, a foreign retailer needed to bring in a paid-up capital of USD 2.5 million or more, provided that investments for each store must be not less than USD830 thousand. In Vietnam, establishing an outlet beyond the first one was considered on a case-by-case basis and approval

depended on the number of outlets, market stability, population density, and consistency of the investment project with the master plan of the city, where the shop was planned to be set up. Malaysia also had a minimum capital requirement that foreign retailers needed to meet. In these cases, domestic retailers did not have the same requirement.

**Transportation:** Transportation services were relatively restricted in ASEAN countries as they were in other parts of the world. In cross-border (mode 1) maritime shipping, we examined restrictions on both private and government cargo. Thailand, Vietnam, Philippines, and Malaysia had restrictions on foreign ships carrying government cargo but no limitations on private cargo. On commercial presence (mode 3), for the types of transport covered by the survey (maritime, air, road, and rail), the majority of Member States mentioned that the control must be held by local companies. In air transport, the member states signed the ASEAN Multilateral Agreement on Full Liberalization of Air Freight and Air Passenger services. It was difficult to assess how much more openness the regional air services agreements offered beyond the existing Bilateral Air Services Agreements (BASAs), which are discussed in more detail below.

**Education and medical services:** These services were covered most comprehensively, as all modes of supply were included in our survey: cross border (mode 1), consumption abroad (mode 2), commercial presence (mode 3), and presence of natural persons (mode 4). Not surprisingly, most countries were fairly open in mode 1 and mode 2 types of trade in education and medical services. In mode 3, Thailand, Indonesia, Myanmar, and Philippines had restrictive policies. In these countries, the control of such institutions was required to be held by nationals and in the case of Myanmar, the medical and higher education services were run by state-owned institutions. In Philippines, medical services were run by the state and the educational institutions were required to be owned and operated by Philippine nationals only. In mode 4, Lao PDR and the Philippine required medical and educational services to be provided by the nationals. Other countries were surprisingly open in the supply of services through mode 4.

**Professional Services:** The supply of accounting, auditing, legal advisory service on foreign and domestic laws, architectural, engineering, and management consulting services were covered through mode 1, mode 3, and mode 4. Although countries differed in their policies, it appeared that most countries had fewer restrictions on management consulting, accounting, legal advice

on foreign law, architecture, and engineering services than on auditing and legal advice on domestic law. In many of the countries, the cross –border supply of services (mode 1) was unregulated and open. In mode 3, the countries had restrictions on ownership, organization, and practices. Indonesia did not allow investment in most of its professional services sectors. In mode 4, Thailand and Philippine were quite restrictive: Thailand did not allow entry via mode 4 in all of the professional services sectors covered and the Philippines allowed entry subject to restrictive conditions including reciprocity and labor market tests.

#### **4 IS ASEAN POLICY RULE-BOUND OR DISCRETIONARY?**

Besides the overall policy pattern by sector, we looked at a few of the key policy measures the survey covers in each sector: legal form of entry and ownership, licensing regime, and regulatory environment. The central features that emerged are the restrictiveness of policy and the high degree of discretion in the policy environment relating to the entry and operation of foreign firms.

##### **4.1 Legal form of entry and foreign ownership**

As we saw in the previous section, the restrictiveness of legal form of entry and ownership varied by sector and country, but certain broad trends emerged. In general, higher foreign ownership was allowed in a greenfield subsidiary than in entry through acquisition (Annex Tables A6.A, A6.B and A6.C). Many countries allowed full foreign ownership in a subsidiary, but full foreign ownership did not actually mean liberal conditions of entry, since licensing could still be restrictive. For example, even though Malaysia allowed 100 percent foreign ownership in banking and life insurance, new licenses were not being issued. In Thailand, insurance sector licenses were subject to review by several authorities, including the Office of Insurance Commission (OIC), on a case by case basis. In case more than 49 percent of foreign equity was desired, the approval of the Ministry of Finance (MOF) was required upon the recommendation by the Commission; the Minister had the power to grant a license with the approval of the Cabinet.

Compared to Greenfield entry, there were stricter limits on foreign ownership via acquisition of an existing entity, especially if the entity was state–owned. Myanmar and Philippines did not allow foreign acquisition of state-owned entities in most of the sectors covered. However,

because acquisition was not subject to new licensing requirements, conditions of entry through this legal form may in fact have been more liberal than greenfield entry. Across countries, the foreign ownership limit was more restrictive in transportation sectors. The only country that allowed full foreign ownership of a state-owned entity was Singapore.

## **4.2 Licensing regime**

The licensing regime is vital but it was difficult to assess whether licensing measures were applied for prudential or protectionist reasons. In most countries, licensing and market entry criteria were publicly available but fulfilling publicly available criteria did not ensure that a license was granted. All countries except Vietnam indicated licensing was not automatic in at least several sectors. Instead, licenses tended to be issued on a case-by-case basis. Measuring the discretionary element in licensing was, of course, difficult.

In only a few countries did we observe an explicit licensing limit or a hard quota-type of restriction but the discretion of the licensing authority could be used to implement implicit limits. Many countries also maintained different licensing criteria for foreign and domestic firms, but most such differences were relatively minor, such as an additional document or minimum capital requirement.

## **4.3 Regulatory environment**

Our survey also covered several aspects of the regulatory environment, of which we describe three: whether the regulator was required to provide reasons for license rejection; whether there was a right to appeal the decisions of the regulatory authority; and whether regulators provided prior notice of regulatory and policy changes. Countries in which the regulators were required to provide reasons for rejecting licenses would presumably have had less room for discretion. Having a right to appeal was also connected to the licensing regime and indicated whether there the private sector had recourse to a remedial process. The survey results showed that Myanmar, Malaysia, Philippines, Singapore and Thailand did not require regulators to provide reasons for license rejection. Appeals were not allowed in Cambodia, Myanmar, and Malaysia. Prior notice helped the private sector prepare for policy changes and may even have allowed for private sector input into policy. Indonesia, Philippines, Thailand, Myanmar, and Lao did not have processes for prior notice to the private sector.

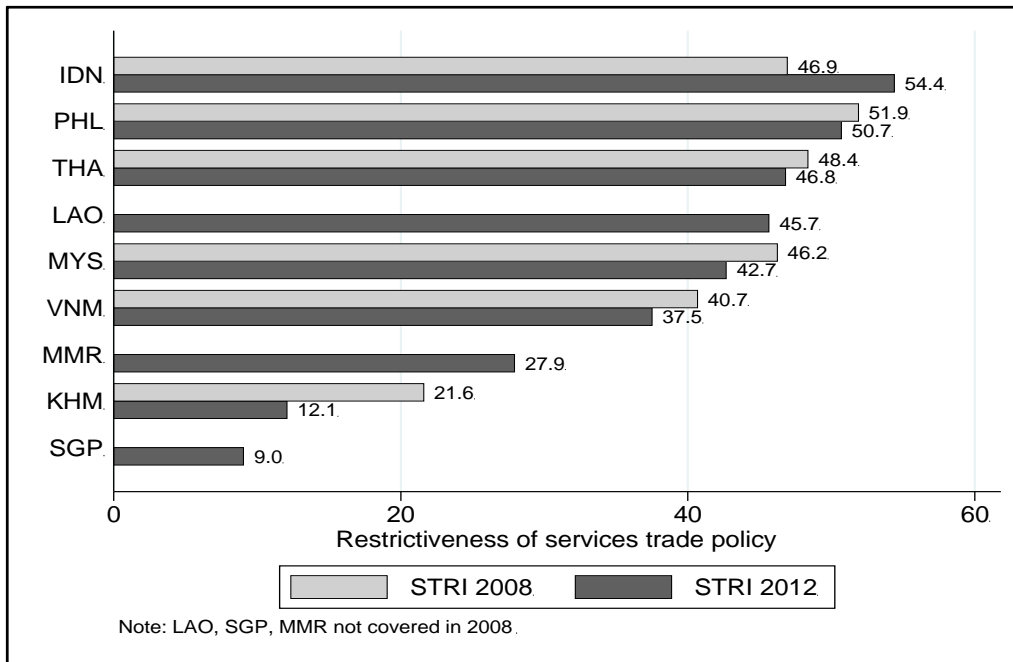


In low-income countries, where there was less institutional capacity, the complete absence of a formal policy or regulation was not uncommon. The most number of subsector-modes that were not covered by any specific regulation or policy appeared in Lao PDR, followed by Cambodia, Myanmar, and the Philippines, and it was a phenomenon mostly observed in modes 1 and 2. The absence could have had a restrictive impact, since it reduced transparency and predictability of the policy regime and increased the potential for discretion. But in many of these cases, in practice the supply of a service was allowed, with Vietnam a notable exception in this respect. Some other dimensions of the regulatory environment that the survey covered are described below.

## **5 DID ASEAN MEMBERS BECOME MORE OPEN BETWEEN 2008 AND 2012?**

As noted above, the surveys were conducted in both 2008 and 2012 for six ASEAN countries: Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Vietnam. Over this period, the data shows that six countries' policies on average became more liberal but the change is very small (Figure 3). To identify the policy change, we need to look at the subsector mode level, because the country level score is a weighted aggregation of subsector-mode scores. For example, Indonesia's overall STRI increased by 7 points between 2008 and 2012. Even though the restrictiveness index went down in 5 subsector-modes, it went up in 3 subsector-modes, including the relatively important retail sector.

### **Figure 3: ASEAN Members country level STRI: 2008 and 2012**



Countries differ significantly in terms of the level and depth of liberalization in policies. In Philippines, automobile and life insurance via mode 1 were not allowed in 2008, but these services were allowed in 2012. In Thailand, cross-border bank loans, deposits, and automobile insurance were not allowed in 2008 but were allowed without restrictions in 2012. In Malaysia, demonstration of domestic availability was required for cross-border life insurance in 2008, but was not required in 2012. In Cambodia, cross-border accounting and auditing services had been opened up since 2008. In Indonesia, FDI in road freight services was closed in 2008 but was allowed in 2012 subject to limitations; in contrast, FDI in retailing was open in 2008 but was not allowed in 2012. In Vietnam, there was no restriction in cross-border maritime international shopping in 2008 but there was a quota on bulk and liner cargo in 2012.

## 6 WAS ASEAN INTEGRATING FASTER INTERNALLY?

One of the goals of the survey, as described in Section 2, was to identify instances where ASEAN countries treated services and/or services providers from their regional partners differently from those whose provenance was outside the region. In fact, neither the law firms that collected the policy data nor the governments that verified the data could identify any meaningful instances of differential treatment. For the seven broad sectors (and relevant modes) covered by the questionnaire, the supposedly preferential policies vis-à-vis other ASEAN

countries were virtually the same as non-preferential (or “most-favored-nation” (MFN) policies vis-à-vis non-ASEAN countries.

In professional and transport services, liberalization initiatives naturally tended to be among two or a few countries because the regulatory framework favored reciprocal arrangements, such as recognition of qualifications and negotiation of traffic rights. ASEAN countries had taken initiatives in both these areas and to illustrate their impact we assess below the intra-ASEAN openness in architectural and engineering services via mode 4 and air transport services via mode 1.

### **6.1. Architectural and Engineering services via mode 4**

ASEAN Mutual Recognition Arrangements (MRAs) have been developed to facilitate the movement within the region of services professionals. There were seven MRAs in professional services: in engineering services (2005), nursing (2006), architectural (2007), medical practitioners (2009), dental practitioners (2009), and a framework agreement on accountancy (2009). We compared the provisions of ASEAN MRAs for Architecture and Engineering services with the MFN provisions in these sectors (Annex Table A7). We found two problems: in some states, the restrictive domestic regime had not been reformed to align it with the relatively liberal MRAs; in other states, the liberal domestic regime was already more liberal than the MRAs.

The first problem was the lack of domestic regulatory reform needed to support the specific MRAs. Passing new laws or reforming the existing domestic laws (labor law, immigration law, and professional regulation) was difficult due to the Constitutional and other legislative restrictions. For example, the Philippines Constitution (Article 17, Sec. 14) stated that the practice of all professional services in the Philippines shall be limited to Filipino citizens, although there was another regulation (Philippines’ Republic Act 8981) that provided exceptions when reciprocity requirements are met. Similarly, in Thailand, professional services were reserved for nationals. Singapore recognized education only from selected OECD countries. In these three countries, it was not clear whether being an ASEAN professional made a difference, since the domestic laws were still being revised.

The survey revealed that in some other respects, member states already had quite liberal regimes for foreign licensed architects and engineers (Annex Table A8). In these respects, it appeared that being an ASEAN licensed professional conferred no additional advantage since the MFN regime was already liberal. To illustrate this aspect, we compare one condition of the MFN regime with the comparable condition in the MRA: work experience (Table Annex A9). The ASEAN MRA on architectural services required at least 10 years of experience; but the MFN regime shows that four countries (Indonesia, Vietnam, Myanmar, and Lao PDR) did not require any work experience, and two countries (Philippines and Malaysia) required 2 and 5 years of experience, and one country (Singapore) required 2 to 10 years of experience. In engineering services, we observed the same pattern, where the MFN regime was more relaxed than the ASEAN regime. Hence, although the MRAs are potentially an important step in the regional integration in professional services, there still appeared to be limited benefits of being registered as an ASEAN professional - a conclusion which accords with the findings of Aldaba (2013) and Hirawan and Triwidodo (2012).

## **6.2. Cross-border air transport**

Compared to other sectors, ASEAN member states appeared to have made progress in the regional integration of their air transport markets.<sup>8</sup> They had signed “multilateral” air transport agreements that were more liberal than their previous restrictive bilateral air service agreements. However, regional integration was incomplete, as there were number of areas that needed to be further liberalized to achieve a truly integrated regional air market. In fact, some members had moved ahead and individually concluded bilateral agreements with certain OECD countries that could be even more liberal than the agreements with other member states.

Most bilateral routes within ASEAN had been liberalized by the ASEAN multilateral agreements. The only exception were routes into and out of those member states that had not fully accepted the air transport agreements and these remained governed by restrictive bilateral air services agreements (BASAs). The formal ASEAN agreements on air transport liberalization were the “Multilateral Agreement on Air Services” (MAAS), the “Multilateral Agreement for

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<sup>8</sup> This Section and Annex Section 2 are based on the insightful study by Tan (2013).

Full Liberalization of Passenger Air Services” (MAFLPAS) and “Multilateral Agreement for Full Liberalization of Air Freight Services” (MAFLAFS) and their respective Implementing Protocols. These multilateral agreements go beyond the BASAs in two important aspects: the agreements allow 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> freedom rights for air carriers between designated secondary cities and all capital cities of ASEAN Member States;<sup>9</sup> instead of substantial ownership and control by the nationals, the “community carrier” concept is in principle allowed. This means an airline can be substantially owned and effectively controlled by ASEAN interests taken cumulatively or in the aggregate (Tan, 2009). This provision allows airlines to attract capital infusions and management expertise from multiple sources within ASEAN.

However regional integration appeared incomplete in certain key respects. To achieve a truly integrated aviation market, further liberalization, such as the seventh freedom (the right to fly between two ASEAN countries while not offering flights to one's own country), eighth freedom (the right to fly between two or more airports within an ASEAN country while continuing service to one's own country), and ninth freedom (the right to fly inside a ASEAN country without continuing service to one's own country) are all necessary. A single aviation market such as that which exists in the European Union (E.U.) liberalizes such operations fully and allows market competition throughout the region. But in ASEAN countries, domestic carriage remained highly sensitive for large countries with a large domestic population. Typically, such operations were reserved exclusively for local players, and most ASEAN governments upheld that *status quo*.

As far as ownership and control were concerned, although in theory a “community carrier” was allowed to operate, in practice, it was still difficult. There was no certainty that the “community carrier” could fly into all member states in the region, as the Member States still needed to provide an approval before the carrier could operate. Unless a significant number of member states first declared their unequivocal approval for such a model, the current uncertainty could

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<sup>9</sup> The freedoms of the air are described in ICAO (2004) as the following: 1st is the right to fly over a foreign country, without landing there; 2nd is the right to refuel or carry out maintenance in a foreign country on the way to another country; 3rd is the right to fly from one's own country to another; 4th is the right to fly from another country to one's own; 5th is the right to fly between two foreign countries during flights while the flight originates or ends in one's own country; 6th is the right to fly from a foreign country to another one while stopping in one's own country for non-technical reasons; 7th is the right to fly between two foreign countries while not offering flights to one's own country; 8th is the right to fly between two or more airports in a foreign country while continuing service to one's own country; 9th is the right to fly inside a foreign country without continuing service to one's own country.

discourage any investor thinking of establishing such an airline. At the time of this study, investors complied with the traditional “substantial ownership and effective control of nationals” rule.

Finally, even though the agreements were in force among most ASEAN member states, key states such as Indonesia and Philippines remained outside the scope of the agreements.

Indonesia’s position on the ASEAN agreements could be traced to its leading carriers’ lobbying of their government to continue protecting their international operations against those of rival airlines from neighbouring ASEAN states. Through their industry group, the Indonesian National Air Carriers Association (INACA), the major carriers had traditionally opposed efforts to open up the ASEAN air travel market. The Philippines’ reluctance was related to the lack of airport slots and infrastructural constraints.

However, there are several factors that may provide the momentum for change beyond 2015. First is the growing confidence of Indonesian carriers such as Garuda and Lion Air. As these airlines expand their services and increase their competitiveness and appeal to passengers, there may come a time when they feel more secure and see less of a need to resist greater liberalization. Second, there is the pressure created by the provincial governments, tourism authorities and business community to allow greater direct access into secondary cities. Third, there is the pressure created by the agreements with larger countries such as China. The Member States are realizing that without a truly single market agreement internally, negotiating with large countries like China may be difficult for the ASEAN Member States. Fourth, innovative airlines have sought to get around the restrictions, including those that are cast in the bilateral and multilateral agreements. One example is how AirAsia pioneered the cross-border joint venture model – while still imperfect, it allows AirAsia to get around the “seventh freedom” prohibition and to operate region-wide from multiple hubs using a common, well-recognized brand.

Recent research by Tan (2013) suggests that some ASEAN member states have more liberal air services agreements with the third parties than among themselves. With the United States, Singapore, Brunei, Malaysia, Indonesia, Thailand and Lao PDR have “open skies” agreements that allow, at the minimum, unlimited third and fourth freedom capacity. Moreover, Singapore and Brunei have gone further with the U.S. in that they are state parties to the APEC-sponsored Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT) and

the Protocol of the agreement.<sup>10</sup> The MALIAT Agreement provides for unlimited third, fourth *and* fifth freedom rights among the state parties and replaces the traditional “substantial ownership and effective control” requirement with a more progressive “principal place of business and incorporation and effective control” clause. Singapore and Brunei are also party to the MALIAT Protocol, which goes further in providing for the exchange of seventh freedom and cabotage rights. While the impact of MALIAT and its Protocol is limited due to the very few state parties that they have managed to attract, the involvement of Singapore and Brunei shows that ASEAN member states do in some respects go further with their trading partners than among themselves.

In addition, several ASEAN member states have entered into “horizontal” agreements with the European Community that recognize the right of all E.U. carriers to operate between any E.U. point and the state concerned.<sup>11</sup> As of October 2013, four ASEAN member states – Singapore, Malaysia, Indonesia and Vietnam – had entered into horizontal agreements with the European Community and their individual bilateral agreements with the EU members do go much further. For instance, Singapore has had an extremely liberal agreement with the United Kingdom since 2007 that provides for unlimited third, fourth and fifth freedom capacity *and* even seventh freedom and domestic carriage rights for both sides’ carriers. In June 2013, Malaysia adopted a new agreement with the U.K. containing similar rights. In Annex Section 2, we discuss in greater detail the ASEAN multilateral air transport agreements and reasons for why some Member States remained reluctant to liberalize the domestic air market.

## **7. REGIONAL AND MULTILATERAL COMMITMENTS AND GOALS**

Having examined applied policies, we are in a position to make three sets of comparisons: between regional commitments and goals, and actual policy; between multilateral commitments and offers, and actual policy; and, finally, between the regional and multilateral dimensions.

### **7.1 The regional dimension**

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<sup>10</sup> The other parties to MALIAT are Chile, Cook Islands, New Zealand, Samoa and Tonga.

<sup>11</sup> These horizontal agreements do not alter the capacity provided for in the existing bilateral agreements.

The ASEAN Framework Agreement on Services (AFAS), signed in 1995, is one of the first regional trade agreements in services. AFAS is closely related to the GATS and follows its main principles, disciplines and approach to liberalization. It contains liberalization commitments that aim to reduce restrictions to services trade between the ASEAN Member States and calls for the liberalization of services trade through successive rounds of negotiations of sector-specific commitments. Since 1995, numerous packages of AFAS commitments have been concluded and signed by ASEAN Member States. These negotiations have resulted in eight packages of commitments in a wide range of services sectors under the purview of ASEAN Economic Ministers; five packages of commitments in financial services; and seven packages of commitments in air transport.

The ASEAN Economic Community (AEC) Blueprint was adopted in 2007 to further liberalize services trade among ASEAN Member States and create a free trade area in services trade by 2015. The Blueprint aims to: remove substantially all restrictions on trade in services for the four priority services sectors, air transport, e-ASEAN, healthcare and tourism, by 2010 and the fifth priority services sector, logistics services, by 2013; remove substantially all restrictions on trade in services for all other services sectors by 2015; and undertake liberalization through consecutive rounds of every two years until 2015, i.e. 2008, 2010, 2012, 2014 and 2015.

In addition, the Blueprint goals set up specific liberalization parameters for the sectors. In all sectors, there would be no restrictions for Modes 1 and 2, with exceptions for bona fide regulatory reasons (such as public safety) which are subject to agreement by all Member States on a case-by-case basis. For the four priority services sectors, foreign (ASEAN) equity participation would be allowed of not less than 51 percent by 2008 and 70 percent by 2010, and for logistics services not less than 49 percent by 2008, 51 percent by 2010 and 70 percent by 2013. For the other services sectors, the equity participation thresholds were not less than 49 percent by 2008, 51 percent by 2010, and 70 percent by 2015. Members also agreed to progressively remove other Mode 3 market access limitations by 2015.

It is evident from Table 1 (and Annex Figure A2) that all ASEAN member countries' applied policies were more liberal than their AFAS commitments, though the size of the gap varied across countries and sectors. Indonesia and Vietnam are examples of countries where there was



virtually no gap, whereas Singapore, Cambodia and Myanmar had policies that were much more open than their commitments. In terms of sectors, Table 2 shows that the gap was particularly large in financial (especially banking) and education services with commitments more than twice as restrictive as policy, and quite small in transport and medical services.

Table 3 provides a more textured comparison, drawing upon the restrictions on entry and ownership in fixed line telecommunications services. Myanmar and Singapore already applied no significant restrictions and were ahead of the Blueprint goals for 2015 (which allows foreign equity limits of greater than 70 percent). In contrast, Indonesia, Malaysia and the Philippines were examples of countries which still maintained foreign equity limitations more stringent than the Blueprint goals.

On the whole, it was evident that most ASEAN countries would need to take drastic action to close the gap between applied policy and Blueprint 2015 (the average gap is about 20 STRI points). The two notable exceptions were Singapore and Cambodia; their applied policies were on average already more liberal than Blueprint goals. In terms of sectors, applied policies were close to goals in financial, telecommunication and retail services but remained far behind in most other sectors.

## **7.2 The multilateral dimension**

Two things are immediately evident from Tables 1 and 2. First, offers submitted during the course of the WTO's unfinished Doha negotiations by most ASEAN countries have hardly improved on countries' Uruguay Round commitments (the offers improve on commitments by only 2 STRI points). To be fair, more far-reaching offers would probably have been put forward if services negotiations had reached a more conclusive stage. Second, in most cases both WTO commitments and offers bear virtually no relationship with applied policies which are significantly more liberal, with the starkest gaps in the case of Myanmar and Singapore. In fixed line telecommunications, for example, Table 3 shows that Singapore which has a virtually open market, limits direct foreign investment to 49 percent in both its GATS commitments and Doha offer, whereas Myanmar with a similarly open market has made neither commitments nor an offer. There are, however, two exceptions: Cambodia and Vietnam, both of which made far-

reaching commitments during their WTO accession negotiations. Lao PDR's accession negotiations do not seem to have led to bindings which are as close to applied policies.

### 7.3 Comparing the regional and multilateral dimensions

To bring all the dimensions together, ASEAN countries' GATS commitments and Doha offers were far more restrictive than their AFAS commitments (with a gap of about 23 STRI points). Thus, there is no doubt that the countries – especially Myanmar - have displayed a far greater willingness to widen and deepen their legal bindings in the regional than the multilateral context. The two exceptions are again the recently acceding countries, Cambodia and Vietnam, which have made WTO commitments close to their AFAS commitments. But the ASEAN countries' AFAS commitments themselves remained more restrictive than applied policies, as we saw above. And the gap between applied policy and Blueprint 2015 was still large (about 20 STRI points).

**Table 1: Restrictiveness of GATS commitments, Doha offers, AFAS commitments, applied policy and Blueprint goals by country**

Country	Restrictiveness of GATS Commitments	Restrictiveness of Doha Offers	Restrictiveness of AFAS commitments	Restrictiveness of applied policy	Restrictiveness of Blueprint goals
BRN	89.3	89.3	65.2	No data	19.1
IDN	78.2	74.0	49.5	48.3	19.1
KHM	24.1	23.4	18.5	10.0	19.1
LAO	76.0	75.3	55.3	44.6	19.1
MMR	100.0	100.0	42.8	26.4	19.1
MYS	76.0	73.1	54.2	42.3	19.1
PHL	78.7	78.7	55.0	48.6	19.1
SGP	60.4	59.8	30.5	10.8	19.1
THA	80.4	70.0	58.5	43.8	19.1
VNM	38.3	38.3	36.4	36.0	19.1

**Table 2: Restrictiveness of GATS commitments, Doha offers, AFAS commitments, applied policies and Blueprint goals by sector**

STRI by sector	Restrictiveness of GATS Commitments	Restrictiveness of Doha Offers	Restrictiveness of AFAS commitments	Restrictiveness of applied policy	Restrictiveness of Blueprint 2015 goals
<b>Overall</b>	<b>70.1</b>	<b>68.2</b>	<b>46.6</b>	<b>31.1</b>	<b>19.0</b>
<b>Financial</b>	<b>60.0</b>	<b>60.0</b>	<b>51.3</b>	<b>26.4</b>	<b>19.5</b>
Banking	64.6	64.6	59.0	24.6	21.3

Insurance	52.8	52.8	39.3	29.3	16.7
<b>Telecom</b>	<b>55.0</b>	<b>55.0</b>	<b>40.0</b>	<b>28.8</b>	<b>25.0</b>
<b>Retailing</b>	<b>82.5</b>	<b>80.0</b>	<b>42.5</b>	<b>32.5</b>	<b>25.0</b>
<b>Transport</b>	<b>75.9</b>	<b>73.9</b>	<b>40.0</b>	<b>37.9</b>	<b>21.8</b>
Maritime shipping	59.7	55.8	18.3	25.6	7.5
Maritime auxiliary	72.2	66.7	35.0	33.3	25.0
Road	77.5	77.5	45.0	37.5	25.0
Rail	92.5	92.5	70.0	59.4	25.0
<b>Education</b>	<b>76.5</b>	<b>68.5</b>	<b>57.3</b>	<b>22.8</b>	<b>10.0</b>
<b>Medical</b>	<b>66.8</b>	<b>60.3</b>	<b>31.8</b>	<b>29.3</b>	<b>10.0</b>
<b>Professional</b>	<b>69.7</b>	<b>67.7</b>	<b>51.2</b>	<b>32.4</b>	<b>10.4</b>
Accounting	73.0	73.0	49.0	27.0	10.0
Auditing	68.0	68.0	44.0	37.0	10.0
Legal advice domestic	91.3	91.3	90.0	53.8	12.5
Legal advice foreign	73.0	69.0	76.0	33.0	10.0
Engineering	60.0	57.0	32.5	28.0	10.0
Architecture	61.5	58.5	40.0	30.0	10.0
Management consulting	61.0	57.0	27.0	18.0	10.0

**Table 3: Comparing multilateral and regional commitments with applied policies:  
Restrictions on entry and ownership (mode 3) in the fixed telecommunications sectors**

Countries	GATS Commitments	Doha Offers	ASEAN Framework Agreement on Services (AFAS 8th Package)	Blueprint 2015	Applied policy (as of 2012), reviewed by government
<b>Brunei</b>	Subject to licensing by the appropriate regulatory authority and Companies' Act. Local public switched voice telephone services are provided exclusively by JTB, a government department. International services: Exclusive monopoly until 2010, then, the government will review policy and decide whether to permit additional suppliers.	Offer is similar to GATS commitment.	Subject to licensing by the appropriate regulatory authority and Companies Act.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%. Progressively remove other Mode 3 market access limitations by 2015.	Data not available
<b>Cambodia</b>	Provided exclusively by Telecom Cambodia until January 2009. Thereafter, no restrictions except subject to requirement for local shareholding of up to 49%.	Did not submit an offer.	None, except subject to requirement for local shareholding of up to 49%.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	No restrictions except when acquiring a state owned entity, the foreign equity limit is 49%.
<b>Indonesia</b>	Local services: Provided exclusively by PT Telecom until 2011. International: Provided exclusively by duopoly, expires 2005. Foreign equity limit is 35% and must be in form of a joint venture. At the end of each period, government decides whether to permit additional suppliers.	Offer is similar to GATS commitment.	Only through joint venture with local private sector. Foreign equity limit is 49%	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	There are no restrictions except foreign ownership limit is 49 percent.
<b>Lao PDR</b>	Only through acquisition of existing operators and foreign equity participation limit is 49% for 5 years after the date of accession. Thereafter, commercial presence is allowed with foreign equity limit of 60%.	Did not submit an offer.	Local and national long distance services can be supplied only on a facilities basis for public use. 100% foreign owned or joint venture enterprise is allowed.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	Foreign ownership limit in a state owned entity is 49.9%.

Countries	GATS Commitments	Doha Offers	ASEAN Framework Agreement on Services (AFAS 8th Package)	Blueprint 2015	Applied policy (as of 2012), reviewed by government
<b>Malaysia</b>	Entry allowed only through acquisition. Foreign equity limit is 30%.	With respect to network facilities and services provider: only through acquisition and foreign equity limit is 30%. The management must be controlled by Malaysians. For Telekom Malaysia, the foreign equity limit is 30% in aggregate with no single country holding more than 5% of the equity at any one time.	Only through acquisition of shares of existing licensed public telecommunications operators, foreign equity participation limited to 51% in such providers.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	Entry is possible only through acquisition (no new license is allowed). The foreign equity limit is 49%.
<b>Myanmar</b>	No commitment.	Did not submit an offer.	No commitment.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%. Progressively remove other Mode 3 market access limitations by 2015.	Foreign Investment Law (2012) allows commercial presence of foreign service suppliers. No restrictions on the foreign equity participation.
<b>Philippines</b>	Franchise from the Congress and Certificate of Public Convenience and Necessity from the National Telecommunications Commission required. Foreign equity limit is 40%. All executives and managers must be citizens and limit on the share of foreigners in BOD is 40%.	Offer is similar to GATS commitment.	Entry is subject to following requirements and conditions: franchise from Congress of the Philippines; certificate of Public Convenience and Necessity from National Telecommunications Commission (NTC); foreign equity permitted up to 40%; and resale of private leased line is not allowed.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	Entry as a branch or acquisition of state-owned entity is not allowed. Foreign ownership limit is 40%. Nationality requirement for BOD is 60%.
<b>Singapore</b>	Up to two additional operators will be licensed in 1998 for the provision of these services commencing 1 April 2000. Thereafter, additional licenses will be granted. A cumulative total 73.99% foreign shareholding, based on 49% direct investment and 24.99%	A cumulative total 73.99% foreign shareholding, based on 49% direct investment and 24.99% indirect investment is allowed.	A cumulative total of 73.99% foreign shareholding, based on 49% direct investment and 24.99% indirect investment is allowed.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	No restriction on foreign ownership, there shall be at least one Singaporean in the BOD.

Countries	GATS Commitments	Doha Offers	ASEAN Framework Agreement on Services (AFAS 8th Package)	Blueprint 2015	Applied policy (as of 2012), reviewed by government
	indirect investment in these operators is allowed.				
<b>Thailand</b>	Must be locally incorporated. Foreign equity limit is 20% of the registered capital. Due to scarce resources, the number of licenses may be limited. Since 2006, new commitments will be introduced, conditional on new communications acts.	Offers reflect commitment, except: Starting in 2006, new commitments will be made, as the Thai Communications Acts are being revised.	Facilities based: Foreign equity limit is 25%. Number of licenses may be limited. Head office and management must be in Thai territory.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	Foreign majority owned or controlled providers may only offer services on a resale basis, and such offerings are limited to certain defined services. No other restrictions.
<b>Vietnam</b>	Facilities-based: Upon accession, joint ventures with telecom service suppliers duly licensed in Vietnam will be allowed. Foreign equity limit is 49%. Non-facilities based: Upon accession, joint venture with telecom service suppliers duly licensed in Vietnam with foreign equity limit of 51% is allowed.	Did not submit an Offer.	None, services must be offered through commercial arrangements with an entity established in Viet Nam and licensed to provide international telecommunication services.	By 2015, allow for foreign (ASEAN) equity participation of not less than 70%.	Foreign equity limit is 70% (including facilities-based services). Approval required for majority control. The State of Vietnam holds dominant shares in telecommunications service providers with network infrastructure.

Source: Uruguay round commitments, Accession schedules, and Doha round offers are from the WTO website. ASEAN Framework Agreement on Services (AFAS): 8th Package of Schedules; Financial Services, 5th package of schedules; and ASEAN Economic Community Blueprint, Jan 2008.

## 8. CONCLUSIONS

The main contribution of this paper is the collection and analysis of rich applied policy information for ASEAN countries. Four gaps in data limit the scope of the present analysis and should be the focus of future data collection and research. First, we do not have adequate data on the existing market structure – e.g. the number of firms, their market share and ownership – across sectors and countries, which means that our policy measures capture the restrictions on entry into markets but do not capture the prevailing extent of competition between domestic and/or foreign firms. Second, we do not have good data on outcome variables such as prices, quality or diversity of services, which makes it hard to infer the restrictiveness of policies by econometrically analyzing their impact on outcome variables of interest. Third, we are able to capture only limited information on the state of prudential and pro-competitive regulation, which makes it hard to assess how far these ostensibly non-discriminatory measures offer *de facto* protection to domestic service providers. More importantly, this gap makes it hard to assess how far the gains from market-opening depend on the state of complementary regulation, and we emphasize that a mechanical elimination of trade barriers without reform of complementary regulation is not necessarily desirable. Finally, we capture only limited information on the implementation of policies. For instance, we make an effort to identify certain aspects of the processes involved in licensing services providers, such as transparency and accountability, but the process remains opaque and it is hard to determine whether the processes in themselves offer protection to domestic providers. In some cases, the absence of laws and regulations makes it difficult to assess actual practice, and we do not know whether a *de jure* vacuum signifies *de facto* openness or prohibition.

Despite these limitations, we were able to reach some clear conclusions. First, the ASEAN member states had on average more restrictive policies than most other regions and the pace of recent reform has been slow. Furthermore, with regard to the explicit restrictions, there was little sign of preferential treatment of any ASEAN member state of other Member states. The absence of preferences is not a problem; the absence of reform is. Member states needed to reduce rapidly the remaining explicit barriers to foreign entry and ownership – ideally on an MFN basis - to achieve the Blueprint Goals by 2015.

Second, regionalism offers a potentially valuable avenue for liberalization in areas where multilateral cooperation is difficult, such as in professional services and transportation. ASEAN member states had made some progress in deepening regional integration in these areas, however, the efforts were incomplete. ASEAN member states needed to reform domestic regulations in professional services to better align them with the MRA provisions, and to make the MRA provisions as liberal as their respective MFN regimes. In air transport, there was a need to further liberalize the freedom of rights by allowing the 7<sup>th</sup> freedom and eventually even cabotage, and making the community ownership of designated airlines automatic rather than discretionary.

Third, successful liberalization requires supporting reform of domestic regulation, ranging from prudential regulation in financial and professional services to pro-competitive regulation in telecommunication and transport services. In these areas too, there was scope for regional coordination and cooperation, to reap economies of scale in regulation and to prevent the fragmentation of the regional market because of divergent national regulation (Mattoo and Sauve, 2011).

Finally, the reform process needs to be monitored, transparent and informed by sound analysis. For all these reasons, ASEAN countries must move to remedy the weaknesses in the current state of data identified above. In particular, an effort must be made to collect better data on the implementation of reform in all dimensions –ranging from liberalization to improvement in regulation – as well as the consequences of reform for market structures and market outcomes – relating to the prices, quality, diversity and access to services. Such data would facilitate analysis of both the gains from reform and design of reform, which could make future reform socially desirable and politically feasible.

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**Regionalism in Services:  
A Study of ASEAN**

**ONLINE APPENDIX**

## **ANNEX SECTION 1: MEASURING SERVICES TRADE POLICY, STRI**

It is notoriously difficult to measure policies affecting services trade because of their variety and complexity (see, for example, the overview by Deardoff and Stern, 2008). We develop a measure of the restrictiveness of a country's policy regime, the "services trade restrictions index" (STRI), which has the weakness of being subjective but the virtue of being simple, transparent and robust. This measure is most convenient to depict overall patterns in policy, across countries, modes, and sectors. It builds on a relatively long tradition of restrictiveness indices, ranging from simple counts of policy barriers (Hoekman, 1996) to more complex weighted averages, where weights reflect prior (usually subjective) assessments of the relative restrictiveness of specific policy barriers; work currently being undertaken at the OECD<sup>12</sup> uses an elaborate version of this method, which is described in OECD (2009a).

We construct a single measure of overall openness for any subsector-mode combination, e.g. one for the cross-border supply of bank loans and another for accepting bank deposit by establishing commercial presence abroad. This measure avoids the pitfalls of the approaches that assign fixed weights to all types of restrictions (entry, operational, regulatory) and that treat the restrictions as additive. For instance, if foreign suppliers are not allowed to enter in the first place, then that restriction is binding and other restrictions on operations and regulatory environment simply do not matter. Similarly, a foreign equity limit of 49 percent already precludes foreign corporate control and so adding to it a further (frequently encountered) requirement that the majority of board of directors be nationals would amount to double counting.

Essentially, we assess policy regimes in their entirety and assign them into five broad categories: completely open, i.e. no restrictions at all<sup>13</sup>; completely closed, i.e. no entry allowed at all; virtually open but with minor restrictions; virtually closed but with very limited opportunities to enter and operate; and a final residual "intermediate" category of regimes which allow entry and

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<sup>12</sup> Further information about the OECD's work in this area, which focuses on Member economies, can be found at <http://www.oecd.org/trade/stri> and is described in OECD (2011). The ability of their index to capture trade costs in services is explored in OECD (2009b).

<sup>13</sup> 'No restrictions at all' applies only to the measures covered for a subsector- mode. "No restrictions at all" does not mean there is no other restrictions that are not covered.

operations but impose restrictions that are neither trivial nor stringent. Annex Table A1 presents those five principal categories. In order to further illustrate what portfolio of policies might underpin those restrictiveness scores, we provide an example for each category in Annex Table A1.

Since the principal criterion for covering certain policy measures in the database is their potential to significantly affect services trade, most measures in the database are taken into account in determining the STRI. There are, however, some exceptions. First, there is a *de minimis* threshold in the sense that while some variables clearly add to the rich texture of the database, their restrictive impact is either not clear or small relative to the impact of other variables already considered. For instance, we do not penalize the failure to give advance notice prior to introducing regulatory changes; or, when there are already restrictions on greenfield investment and acquisitions, we do not penalize additional restrictions on forming joint ventures. A variable may be more important in one sector but its impact may fall below the *de minimis* threshold in others. For instance, restrictions on entry as a branch matter in financial services but are not in other sectors where local incorporation is the preferred mode of establishing commercial presence; similarly restrictions on acquiring state-owned firms matter in transportation and telecommunications sectors where there are likely to be state-owned incumbents, but not in professional and retail services. Finally, a few variables for which the response rate was low or inconsistent, e.g. license length or license allocation mode, were not considered for scoring as cross-country differences would reflect response rates or interpretation differences rather than differences in restrictiveness.

It is convenient to assign a value to each of these five categories of regimes on an openness scale from 0 to 1 with intervals of 0.25.<sup>14</sup> We call the resulting score a services trade restrictions index (STRI). As the examples in Annex Table A1 show, most policy regimes have more than one provision in place per sub-sector and mode of supply, in which case the assigned score (shown in the right-most column) reflects the overall restrictiveness of all measures evaluated

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<sup>14</sup> At this level, basic STRI scores are no more than ‘labels’ attached to the five ordered categories of restrictiveness. However, as soon as these scores are further processed, either by aggregation or by use in a quantitative model, the specific values assume a cardinal meaning that implies the five categories are ‘equidistant’ in terms of restrictiveness. The working paper version of this article (Borchert, Gootiiz and Mattoo, 2012b) discusses an alternative approach of ranking policy bundles purely ordinally.

simultaneously.<sup>15</sup> Since the STRI focuses mainly on the set of measures which discriminate against foreign services and providers, the greatest level of openness is associated with a value of zero. However, since the STRI does not adequately cover complementary areas of non-discriminatory prudential and pro-competitive regulation, and since it is likely that the results of liberalization depend on the state of these types of complementary regulation, we cannot say that a zero level of STRI is necessarily immediately desirable from a broader welfare or development perspective.

**Annex Table A1: How STRI scores are assigned**

Overall policy description	5-point scale	Policy summary examples for ASEAN Member States
Open without restrictions	0	<b>Cambodia: Retail bank loan – mode 1</b> “No restrictions.”
Virtually open	0.25	<b>Vietnam: Life insurance –mode 3</b> “Entry as a branch is not allowed. No restrictions on foreign ownership in Greenfield subsidiary or acquisition of existing entity.”
Existence of major/non-trivial restrictions	0.50	<b>Thailand: Air passenger domestic – mode 3</b> “The limit on foreign ownership is 49 percent, with effective control by Thai nationals. At least 40% of Board of Directors must be national.”
Virtually closed	0.75	<b>Malaysia: Reinsurance–mode 1</b> “Reinsurance companies must demonstrate domestic unavailability in both Malaysia and Labuan before obtaining services abroad.”
a. Completely closed	1	<b>Philippines: Architecture services –mode 3</b> “Commercial presence is not allowed.”

Notes: As is apparent from the examples shown, most subsector–mode combinations are characterized by multiple provisions, in which case the regime assignment reflects the overall restrictiveness of all applicable measures.

Once a score has been attached to each regime, STRI values can be aggregated across sectors and modes of supply. Let  $s_{jmc}$  denote the basic scores on a 5-point scale per sub-sector and mode of supply as described in Table 2. In order to arrive at an aggregate STRI of country  $c$ ,  $STRI_c$ , we

<sup>15</sup> The Database Guide (Borchert, Gootiiz and Mattoo, 2012a) contains in its Section 4 three examples—from Burundi, Thailand and India—that illustrate how a portfolio of several measures is being assigned to one of the five basic scores. In principle, policy measures can be divided into two tiers. The first tier measures include those that affect market entry decisions most significantly, such as a limit on foreign ownership and the number of licenses. The second tier measures are those that affect operations of service providers, such as restrictions on the repatriation of earnings. The second tier measures do not contribute to overall restrictiveness when first tier measures are prohibitive. In contrast, if the first tier measures are not prohibitive then second tier measures are also considered in determining the overall restrictiveness score.

begin by taking weighted averages across modes of supply  $m \in M$ , whereby the set of modal weights  $w_m^{(j)}$  is specific to sector  $j$ . The sectors differ in the relative importance of alternative modes for delivering a specific service. For instance, in a ‘consumer service’ such as life insurance, a higher modal weight is attached to commercial presence than in the reinsurance sector in which cross-border provision amongst firms is the dominant mode of supply. Formally, the sectoral scores are given by

$$STRI_{cj} = \sum_m w_m^{(j)} s_{jmc}$$

Sectoral scores are then aggregated across all sectors  $j \in J$  using weights  $w_j$  that reflect the relative importance of constituent services sectors in domestic value added. Sector weights  $w_j$  are based on services sectors’ standardized share in total services output for an ‘average’ industrialized country.<sup>16</sup> Overall country-level scores are obtained as

$$STRI_c = \sum_j w_j STRI_{cj}$$

The complete weighting schemes used to aggregate modes, subsectors and sectors, respectively, can be found in Annex Table A.7, including further details regarding the sectoral weights. All scores at any level of aggregation are available from the ‘STRI’ section of the database; in particular, the full set of baseline values  $s_{jmc}$  is accessible so that users are free to devise alternative aggregation schemes if they so wish.

We recognize the subjectivity of this approach but given data constraints and the wide range of sectors covered, there is no obviously superior method of quantification. A demonstration that the STRI assessments are broadly corroborated by alternative methods of quantification can be found in the working paper version of this paper (Borchert, Gootiiz and Mattoo, 2012b). The subjectivity of the STRI is somewhat mitigated by the extensive consultations we have conducted with the private sector and regulators in making the assignments of weights to specific categories and developing a scoring rule sheet, which sets out how measure specific restriction is scored. We

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<sup>16</sup> A sense of how sectors are over-/underweighted in low-income countries can be gleaned from the fact that the share of financial and business/professional services tends to rise with income whereas the share of retail distribution and, to some extent, telecommunications services tends to decline with income. However, for the STRI to be comparable across countries, we need to use one uniform set of weights for all countries (see Annex 1 for further details).

believe that the adopted approach is at this stage more suitable than any fixed algorithm to turn the rich and difficult-to-quantify aspects of policy information into a broadly plausible if somewhat imprecise restrictiveness scores. In Paul Krugman’s words, it has the virtue of being “roughly right rather than precisely wrong.”

### Weighting Schemes for the STRI Index

Annex Table A2 below documents the sets of weights used to derive aggregate, country-level STRI scores,  $STRI_c$ , from basic scores per sub-sector and mode,  $s_{jmc}$ . Modal weights sum up to unity within any given subsector, e.g. ‘accounting’ (all subsectors are listed in Table 1). Subsectors are aggregated to the sectoral level, e.g. ‘telecommunications,’ using simple averages. Sector scores are aggregated to the country level using standardized weights based on the constituent services sectors’ share in total services output for an ‘average’ industrialized country. The service sector output shares are taken from Hoekman (1995, p.37/Appendix 1) and scaled so as to make the weights of all sectors covered in the Services Trade Restrictions Database add up to unity. We recognize that services sectors command a different share in total services output in different countries, especially across developing and developed countries, and are at least in part influenced by policy restrictions. As an empirical regularity, the share of financial and business/professional services tends to rise with income whereas retail distribution and, to a lesser extent, telecommunications services occupy a larger share in poorer countries. However, comparability requires the use of one uniform set of weights for all countries. We chose to use the shares for an ‘average’ industrialized country because industrial countries tend to be more open and so shares are less likely to be distorted by restrictions.

**Table A2: Sector and modal weighting schemes used for constructing STRI**

Aggregate sectors	Subsectors, by mode of supply	Modal weights $w_m^{(j)}$	Sector weights $w_j$
<b>Banking</b>	Mode 1:		0.149
	(1) Deposit acceptance	0.15	
	(2) Bank lending	0.15	
	Mode 3:		0.85
	(3) Deposit acceptance	0.85	
	(4) Bank lending	0.85	

<b>Insurance</b>	Mode 1:		0.095
	(5) Life	0.10	
	(6) Automobile	0.10	
	(7) Reinsurance	0.80	
	Mode 3:		
	(8) Life	0.90	
<b>Telecommunications</b>	(9) Automobile	0.90	
	(10) Reinsurance	0.20	
	Mode 3:		0.095
	(11) Fixed-line	1.00	
	(12) Mobile	1.00	
<b>Retailing</b>	Mode 3:		0.239
	(13) Retail distribution	1.00	
<b>Transportation</b>	Mode 1:		0.223
	(14) Air passenger internat.	0.70	(0.037)
	(15) International shipping	0.70	(0.037)
	Mode 3:		
	(16) Air passenger internat.	0.30	
	(17) Air passenger domestic	0.30	
	(18) International shipping	0.30	
	(19) Maritime auxiliary	1.00	(0.050)
	(20) Road freight	1.00	(0.062)
	(21) Rail freight	1.00	(0.037)
	<b>Professional Services</b>	Mode 1:	
(22) Accounting		0.20	
(23) Auditing		0.20	
(24) International law		0.20	
(25) Architecture		0.20	
(26) Engineering		0.20	
(27) Management consulting		0.20	
Mode 3:			
(25) Accounting		0.40	
(26) Auditing		0.40	
(27) Domestic law		0.50	
(28) International law		0.40	
29) Architecture		0.40	
29) Engineering		0.40	
29) Management consulting		0.40	
Mode 4:			
(30) Accounting			
(31) Auditing		0.40	
(32) Domestic law		0.40	
(33) International law		0.50	
(34) Architecture		0.40	
(29) Engineering	0.40		
(cc) Management consulting	0.40		
		0.40	



<b>Education</b>	Mode 1	
	Higher education	0.15
	Mode 2	
	Higher education	0.15
	Mode 3	
	Higher education	0.40
	Mode 4	
	Higher education	0.30
<b>Health</b>	Mode 1	
	Medical and dental services	0.15
	Mode 2	
	Medical and dental services	0.15
	Mode 3	
	Medical and dental services	0.40
	Mode 4	
	Medical and dental services	0.30

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Notes: The sector weights are used for constructing country STRI, there are no sector weights reported for education and health services, because these sectors were not covered in 2008 surveys and for comparison with 2008 country level STRI, the 2012 country level STRIs don't aggregate STRIs for education and health. The STRI for midwives and physical therapists services via mode 4 was aggregated with medical dental services via mode 4 with equal weights.

For most sectors the deviations between the set of weights used and weights representative of low-income countries are not large; if anything, scores in the retailing sector are underweighted whereas professional services scores are somewhat overweighted.

## ANNEX SECTION 2: ASEAN MULTILATERAL AGREEMENTS IN AIR TRANSPORT<sup>17</sup>

The discussions on regional air services agreements started in November 2004, the 10th ASEAN Transport Ministers' Meeting (ATM) held in Cambodia with adoption of a document called the Action Plan for ASEAN Air Transport Integration and Liberalization 2005-2015. The Action Plan, together with an accompanying document known as the Roadmap for Integration of Air Travel Sector (RIATS), established the objective of achieving an effective "open skies" regime for the region by the target date of 2015. The RIATS aimed to fully liberalize air cargo services by 2008 and allow 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> freedom flights to the regional air passenger service providers between designated points within ASEAN subregions by 2006 and between ASEAN capital cities by 2010.

Subsequently, the RIATS commitments for passenger services were formalized as two legal agreements for ASEAN member states' acceptance. These are the Multilateral Agreement on Air Services (MAAS) and the Multilateral Agreement for Full Liberalization of Passenger Air Services (MAFLPAS), adopted in 2009 and 2010 respectively. Concurrently, an agreement for cargo transport was also adopted - the 2009 Multilateral Agreement for Full Liberalization of Air Freight Services (MAFLAFS).

### What is allowed under the agreement?

Overall, the objectives of the agreements remain fairly modest - market access relaxations stop simply at the third, fourth and fifth freedoms, and do not extend to the seventh, eighth and ninth freedoms.<sup>18</sup> More specifically, the MAAS Implementing Protocols specify the following "third", "fourth" and "fifth" freedom market access rights:

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<sup>17</sup> This Annex Section is based on the insightful study by Tan (2013).

<sup>18</sup> **Third and fourth freedom:** If the Singapore carrier has rights to carry passengers from Singapore to Bangkok, it is utilising the "third freedom" granted by Thailand to Singapore. The reverse journey back to Singapore with the same rights would constitute the "fourth freedom". **Fifth freedom:** In both directions, if the carrier have the right to stop over in Malaysia to drop off some passengers and fill up the vacated seats with new passengers picked up from there, this is the "fifth freedom" granted to Singapore by both Thailand and Malaysia that permits Singapore carriers to carry traffic between their respective points. **The seventh freedom:** Refers to the right of a carrier to connect two international points *outside of its home country*. **The eighth freedom:** It means if the flight originates in the carrier's home country (Malaysia), and operates between domestic points within the contracting party (Jakarta and Bali). **The ninth freedom:** It means, the same carrier operates between domestic points (Jakarta and Bali) of contracting party without starting or ending in the home country.

- Protocol 1 - Unlimited Third and Fourth Freedom Traffic Rights Within ASEAN Sub-Region
- Protocol 2 - Unlimited Fifth Freedom Traffic Rights Within ASEAN Sub-Region
- Protocol 3 - Unlimited Third and Fourth Freedom Traffic Rights Between ASEAN Sub-Regions
- Protocol 4 - Unlimited Fifth Freedom Traffic Rights Between ASEAN Sub-Regions
- Protocol 5 - Unlimited Third and Fourth Freedom Traffic Rights Between ASEAN Capital Cities
- Protocol 6 - Unlimited Fifth Freedom Traffic Rights Between ASEAN Capital Cities

The first four Implementing Protocols of MAAS - Protocols 1 to 4 - are limited in impact and relatively straightforward. By virtue of their geographical scope, they only deal with market access relaxations designed to spur growth within sub-regions straddling the member states' boundary regions and the designated points are mainly secondary cities (Forsyth et al., 2006). Four such sub-regions have been identified (new sub-regions may be declared or existing ones expanded): the Brunei, Indonesia, Malaysia and Philippines East ASEAN Growth Area (BIMP-EAGA); the Sub-regional Cooperation in Air Transport among Cambodia, Lao PDR, Myanmar and Vietnam (CLMV) (this corresponds with the CLMV Agreement); the Indonesia, Malaysia, Singapore Growth Triangle (IMS-GT); and the Indonesia, Malaysia, Thailand Growth Triangle (IMT-GT).

In terms of air traffic volume and market potential, Protocols 5 and 6 have much greater economic significance as these cover the ten capital cities and are not limited by sub-regional proximity. Specifically, Protocol 5 provides contracting states' designated carriers with unlimited third and fourth freedom opportunities between their own capital city and all the other ASEAN capital cities. Protocol 5 further provides that such rights shall be allowed by 31 December 2008 (although, as noted above, Protocol 5 was actually adopted only in May 2009). On its part, Protocol 6 lays down a deadline of 31 December 2010 for a contracting state's designated carriers to operate full third, fourth and fifth freedom rights from their capital city to other contracting states' capital cities (e.g. a Malaysian carrier from Kuala Lumpur to Hanoi with fifth freedom pick-up rights in Phnom Penh).

The MAFLPAS Implementing Protocols address the following market access rights:

- Protocol 1 - Unlimited Third and Fourth Freedom Traffic Rights Between Any ASEAN Cities
- Protocol 2 - Unlimited Fifth Freedom Traffic Rights Between Any ASEAN Cities

The MAFLPAS agreement was designed to supplement MAAS and to cover the rest of the ASEAN cities. Hence, MAFLPAS Protocol 1 allows for unlimited third and fourth freedom operations for state parties' carriers between two non-capital cities, or between a non-capital and a capital city (capital-to-capital operations remain governed by MAAS Protocol 5). MAFLPAS Protocol 2 provides for unlimited fifth freedom operations involving the non-capital cities. By its terms, Protocol 2 can also cover flights involving capital cities, except when *all three points* are capitals, in which case MAAS Protocol 6 governs.

### **Ownership and control**

How have the ASEAN multilateral agreements sought to deal with these ownership and control restrictions? In essence, when both market access and ownership and control are freed up, the Member States can achieve the true single air market. On top of prohibiting seventh freedom and domestic operations by foreign carriers, the current ASEAN regime also does not allow carriers like AirAsia from going into, say, Indonesia, either to establish a wholly-owned subsidiary or to buy over an existing local airline fully. In comparison, EU permits any E.U. national to move into another E.U. country and establish a fully-owned airline there, *and* fly it between any two points within the E.U. (even domestic points).

Interestingly, both MAAS and MAFLPAS provide *alternatives* to the traditional “substantial ownership and effective control” rule. They allow “ASEAN community carrier”, which means an airline can be substantially owned and effectively controlled by ASEAN interests *taken cumulatively or in the aggregate* (Tan, 2009). This means that airlines can now attract capital infusions and management expertise from more sources across ASEAN. However, there is no *certainty* that the “community carrier” can fly into all member states in the region, because the Member States receiving an application from such a carrier must provide an approval before the carrier can operate. This is a great disincentive for any investor thinking of constituting an airline as such, unless a significant number of member states first declare their unequivocal approval for such a model. For now, investors comply with the traditional “substantial ownership and effective control of nationals” rule. Indeed, no community carrier has thus far been set up in ASEAN, and

new airlines like Malindo and Thai Vietjet Air continue to employ the traditional joint venture model that requires majority ownership and effective control by local national interests. The member states should work toward a regime that allows for carriers bearing a community ownership structure to be recognized automatically, instead of at the discretion of each individual member state. The solution is to allow member states to retain the traditional *national* ownership and control restrictions for *their own* designated carriers if they wish to, without affecting other carriers' ability to be set up as community carriers.

**How far have the member states implemented these agreements and the relevant commitments?**

The agreements are in force among most ASEAN member states. However, key states such as Indonesia remain outside the scope of the agreements. Both MAAS and MAFLPAS are in force after having received the acceptance of the minimum number of three ASEAN member states for each agreement. At the same time, the respective Protocols' separate requirements for entry into force have been satisfied. All the Protocols are thus in force for those member states that have ratified them. As shown in Table A3, all member states have accepted MAAS Protocols 1 to 4, but Protocols 5 and 6 have not yet been accepted by Indonesia and the Philippines. In the case of MAFLPAS and its Protocols 1 and 2, Indonesia and Lao PDR are not yet state parties (Table A4).

The following tables summarize the member states' ratification status as at October 2013:

**Annex Table A3: Ratification Status of 2009 Multilateral Agreement on Air Services (MAAS)**

	MAAS (Parent Agreement)	Protocol 1: third & fourth freedom within sub- region	Protocol 2: fifth freedom within sub- region	Protocol 3: third & fourth freedom between sub-regions	Protocol 4: fifth freedom between sub-regions	Protocol 5: third & fourth freedom between capitals	Protocol 6: fifth freedom between capitals
Brunei	✓	✓	✓	✓	✓	✓	✓
Cambodia	✓	✓	✓	✓	✓	✓	✓
Indonesia	✓	✓	✓	✓	✓	[ X ]	[ X ]
Lao PDR	✓	✓	✓	✓	✓	✓	✓
Malaysia	✓	✓	✓	✓	✓	✓	✓
Myanmar	✓	✓	✓	✓	✓	✓	✓
Philippines	✓	✓	✓	✓	✓	[ X ]	[ X ]
Singapore	✓	✓	✓	✓	✓	✓	✓
Thailand	✓	✓	✓	✓	✓	✓	✓
Vietnam	✓	✓	✓	✓	✓	✓	✓

Source: ASEAN Secretariat. ✓ denotes state party, [ X ] denotes non-state party

**Annex Table A4: Ratification Status of 2010 Multilateral Agreement for Full Liberalization**

**of Passenger Air Services (MAFLPAS)**

	MAFLPAS (Parent Agreement)	Protocol 1: third & fourth freedom between all cities	Protocol 2: fifth freedom between all cities
Brunei	✓	✓	✓
Cambodia	✓	✓	✓
Indonesia	[ X ]	[ X ]	[ X ]
Lao PDR	[ X ]	[ X ]	[ X ]
Malaysia	✓	✓	✓
Myanmar	✓	✓	✓
Philippines	✓	✓	✓
Singapore	✓	✓	✓
Thailand	✓	✓	✓
Vietnam	✓	✓	✓

**Source:** ASEAN Secretariat. ✓ denotes state party, [ X ] denotes non-state party

Indonesia is, of course, the one member state whose acceptance of the ASEAN agreements is critical for the entire ASAM project. Spanning 17,000 islands and home to 270 million people (effectively half the entire ASEAN population), Indonesia has the region’s largest land area, economy, population and air travel market. Its capital, Jakarta, is ASEAN’s biggest city by population.

Indonesia’s position on the ASEAN agreements can be traced to its leading carriers’ lobbying of their government to continue protecting their international operations against those of rival airlines from neighbouring ASEAN states. Through their industry group, the Indonesian National Air Carriers Association (INACA), the major carriers have traditionally opposed efforts to open up the ASEAN air travel market (although see below for recent changes in attitude). Their concern lies with the stronger airlines from the other ASEAN states, principally Singapore, Malaysia and Thailand, whom they fear will dominate the international market between Indonesia and these countries (IndII, 2012). INACA’s position is that as a huge archipelago, Indonesia has hundreds of points to offer international aviation, whereas the other states have far fewer points to offer (indeed, Singapore has all of one!). For some Indonesian carriers, this represents a systemic imbalance for exchanging air traffic rights.

Overall, despite Indonesia’s traditional stance toward liberalization, the recent capacity revision with Singapore indicates some positive signs. It shows that the Indonesian carriers are likely to support (or at least not object to) capacity increases for foreign carriers when they themselves come close to exhausting their own limits to fly to other states.

Indeed, the Indonesian carriers are expanding rapidly across the region, showing a capability and willingness to compete with their regional rivals. Lion Air has even established a subsidiary, Malindo, in Malaysia, taking the challenge right into the turf of its LCC rival, AirAsia. In

essence, Lion Air is seeking to penetrate AirAsia's home market in the same manner that the latter has entered Indonesia. Another subsidiary, Thai Lion Air, is scheduled to commence operations in Thailand in late 2013. Yet another subsidiary in Myanmar is reportedly being launched. In short, Lion Air is seeking to replicate AirAsia's experience with its joint venture subsidiaries across the region.

In the light of such developments, there are encouraging signals that Indonesia's policy on the ASEAN agreements could be evolving. Indeed, the Indonesian government is reportedly considering the acceptance of MAAS Protocols 5 and 6. When this happens, it will be a huge boost for the ASAM integration project and the entire region.

In comparison, the Philippine government's position is slightly different. The Philippines has actually embraced MAFLPAS Protocols 1 and 2 to open up access to its secondary cities in a bid to spur regional development. Yet, it has kept its capital, Manila, restricted and has not accepted MAAS Protocols 5 and 6. The government justifies its decision based on the shortage of landing and take-off slots and overall runway congestion at central Manila's Ninoy Aquino International Airport.

While the concern over congestion at Ninoy Aquino International is understandable, the attempt to link traffic rights and airport slots is problematic. Indeed, these are separate matters that should be kept distinct. In particular, the lack of airport slots should not prevent member states from ratifying the ASEAN agreements to liberalize market access rights and to signal their support for ASEAN's market integration efforts. Linking slots to access rights is also a negative precedent in that it encourages air rights negotiators to use congestion and lack of slots (which may be within the competence of other government agencies) as pretexts to delay their acceptance of regional agreements.

For its part, it is unclear why Lao PDR has not ratified MAFLPAS Protocols 1 and 2. It is likely that internal consultations are ongoing within Lao government agencies and that ratification will happen soon. It should be also noted that Cambodia has very recently in 2013 submitted instruments of ratification for MAFLPAS and Protocols 1 and 2, becoming the latest member state to accept these agreements.

## ANNEX TABLES

**Annex Table A5: Sectors and modes covered by the questionnaire in 2008 and 2012**

Aggregate sectors	Subsectors	Modes	Year
<b>Financial</b>	<b>Retail Banking</b>		
	(1) Acceptance of deposits	Mode	2008, 2012
	(2) Lending	1 &3	
	<b>Insurance</b>		
	(3) Life		
(4) Automobile	Mode	2008, 2012	
(5) Reinsurance	1 &3		
<b>Telecommunications</b>	(6) Fixed-line		
	(7) Mobile	Mode 3	2008, 2012
<b>Retailing</b>	(8) Retailing	Mode 3	2008, 2012
<b>Transportation</b>	(9) Air passenger internat.	Mode	
	(10) Air passenger domestic	1 &3	2008, 2012
	(11) Air cargo internat.		
	(12) Air cargo domestic		
	(13) International shipping		
	(14) Maritime shipping auxiliary		
(15) Road freight <sup>19</sup>			
<b>Professional Services</b>	(16) Rail freight		
	(17) Accounting	Mode	2008, 2012
	(18) Auditing	1, 3, 4	
	(19) Advice on domestic law		
	(20) Advice on foreign law		
	<i>Additional professional services</i>		
	(21) Architecture		only 2012
(22) Engineering			
(23) Management Consulting			
<b>Education</b>	(24) Higher education	Mode	
		1, 2 3, and 4	only 2012
<b>Health</b>	(25) Medical and dental services	Mode	only 2012
		1, 2 3, and 4	
	(26) Nurses and Paramedics	Mode 4	only 2012

Notes: As an exception to the modal aggregation rule outlined above, air passenger transport subsectors are first aggregated within mode 3, i.e. air passenger domestic and air passenger international, then the resulting modal score is aggregated with mode 1 using the modal weights as shown.

<sup>19</sup> In road transport, we covered only mode 3 in 2008 and both mode 1 and mode 3 in 2012.



**Table A6.A: Foreign ownership allowed in a subsidiary (in percentage)**

<b>Selected sectors</b>	<b>IDN</b>	<b>KHM</b>	<b>LAO</b>	<b>MMR</b>	<b>MYS</b>	<b>PHL</b>	<b>SGP</b>	<b>THA</b>	<b>VNM</b>
Banking	99	100	100	100	100	0	100	100	100
Insurance auto.	80	100	49	0	100	100	100	49	100
Insurance life	80	100	49	0	100	100	100	49	100
Fixed telecom	49	100	100	100	49	40	100	100	70
Mobile telecom	65	100	100	100	49	40	100	100	70
Retailing	0	100	0	100	100	100	100	100	100
Air transport	49	49	49	0	49	40	100	49	49
Maritime ship.	49	49	NA	100	100	40	100	49	49
Maritime aux.	49	100	NA	100		40	100	49	51
Road freight	49	100	49	100	49	40	100	49	51
Rail freight	0	100	NA	0	0	0	NA	49	49

Note: Zero means foreign ownership is not allowed; NA means not applicable due to different reasons, such as the country is landlocked or has no railway system. Empty cells mean data is missing.

**Table A6.B: Foreign ownership allowed in acquisition of a local company**

<b>Selected sectors</b>	<b>IDN</b>	<b>KHM</b>	<b>LAO</b>	<b>MMR</b>	<b>MYS</b>	<b>PHL</b>	<b>SGP</b>	<b>THA</b>	<b>VNM</b>
Banking	99	100	100	100	30	60	100	49	30
Insurance auto.	80	100	49	0	70	100	100	49	100
Insurance life	80	100	49	0	70	100	100	49	100
Fixed telecom	49	100	100	100	49	40	100	100	70
Mobile telecom	65	100	100	100	49	40	100	100	70
Retailing	0	100	0	100	100	100	100	100	100
Air transport	49	49	49	49	49	40	100	49	49
Maritime ship.	49	49	NA	0	100	40	100	49	49
Maritime aux.	49	100	NA	0		40	100	49	51
Road freight	49	100	49	0	49	40	100	49	51
Rail freight	0	100	NA	0	0	0	NA	49	49

Note: Zero means foreign ownership is not allowed; NA means not applicable due to different reasons, such as the country is landlocked or has no railway system. Empty cells mean data is missing.

**Table A6.C: Foreign ownership allowed in acquisition of a local state-owned company**

<b>Selected sectors</b>	<b>IDN</b>	<b>KHM</b>	<b>LAO</b>	<b>MMR</b>	<b>MYS</b>	<b>PHL</b>	<b>SGP</b>	<b>THA</b>	<b>VNM</b>
Banking	99	NA	100	0	30	0	100	49	30
Insurance auto.	80	49	49	0	70	0	100	49	
Insurance life	80	49	49	0	70	0	100	49	
Fixed telecom	49	49	100	100	49	0	100	100	70
Mobile telecom	65	49	100	100	49	0	100	100	70
Retailing	0	49	0	0	100	0	100	0	0
Air transport	49	49	49	0	49	0	100	49	49

Maritime ship.	49	49	NA	0	100	0	100	49	49
Maritime aux.	49	49	NA	0		0	100	49	51
Road freight	49	49	49	0	49	0	100	49	51
Rail freight	0	49	NA	0	0	0	NA	49	49

Note: Zero means foreign ownership is not allowed; NA means not applicable due to different reasons, such as the country is landlocked or has no railway system. Empty cells mean data is missing.

### ANNEX TABLE A7: ASEAN Mutual Recognition Arrangement (MRA) on Architectural and Engineering Services

MRA on Architecture	MRA on Engineering
The ASEAN architect professionals are eligible to apply to the ASEAN Architect Council (AAC) to be registered as an ASEAN Architect (AA) when they meet the following conditions:	The ASEAN engineering professionals are eligible to apply to the ASEAN Chartered Professional Engineers Register (ACPER) as an ASEAN Chartered Professional Engineer (ACPE) when they meet the following conditions:
<ul style="list-style-type: none"> <li>• <b>Education:</b> Completed an accredited architectural degree recognized by the professional architectural accreditation body whether in the Country of Origin or Host Country or assessed and recognized as having the equivalent of such a degree. The education for architects should be no less than five (5) years duration delivered on a full time basis in an accredited program in an accredited/validated university in the Country of Origin while allowing flexibility for equivalency</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Education:</b> Completed an accredited engineering degree/program recognized by the professional engineering accreditation body whether in the Country of Origin or Host Country or assessed and recognized as having the equivalent of such a degree.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Registration/License:</b> Obtained a current and valid professional registration or licensing certificate to practice architecture in the Country of Origin issued either by the Professional Regulatory Authority (PRA) of the ASEAN Member Countries and in accordance with its policy on registration/licensing/certification of the practice of architecture or the Monitoring Committee</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Registration/License:</b> Professionals should have been assessed within their own jurisdiction as eligible for independent practice. The assessment may be undertaken by the Monitoring Committee (MC) or by the Professional Regulatory Authority (PRA) within the country of origin.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Work Experience:</b> Acquired practical and diversified experience of not less than ten (10) years of continuous practice of architecture after graduation, of which at least five (5) years shall be after licensure/registration and at least two (2) years of which shall be in responsible charge of significant architectural works</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Work Experience:</b> Gained minimum of 7 years of experience (since graduation), of which at least two (2) years shall be in responsible charge of significant engineering works.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Training:</b> Complied with the Continuing Professional Development (CPD) policy of the country of Origin at a satisfactory level;</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Training:</b> Complied with the Continuing Professional Development (CPD) policy of the country of Origin at a satisfactory level;</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Ethical standard:</b> Obtained certification from the Professional Regulatory Authority (PRA) of the Country of Origin with no record of serious violation on technical, professional or ethical standards, local and international, for the practice of architecture; and</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Code of conduct and accountability:</b> Must agree to be bound by local and international codes of professional conduct.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Other requirements:</b> Complied with any other requirements agreed upon by the ASEAN Architect Council”</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Other requirements:</b> Complied with any other requirements agreed upon by the ACPEs.</li> </ul>

Sources: MRA on Architecture services (2007), MRA on Engineering services (2005)

### Annex Table A8: Policy summaries for Architectural and Engineering via mode 4 - MFN regime

Countries	Architectural services via mode 4	Engineering services via mode 4
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Cambodia	Entry is allowed subject to meeting certain conditions: Educational and work experience requirements must be met. Foreign degrees and work experience recognized, the number of years of work experience is not available. There is a restriction on the employment of foreign employees, which is applicable to all firms. The maximum percentage of foreign employees in any firm is set at 10%. Exceptions may be granted. Initial stay allowed is 1 month, can be extended to 12 months.	No restrictions except 90 percent of firm employees need to be nationals.
Thailand	Not allowed.	Not allowed.
Vietnam	Must meet educational requirement, degrees from foreign countries recognized. Work experience or training not required. Professional exam in local language is required. Labor market test is required.	No restrictions except for labor market test required.
Indonesia	No sector specific regulation governing this subsector-mode. There is no additional qualification requirement. Work experience or training not required.	No sector specific regulation governing this subsector-mode. There is no additional qualification requirement. Work experience or training not required.
Philippines	Foreign citizens may be allowed to take licensure exam if he/she can meet reciprocity requirement and obtained educational from universities recognized by the Government of Philippine. Foreign nationals need a special/temporary permit from the Board of Architecture and the Professional Regulatory Committee (PRC). Must be qualified to practice architecture in his/her own country. Foreign nationals shall be required to work with a Filipino counterpart. Work experience of 2 years is required. LMT is required.	Foreign licensed professionals maybe allowed to take the engineering license exams, practice, or be given a certificate of registration or be entitled to any privileges under the pertinent professional regulatory laws, provided that the country of which he/she is a citizen permits citizens of the Philippines to practice within its territorial limits under the same rules and regulations governing citizens thereof. This provision pertains to agriculture, geodetic, mechanical, metallurgical, chemical, civil, electrical, mining, naval architecture and marine, sanitary and electronic and communication engineering. LMT is required.
Myanmar	No regulation or policy exists, but in practice entry is allowed. Domestic regulations are being drafted. Foreign licensed professionals can provide services automatically without additional requirement for qualification.	No regulation or policy exists, but in practice entry is allowed. Domestic regulations are being drafted. Foreign licensed professionals can provide services automatically without additional requirement for qualification.
Lao PDR	Foreign licensed professionals are qualified automatically without additional requirement. No educational, work experience, and training requirement. Entry as a SSE is not allowed. The limit on the length of stay initially allowed is 4 years. Extension of stay is allowed.	Foreign licensed professionals (FLP) are qualified automatically without additional requirement. No educational, work experience, and training requirement. Entry as a SSE is not allowed. The limit on the length of stay initially allowed is 4 years. Extension of stay is allowed.
Malaysia	Must reside in Malaysia not less than 180 days in a calendar year. Must be qualified in the country where he/she normally practices. Need to meet labor market test. The length of stay initially allowed is 5 years. Extensions of stay are allowed. Work experience of 5 years is required, foreign experience is recognized. Entry through ICT is not allowed.	Must reside in Malaysia not less than 180 days in a calendar year. Must be qualified in the country where he/she normally practices. Need to meet labor market test. The length of stay initially allowed is 5 years. Extensions of stay are allowed. Work experience of 5 years is required, foreign experience is recognized. Entry through ICT is not allowed.
Singapore	FLPs can provide services subject to certain conditions, (regulated by Architects Act). Must need educational requirement, degrees from certain countries are recognized: Universities from Australia, England, Scotland, Wales, Ireland, Northern Ireland, Germany, Japan, France, Canada, China, Hong Kong SAR, China, New Zealand, USA. Must be qualified to practice in any foreign country. Work experience (can be in any country) requirement varies from 2 to 10 years. The length of stay initially allowed is 2 years. Extension of stay is allowed.	For professional engineering services in civil, mechanical and electrical engineering, FLPs can provide services subject to certain conditions: Must be qualified and licensed to practice in Singapore for registration as professional engineers in the above branches. Foreign degrees from certain countries are recognized (India, Belgium, the Netherlands, Germany, Sweden, Switzerland, Australia, Canada, France, Hong Kong SAR, China, Ireland, Japan, Malaysia, New Zealand, Republic of Korea, South Africa,

	Taiwan, China, USA, UK, and China). Work experience of not less than 4 years of experience (in any country) required. The length of stay initially allowed is 2 years. Extension of stay is allowed.
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Source: World Bank surveys on Services Trade Integration for ASEAN countries, December 2012. Information has been confirmed/reviewed by the respective government officials in May 2013.

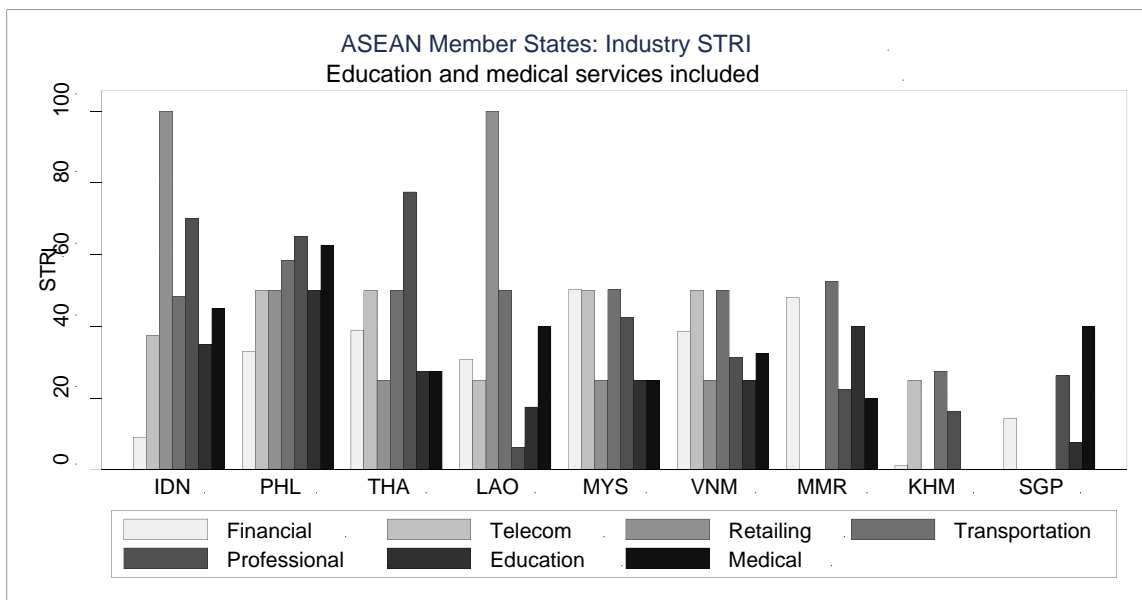
**Annex Table A9: Work Experience requirement for Architectural and Engineering via Mode 4**

Member States	Architecture –MFN regime	Engineering –MFN regime	ASEAN –MRA
<b>If work experience is required, how many years?</b>			
Cambodia	... (Missing)	... (Missing)	<b>Architecture</b> <b>10 years</b> of experience required, of which 5 years shall be after licensure and 2 years of which shall be in responsible charge of significant architectural work (Prov. 3.1.3, page 6, ASEAN MRA on Architectural Services).  <b>Engineering</b> <b>7 years</b> of practical and diversified work experience (after graduation) required, of which at least 2 years is spent for responsible charge of significant engineering work (Provision 3.1.3 page 5, ASEAN MRA on Engineering Services)
Thailand	Not applicable (Entry via mode 4 is not allowed for foreign nationals)	Not applicable (Entry via mode 4 is not allowed for foreign nationals)	
Vietnam	Not required	Not required	
Indonesia	Not required	Not required	
Philippines	2 years (upon having met reciprocity and LMT requirement)	4 years (upon having met the reciprocity and LMT requirement)	
Myanmar	Not required	Not required	
Lao PDR	Not required	Not required	
Malaysia	5 years	5 years (experience obtained in any country is recognized)	
		4 years is required (experience obtained in any country is recognized)	
Singapore	2-10 years		

Source: WB surveys on ASEAN integration (2012); ASEAN the Mutual Recognition Agreement on Architectural and Engineering services.

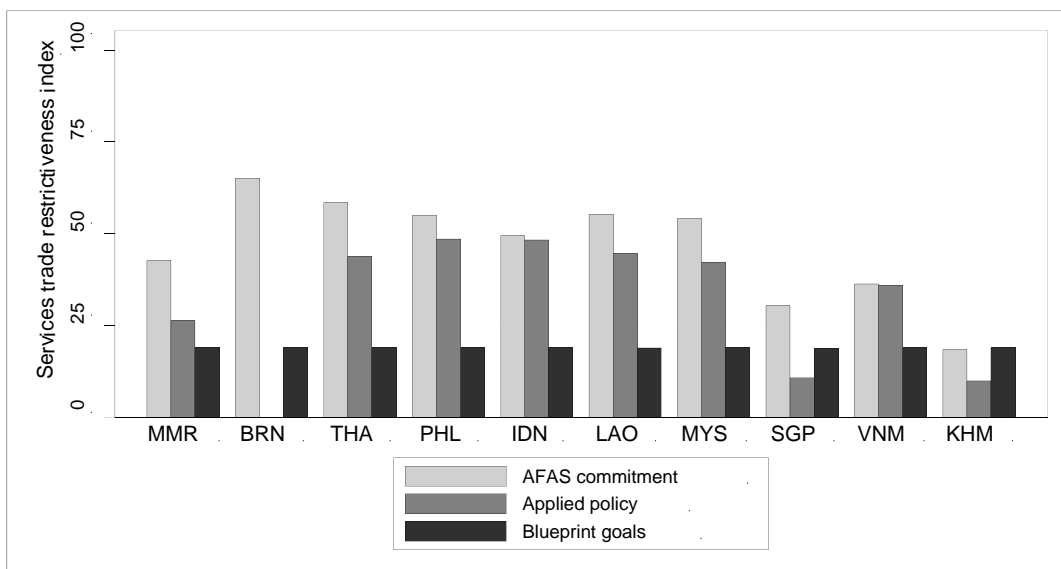
## ANNEX FIGURES

### ANNEX FIGURE A1: APPLIED POLICIES FOR ASEAN MEMBER STATES BY INDUSTRY



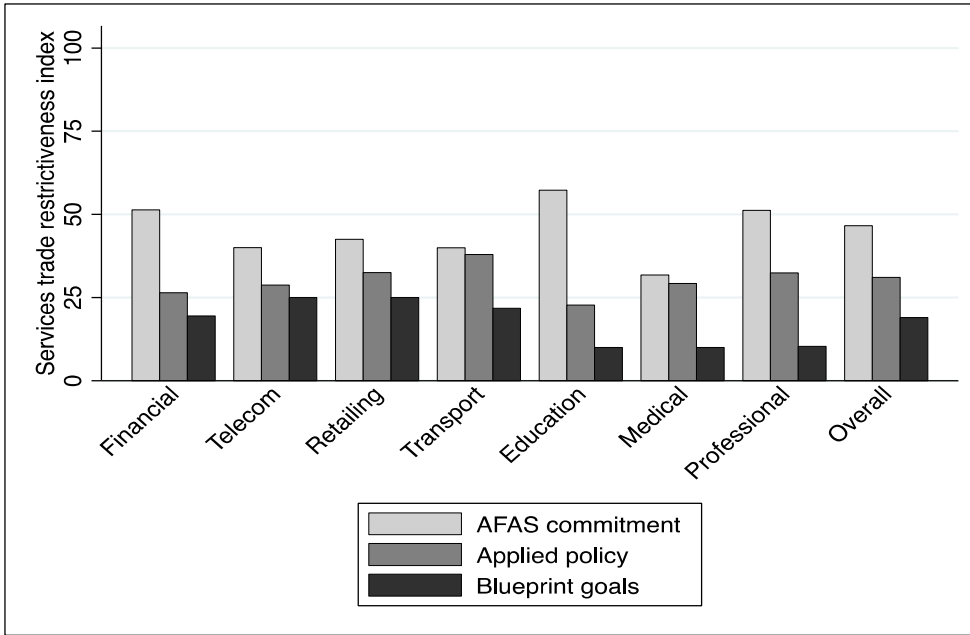
Note: IDN =Indonesia, KHM =Cambodia, LAO =Lao PDR, MMR =Myanmar, MYS = Malaysia, PHL =Philippines, THA =Thailand, SGP =Singapore, VNM =Vietnam

### ANNEX FIGURE A2: AFAS commitments, applied policy, and Blueprint goals by country

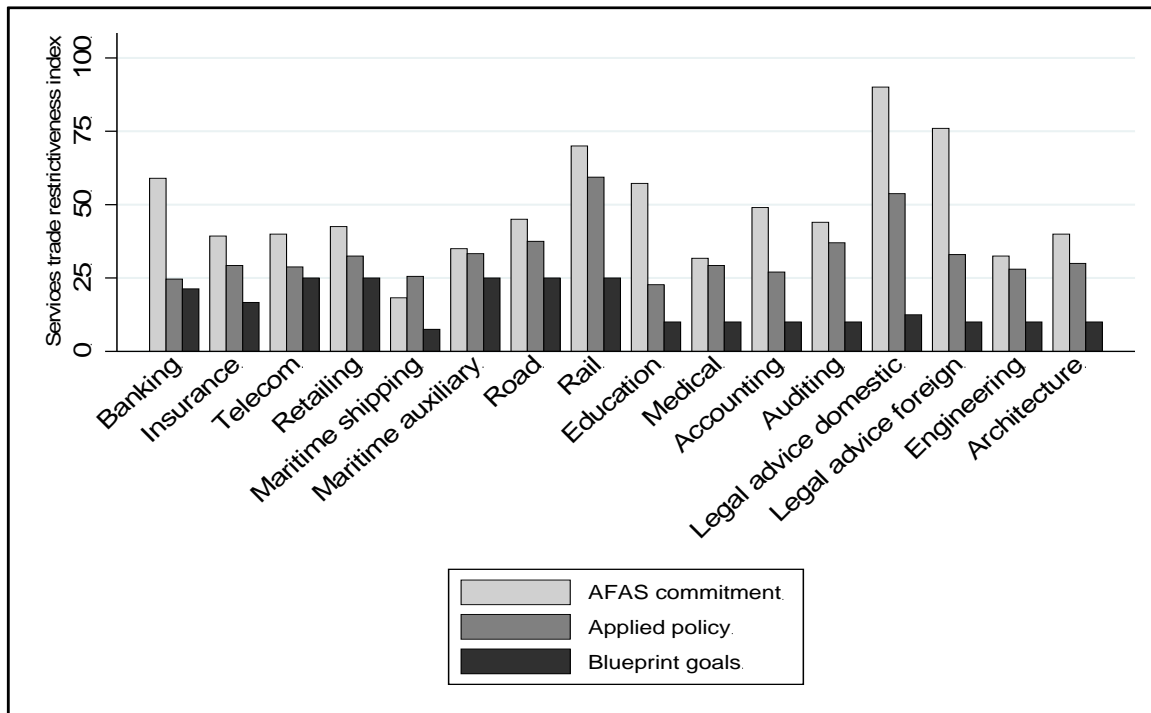


Note: Applied policy information for Brunei is missing.

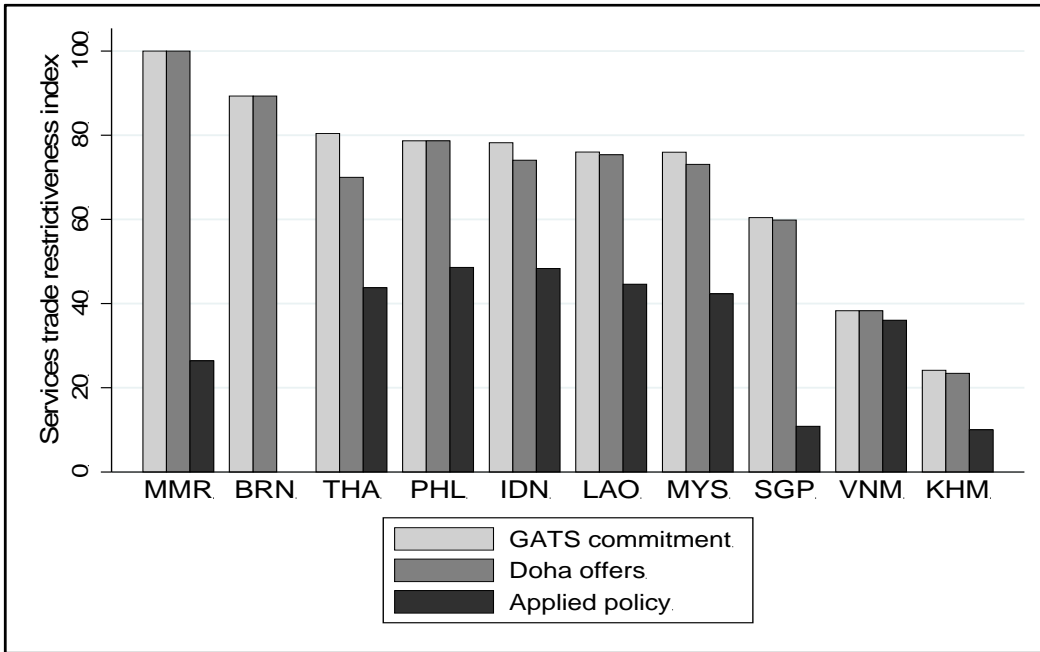
### ANNEX FIGURE A3: AFAS commitments, applied policy, and Blueprint goals by industry



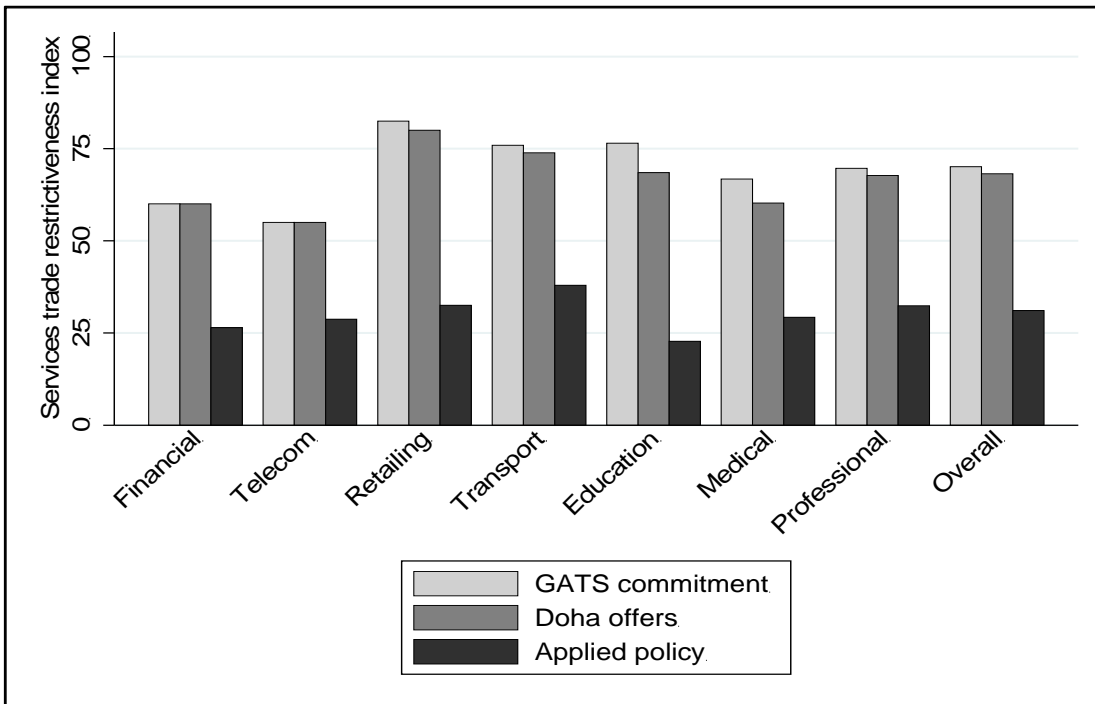
**ANNEX FIGURE A4: AFAS commitments, applied policy, and Blueprint goals by sector**



**ANNEX FIGURE A5: GATS commitments, Doha offers, and applied policy by country**



**ANNEX FIGURE A6: GATS commitments, Doha offers, and applied policy by industry**



**ANNEX FIGURE A7: GATS commitments, Doha offers, and applied policy by sector**

