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Assessing the Progress of Services Liberalization in the ASEAN-China Free Trade Area (ACFTA)

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Abstract: The aim of this paper is to evaluate the success of progressive services liberalization under the ASEAN China FTA (ACFTA). First, we calculate the level of commitments by applying the Hoekman Index. Second, we compare the ACFTA 2nd Package with the ACFTA 1st Package and examine the additional liberalization, and the frequency of backtrack. Third, we compare the ACFTA 2nd Package with the GATS commitments by the respective member states. Last, we discuss the policy implications of this analysis to the other ASEAN+1 FTA and RCEP negotiations, as well as the need to address GATS-minus commitments found in FTAs.

Keywords: FTA, services liberalization, ASEAN, China, RCEP

JEL Classification: F13, F15 and F53

1. Introduction

In 2002, ASEAN and China signed the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China (ACFTA Framework Agreement). Following the Trade in Goods Agreement in 2004, ASEAN and China concluded the Trade in Services Agreement (ACFTA TIS Agreement)¹ in January 2007, which entered into force in July 2007.

Services liberalization requires changes in domestic regulations for which time is needed. ASEAN and China have explicitly recognized this progressive nature of services liberalization.² As an instrument to achieve progressive liberalization, the ACFTA TIS Agreement introduced a package structure (Art. 23). The package structure has its origin in the ASEAN Framework Agreement on Services (AFAS).³ In ASEAN, AFAS provides a framework of negotiation, and package documents set the commitments of the member states. ASEAN had successfully generated five packages after the AFAS was signed in 1995 and before the ACFTA TIS Agreement was concluded in 2007.⁴ AFAS has been recognized as having been successful in achieving progressive services liberalization from its early years.⁵ Based on these experiences, ASEAN and China adopted the ACFTA TIS Agreement as a framework agreement, and the first package (hereafter, ACFTA 1st Package) in January 2007 as annexes to the TIS Agreement. Subsequently, they signed the second package (ACFTA 2nd Package) in November 2011.

Ishido and Fukunaga (2012) analyzed the level of services liberalization in the ACFTA 1st Package and argued that the General Agreement on Trade in Services (GATS)-plus components in the ACFTA 1st Package are limited.⁶ This is not surprising when we consider the progressive nature of services negotiation under the ACFTA. Services liberalization under the ACFTA can be meaningful, even if the 1st Package provides a low level of GATS-plus, so long as the subsequent packages provide substantial additional GATS-plus liberalization. Indeed, the ACFTA TIS Agreement Art. 23.2 (Progressive Liberalization) provides as follows:

“The Parties shall, with the aim of substantially improving on the first package of specific commitments, conclude the second package of specific commitments

within a year from the date of entry into force of [the ACFTA Trade in Services] Agreement.” (the underline added by the authors)

Therefore, the real benefits of ACFTA services liberalization should be tested by analyzing the 2nd package in comparison with the 1st package.

This article examines the achievements of services liberalization in the ACFTA by applying the Hoekman Index. Section 2.1 explains the methodology. Section 2.2 discusses GATS-minus aspects in the ACFTA commitments, partly as the methodology and also as a key aspect of our assessment. Section 2.3 explains the level of commitments in the ACFTA 2nd Package. We then analyze the additional liberalization of the 2nd Package in comparison with the 1st Package (section 2.4) and with GATS (section 2.5). Section 3 concludes by discussing the implications of our analysis of ACFTA services liberalization to the other ASEAN+1 FTAs, especially the ASEAN Korea FTA (AKFTA) and the ongoing negotiation of the Regional Comprehensive Economic Partnership (RCEP).

2. Assessment of ACFTA Services Liberalization

2.1. Methodology: Hoekman Index

Hoekman (1995) proposes an indexation method for measuring the GATS-style degree of commitments in the services sector. This method assigns values to each of 8 cells (4 modes and 2 aspects--market access (MA) and national treatment (NT)--), as follows: first assign the value 1 when the sector at issue is “fully liberalized”; 0.5 when “limited” (but bound); 0 when “unbound” (government has not committed to liberalize) by sub-sector, by mode and by aspect (market access or national treatment), and take the simple average for aggregation; then calculate the average value by services sector and by country. The higher the figure, the more liberal the country’s service trade commitments are to the FTA members. By using the database we construct, the “Hoekman Index” is derived for each of the 155 sub-sectors, drawing on the specific-commitment tables of the FTA members.⁷

Then the simple average at the levels of the 55 sectors and finally 11 sectors presented in **Table 1** are calculated in a step-by-step manner (i.e., the 55-sector average was calculated as the simple-average aggregation of 155 sectors, and the 11-sector average was calculated as the simple-average aggregation of the 55-sector average; for details, see the WTO's "Services Sectoral Classification List (MTN.GNS/W/120)" which is readily viewable by online searching).

2.2. "GATS-minus" in the ACFTA

It is known that services agreements (or services chapters) in FTAs often include GATS-minus components (Adlung and Miroudot, 2012). GATS-minus is a situation where services commitments (on the basis of additional offers after the GATS 1995 conclusion) in an FTA are lower than the commitments in the GATS (based on the GATS 2003 initial offer)⁸ of the same country.

This GATS-minus position can be seen in the ACFTA services liberalization.⁹ To give an example, China committed not to put *any* limitation ("no limitation") in modes 1 and 2 of "02B Courier Services" under the GATS. However, the ACFTA 1st Package provided no such commitment. China might have written down (in its commitment table) mainly additional or new commitments as compared to its commitments in the GATS. However, such consistency cannot be found in ASEAN member states' commitment schedules (ASEAN member states sometimes but not always repeat their GATS commitments in the ACFTA). Even China copied its GATS commitments in the ACFTA 1st Package in some sectors, e.g., "Consultancy services related to the installation of computer hardware" under "01B. Computer and Related Services."

When GATS-minus elements are observed, there are two possible computation measures for the Hoekman Index of the ACFTA. One is to give raw scores based solely on the ACFTA commitments. The other possibility is to take into account GATS commitments *as if* they were also included in the ACFTA commitment schedules. **Table 2** exhibits the contrasts between the two scoring methods.

While China's raw score in the ACFTA 1st Package is 0.12, its adjusted score counting

the GATS commitments is 0.29. The difference (0.17) reflects the GATS-minus aspects of China’s commitments. As noted above, some ASEAN countries did not also include some of their GATS commitments in the ACFTA 1st Package. Those countries are Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, and Thailand. As a result the ASEAN average raw score is 0.13 while its GATS-adjusted score is 0.18 (0.05 is the GATS-minus). Overall, the raw score for the ASEAN-China average is 0.13 while the adjusted score is 0.19 (0.06 is the GATS-minus).

The legal effect of a GATS-minus position is not entirely clear.¹⁰ If GATS still applies despite the GATS-minus commitments in an FTA, the existence of GATS-minus simply confuses the potential users of the FTA. If GATS-minus limits the applications of GATS commitments in practice, it affects the credibility of GATS. On this point, Art. 28.3 of the ACFTA TIS Agreement stipulates:

“Except as otherwise provided in this Agreement, this Agreement or any action taken under it shall not affect or nullify the rights and obligations of a Party under existing agreements to which it is a party.”

While there is no evidence to clarify the meaning of this clause, China (together with its partner) once explained the meaning of a similar clause in a different FTA and said that GATS-minus commitments would not affect the obligations of an FTA party.¹¹ Thus, we take the view that the ACFTA TIS Agreement does not “affect or nullify” the obligations that ASEAN and China assumed under GATS, and hence the GATS-adjusted scores better reflect their level of commitments than the raw scores.¹²

Table 1: Services Sectors (compiled and used by the WTO)

01	Business
02	Communication
03	Construction
04	Distribution
05	Education
06	Environment
07	Finance
08	Health
09	Tourism
10	Recreation
11	Transport

Source: WTO’s Sectoral Classification List (W/120).

Table 2: Hoekman Index in the ACFTA 1st Package

	01	02	03	04	05	06	07	08	09	10	11	Average
Brunei												
ACFTA package 1	0.03	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.00	0.13	0.02
ACFTA package 1 (adj.)	0.15	0.06	0.00	0.00	0.00	0.00	0.13	0.00	0.02	0.00	0.14	0.05
Cambodia												
ACFTA package 1	0.29	0.28	0.50	0.75	0.45	0.75	0.42	0.19	0.45	0.15	0.17	0.40
ACFTA package 1 (adj.)	0.29	0.28	0.50	0.75	0.45	0.75	0.43	0.19	0.45	0.15	0.17	0.40
Indonesia												
ACFTA package 1	0.00	0.00	0.33	0.00	0.00	0.00	0.00	0.00	0.34	0.00	0.00	0.06
ACFTA package 1 (adj.)	0.05	0.05	0.33	0.00	0.00	0.00	0.20	0.00	0.34	0.00	0.03	0.09
Lao PDR												
ACFTA package 1	0.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.00	0.00	0.00	0.02
ACFTA package 1 (adj.)	-	-	-	-	-	-	-	-	-	-	-	-
Malaysia												
ACFTA package 1	0.13	0.00	0.44	0.00	0.01	0.00	0.02	0.16	0.00	0.00	0.01	0.07
ACFTA package 1 (adj.)	0.31	0.15	0.44	0.00	0.01	0.00	0.22	0.16	0.22	0.18	0.04	0.16
Myanmar												
ACFTA package 1	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.01
ACFTA package 1 (adj.)	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.34	0.00	0.07	0.04
Philippines												
ACFTA package 1	0.01	0.20	0.08	0.00	0.00	0.11	0.00	0.00	0.44	0.00	0.00	0.08
ACFTA package 1 (adj.)	0.04	0.27	0.08	0.00	0.00	0.11	0.32	0.00	0.44	0.00	0.16	0.13
Singapore												
ACFTA package 1	0.29	0.05	0.00	0.55	0.30	0.25	0.37	0.25	0.38	0.40	0.09	0.27
ACFTA package 1 (adj.)	0.45	0.18	0.15	0.55	0.30	0.25	0.38	0.25	0.53	0.40	0.12	0.32
Thailand												
ACFTA package 1	0.04	0.00	0.00	0.00	0.24	0.00	0.00	0.00	0.53	0.00	0.00	0.07
ACFTA package 1 (adj.)	0.22	0.12	0.41	0.10	0.44	0.69	0.19	0.00	0.58	0.14	0.11	0.27
Viet Nam												
ACFTA package 1	0.35	0.33	0.50	0.45	0.31	0.41	0.58	0.34	0.38	0.16	0.12	0.36
ACFTA package 1 (adj.)	0.35	0.33	0.50	0.45	0.31	0.44	0.58	0.34	0.38	0.16	0.14	0.36
ASEAN average												
ACFTA package 1	0.11	0.09	0.18	0.18	0.13	0.15	0.16	0.09	0.25	0.07	0.06	0.13
ACFTA package 1 (adj.)	0.19	0.15	0.24	0.19	0.15	0.22	0.26	0.09	0.33	0.10	0.10	0.18
China												
ACFTA package 1	0.22	0.00	0.44	0.00	0.00	0.56	0.00	0.00	0.00	0.01	0.11	0.12
ACFTA package 1 (adj.)	0.35	0.29	0.44	0.48	0.31	0.56	0.23	0.00	0.34	0.01	0.15	0.29
Overall average												
ACFTA package 1	0.12	0.08	0.21	0.16	0.12	0.19	0.14	0.09	0.23	0.07	0.06	0.13
ACFTA package 1 (adj.)	0.20	0.16	0.26	0.21	0.17	0.25	0.26	0.09	0.33	0.09	0.10	0.19

Note: Lao PDR does not reflect its recent GATS commitments (hence “-“, meaning not applicable, in the relevant cells)

Source: authors

2.3. Level of Services Liberalization in the ACFTA 2nd Package

Table 3 reports the results in the ACFTA 2nd Package (both raw scores and GATS-adjusted scores), by sector and country. We use GATS-adjusted scores to assess the level of services liberalization in the ACFTA 2nd Package (i.e., all the sectoral commitments under GATS are reflected in the scores). Both China and ASEAN scored much lower than 0.5. China's score in the ACFTA is 0.32, while ASEAN's (on average) was 0.21. ASEAN and China are clearly still hesitant to open their services markets to each other. Among the ACFTA parties, Cambodia is the most open economy, with a cross-sector average of 0.40, followed by Singapore (0.38); Viet Nam (0.36), China (0.32) and Thailand (0.31). All the other ASEAN countries have committed to a much lower level of liberalization in the ACFTA 2nd package: Malaysia (0.20), the Philippines (0.19); Indonesia (0.09); Myanmar (0.07); Brunei (0.05); and Lao PDR (0.04). Cambodia and Viet Nam have not yet developed local services industries to protect and therefore are open to foreign investors to provide services in their territories. Myanmar and Lao PDR do not have viable domestic services sectors. These two countries are moving toward more liberal economic philosophies with Myanmar's major policy changes since 2011, and Laos's WTO accession in 2013. Those policy changes had not been realized at the time of the ACFTA 2nd Package's conclusion. Singapore has strong services sectors (especially its financial sector) and hence has interests in opening up its markets in order to gain access to foreign markets. In between are Indonesia, Malaysia¹³ and the Philippines.¹⁴ China and Thailand have growing competitiveness and interest in service-trade commitments. Viet Nam's rather high commitment seems to reflect its open-policy efforts before and after its accession to the WTO in 2007. Lastly, it should be noted that all the ASEAN Member States have committed much more under AFAS and the ASEAN-Australia-New Zealand FTA (AANZFTA) (Ishido and Fukunaga, 2012).

The most open sub-sectors (taking an average of ASEAN and China) are tourism (09) with 0.35 followed by construction (03) with 0.35. The most protected sub-sector is health (08) where six members have no commitments at all (i.e., their Hoekman Index is 0).

Table 3: Hoekman Index in the ACFTA 2nd Package

	01	02	03	04	05	06	07	08	09	10	11	Average
Brunei												
ACFTA package 2	0.16	0.08	0.00	0.00	0.00	0.00	0.13	0.00	0.02	0.00	0.14	0.05
ACFTA package 2 (adj.)	0.16	0.08	0.00	0.00	0.00	0.00	0.13	0.00	0.02	0.00	0.14	0.05
Cambodia												
ACFTA package 2	0.29	0.28	0.50	0.75	0.45	0.75	0.42	0.19	0.45	0.15	0.17	0.40
ACFTA package 2 (adj.)	0.29	0.28	0.50	0.75	0.45	0.75	0.43	0.19	0.45	0.15	0.17	0.40
Indonesia												
ACFTA package 2	0.00	0.00	0.33	0.00	0.00	0.00	0.00	0.00	0.34	0.00	0.00	0.06
ACFTA package 2 (adj.)	0.05	0.05	0.33	0.00	0.00	0.00	0.21	0.00	0.34	0.00	0.05	0.09
Lao PDR												
ACFTA package 2	0.25	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.00	0.00	0.00	0.04
ACFTA package 2 (adj.)	-	-	-	-	-	-	-	-	-	-	-	-
Malaysia												
ACFTA package 2	0.32	0.02	0.44	0.00	0.08	0.00	0.20	0.16	0.52	0.18	0.08	0.18
ACFTA package 2 (adj.)	0.33	0.15	0.44	0.00	0.08	0.00	0.26	0.16	0.52	0.18	0.09	0.20
Myanmar												
ACFTA package 2	0.03	0.07	0.13	0.00	0.00	0.00	0.00	0.16	0.34	0.00	0.07	0.07
ACFTA package 2 (adj.)	0.03	0.07	0.13	0.00	0.00	0.00	0.00	0.16	0.34	0.00	0.08	0.07
Philippines												
ACFTA package 2	0.07	0.33	0.28	0.16	0.00	0.11	0.29	0.00	0.44	0.00	0.17	0.17
ACFTA package 2 (adj.)	0.07	0.41	0.28	0.16	0.00	0.11	0.38	0.00	0.44	0.00	0.22	0.19
Singapore												
ACFTA package 2	0.51	0.30	0.60	0.55	0.30	0.25	0.38	0.25	0.53	0.40	0.09	0.38
ACFTA package 2 (adj.)	0.53	0.31	0.60	0.55	0.30	0.25	0.38	0.25	0.53	0.40	0.12	0.38
Thailand												
ACFTA package 2	0.19	0.09	0.50	0.10	0.39	0.50	0.22	0.00	0.53	0.20	0.12	0.26
ACFTA package 2 (adj.)	0.24	0.14	0.61	0.10	0.39	0.69	0.28	0.00	0.58	0.24	0.16	0.31
Viet Nam												
ACFTA package 2	0.35	0.33	0.50	0.45	0.31	0.41	0.58	0.34	0.38	0.16	0.12	0.36
ACFTA package 2 (adj.)	0.35	0.33	0.50	0.45	0.31	0.44	0.58	0.34	0.38	0.16	0.14	0.36
ASEAN average												
ACFTA package 2	0.22	0.15	0.33	0.20	0.15	0.20	0.24	0.11	0.35	0.11	0.10	0.20
ACFTA package 2 (adj.)	0.23	0.18	0.34	0.20	0.15	0.22	0.28	0.11	0.36	0.11	0.12	0.21
China												
ACFTA package 2	0.34	0.24	0.44	0.41	0.38	0.56	0.25	0.00	0.34	0.15	0.20	0.30
ACFTA package 2 (adj.)	0.39	0.29	0.44	0.54	0.38	0.56	0.27	0.00	0.34	0.15	0.20	0.32
Overall average												
ACFTA package 2	0.23	0.16	0.34	0.22	0.17	0.23	0.24	0.10	0.35	0.11	0.11	0.21
ACFTA package 2 (adj.)	0.24	0.19	0.35	0.23	0.17	0.25	0.28	0.10	0.36	0.12	0.12	0.22

Note: Lao PDR does not reflect its recent GATS commitments (hence “-“, meaning not applicable, in the relevant cells).

Source: authors

2.4. Additional liberalization in the ACFTA 2nd Package in comparison with the 1st Package

The Chinese government's positive evaluation of the ACFTA 2nd Package was expressed as follows:

“Compared with the first package, China made adjustment in such sectors as commercial services, telecommunication, construction, distribution, finance, tourism and transportation, based on China's commitment to the WTO. Meanwhile, ASEAN member states have covered more sectors in the second package, more open than their WTO commitment, and offer by many of them are more preferential than that in WTO new round negotiation.”¹⁵ [sic]

Is this statement correct?

Table 4 shows the additional liberalization in the ACFTA 2nd Package in comparison with the 1st Package (before GATS-minus adjustments). China's improvement is significant with 0.18 additional liberalization to its earlier commitments. The ASEAN average was also improved, at 0.06 higher compared with the 1st Package. Thailand tops the ASEAN list with 0.18 improvement followed by Malaysia (0.11) and Singapore (0.11). On the other hand Cambodia (0.00), Viet Nam (0.00), Indonesia (0.01), Lao PDR (0.02), and Brunei (0.03) provide only limited additional commitments.

The landscape will dramatically change when we adjust for the GATS-minus components. **Table 5** presents the real additional liberalization of the ACFTA 2nd Package over the 1st Package. The degrees of improvement now become 0.04 both for China and ASEAN. The additional commitments are at maximum 0.06 (the Philippines and Singapore).

In brief, most of the “improvements” made in the ACFTA 2nd Package are not new commitments. Rather, they are old commitments which had existed since 2003 when the GATS initial offer was released.¹⁶ The real improvement remains at the level of 0.04 in the Hoekman Index.

This is not a bad news. The GATS-minus effect creates a transparency problem that

is avoidable. If that is the case, reductions of GATS-minus will be one important aspect of “progressive liberalization”. Our analysis shows that many GATS-minuses existing in the ACFTA 1st Package are now removed because GATS commitments are better reflected in the latest ACFTA commitment schedules. While not new commitments, they are still meaningful because member states reaffirmed their earlier GATS commitments. Now the transparency is improved, and business can be more confident in the reality of services liberalization commitments made on paper.

One possible explanation for the existence of GATS-minus commitments is the limited capacity of developing countries in negotiating services liberalization.¹⁷ If that was the case in the ACFTA 1st Package, at least the problems have now become smaller.

It should be noted, however, that the GATS-minus problem has not been completely removed. GATS-minuses still exist in the ACFTA 2nd Package, albeit to a much lesser degree than in the 1st Package, in all the ASEAN countries (excluding Lao PDR which did not have any GATS commitments) and China.

Table 4: Additional liberalization in ACFTA 2nd Package over the 1st Package (before GATS adjustment)

	01	02	03	04	05	06	07	08	09	10	11	Average
Brunei	0.13	0.06	0.00	0.00	0.00	0.00	0.13	0.00	0.00	0.00	0.01	0.03
Cambodia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Indonesia	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.00	0.00	0.00	0.05	0.01
Lao PDR	0.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02
Malaysia	0.19	0.02	0.00	0.00	0.06	0.00	0.18	0.00	0.52	0.18	0.07	0.11
Myanmar	0.03	0.06	0.13	0.00	0.00	0.00	0.00	0.16	0.34	0.00	0.01	0.07
Philippines	0.06	0.14	0.20	0.16	0.00	0.00	0.29	0.00	0.00	0.00	0.17	0.09
Singapore	0.23	0.25	0.60	0.00	0.00	0.00	0.01	0.00	0.16	0.00	0.00	0.11
Thailand	0.16	0.09	0.50	0.10	0.15	0.50	0.22	0.00	0.00	0.20	0.12	0.18
Viet Nam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ASEAN average	0.10	0.06	0.14	0.03	0.02	0.05	0.08	0.02	0.10	0.04	0.04	0.06
China	0.11	0.24	0.00	0.41	0.38	0.00	0.25	0.00	0.34	0.14	0.10	0.18
Overall average	0.11	0.08	0.13	0.06	0.05	0.05	0.10	0.01	0.12	0.05	0.05	0.07

Source: authors

Table 5: Additional liberalization in ACFTA 2nd Package over the 1st Package (GATS-minus adjusted)

	01	02	03	04	05	06	07	08	09	10	11	Average
Brunei	0.01	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cambodia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Indonesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.00
Lao PDR	0.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02
Malaysia	0.02	0.00	0.00	0.00	0.06	0.00	0.04	0.00	0.30	0.00	0.06	0.04
Myanmar	0.03	0.06	0.13	0.00	0.00	0.00	0.00	0.16	0.00	0.00	0.01	0.03
Philippines	0.03	0.14	0.20	0.16	0.00	0.00	0.06	0.00	0.00	0.00	0.05	0.06
Singapore	0.09	0.13	0.45	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06
Thailand	0.02	0.02	0.20	0.00	-0.05	0.00	0.09	0.00	0.00	0.10	0.05	0.04
Viet Nam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ASEAN average	0.04	0.04	0.21	0.02	0.00	0.00	0.02	0.02	0.03	0.01	0.02	0.04
China	0.03	0.00	0.00	0.06	0.06	0.00	0.04	0.00	0.00	0.14	0.05	0.04
Overall average	0.04	0.03	0.09	0.02	0.01	0.00	0.02	0.01	0.03	0.02	0.02	0.03

Source: authors

Lastly, it is worth checking the frequency of backtracking (recanting commitments made in the previous package) in the 2nd Package.¹⁸ Compared with tariff in which the differences between WTO and FTA commitments and actual tariff rates have reduced over time, there is more room between commitments and actual regulations. A services commitment in the 2nd Package thus denotes certainty of non-backtracking (i.e., standstill) of actual regulations rather than any changes in actual regulations. *If* backtracks are frequently observed in the 2nd Package, the credibility of the 1st Package will be badly affected, and, in addition, business would be unable to believe in the benefits of the 2nd Package. Fortunately, we have observed only one backtrack in the ACFTA 2nd Package as compared to the 1st Package (education services in Thailand). Therefore, the ACFTA 2nd Package proved to provide a large extent of certainty against policy backtrack.

2.5. “GATS-plus” in the ACFTA 2nd Package

Services liberalization in FTAs can add value only when there are GATS-plus components.¹⁹ **Table 6** presents the GATS-plus scores of each country’s commitments in the ACFTA 2nd Package. GATS-plus is computed as the difference between “ACFTA 2nd (GATS-minus-adjusted)” and “GATS” both in the Hoekman Indices.

Both ASEAN (average) and China provide 0.08 more commitments in the ACFTA 2nd Package than their respective GATS commitments. Among the ASEAN members, Singapore provides the largest GATS-plus, with 0.27. On the other hand, Cambodia (0.01), Brunei (0.02), Indonesia (0.03) and Myanmar (0.04) make only small GATS-plus commitments.

Overall, 0.07 GATS-plus is a low score when we compare it with AFAS and some other ASEAN+1 FTAs. ASEAN countries have made 0.22 GATS-plus commitments under the AFAS 7th Package. Under the AANZFTA, ASEAN (average) made 0.20 GATS-plus commitments. Australia and New Zealand also made much more substantial additional commitments with 0.18 and 0.26 GATS-plus scores, respectively. The AKFTA provides almost the same level of GATS-plus commitments as the ACFTA 2nd Package: GATS-plus scores are 0.09 for Korea and 0.08 for ASEAN.

Table 6: “GATS plus” in the ACFTA 2nd Package

	01	02	03	04	05	06	07	08	09	10	11	Average
Brunei	0.01	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.00	0.13	0.02
Cambodia	0.00	0.00	0.00	0.05	0.00	0.00	0.08	0.00	0.00	0.00	0.00	0.01
Indonesia	0.00	0.00	0.13	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.02	0.03
Lao PDR	-	-	-	-	-	-	-	-	-	-	-	-
Malaysia	0.05	0.00	0.00	0.00	0.08	0.00	0.05	0.00	0.30	0.00	0.07	0.05
Myanmar	0.03	0.07	0.13	0.00	0.00	0.00	0.00	0.16	0.00	0.00	0.07	0.04
Philippines	0.04	0.18	0.28	0.16	0.00	0.11	0.06	0.00	0.08	0.00	0.05	0.09
Singapore	0.32	0.18	0.45	0.55	0.30	0.25	0.07	0.25	0.25	0.25	0.08	0.27
Thailand	0.02	0.02	0.20	0.00	0.09	0.00	0.09	0.00	0.06	0.10	0.05	0.06
Viet Nam	0.01	0.06	0.00	0.20	0.11	0.00	0.17	0.09	0.00	0.08	0.03	0.07
ASEAN average (excl. Lao PDR)	0.05	0.06	0.13	0.11	0.06	0.04	0.06	0.06	0.10	0.05	0.06	0.07
China	0.05	0.00	0.00	0.06	0.06	0.42	0.04	0.00	0.00	0.15	0.07	0.08
Overall average (excl. Lao PDR)	0.05	0.05	0.12	0.10	0.06	0.08	0.06	0.05	0.09	0.06	0.06	0.07

Note: The GATS commitment schedule of Lao PDR was not available at the timing of computation. “-” means not applicable.

Source: authors

3. Conclusion and Policy Implications

ASEAN's services liberalization through AFAS has achieved substantial improvements, package by package. This paper has examined the successes of, and challenges in, services liberalization under the ACFTA, which adopts the same structure as the AFAS: i.e., a framework agreement and commitment packages. The assessment of the ACFTA 2nd Package, which is the first and only 2nd Package among the ASEAN+1 FTAs to date, will have policy implications for the AKFTA and the ongoing negotiation of the RCEP.

Successes of, and Challenges in, Services Liberalization in the ACFTA

ACFTA services liberalization has been successful in two points. First, the ACFTA 2nd Package provides deeper and broader commitments by both ASEAN and China. Second, backtracking is observed only in one case in the 2nd Package, which suggests that the ACFTA TIS Agreement provides certainty to potential services providers (including investors in service industries). On the other hand, the degree of improvement in the 2nd Package over the 1st Package is limited to 0.04 if we adjust the scores with their respective GATS commitments. This suggests that most of the "improvements" made in the ACFTA 2nd Package are mere additions of countries' earlier commitments in the GATS. As a result, the ACFTA Package 2 is just 0.08 more liberal than the GATS itself. In other words, GATS-plus components remain low, especially compared to the level of services liberalization in ASEAN, under AFAS, as well as in the AANZFTA.²⁰ Therefore, although "progressive" services liberalization under the current ACFTA framework is actually progressing, the pace is still slow.

ASEAN and China are starting a new negotiation on the ACFTA 3rd Package in accordance with Art. 23.3 of ACFTA TIS Agreement. Services liberalization commitments are expected to be deepened and broadened through this new negotiation. Judging from the records of the 2nd Package, however, improvements will be limited.

The AKFTA is the other ASEAN+1 FTA which introduces the package structure in its services liberalization. Thus far, only the 1st Package has been concluded. The

success of progressive liberalization in the AKFTA is yet to be seen.

Implications to the RCEP

The RCEP is a new FTA negotiation among the ASEAN+6 countries.²¹ Services liberalization is going to be one of the eight negotiation areas in this framework.²² While the details of services negotiation are not agreed yet, there is a chance that RCEP will introduce the package structure, since the AFAS, ACFTA and AKFTA all take this route. Will it be the right choice?

This study shows that services liberalization under the ACFTA is moving only slowly, and that the AKFTA has yet to yield a 2nd Package. Despite the success of the AFAS, therefore, introduction of a package structure will not ensure the future success of progressive services liberalization in the RCEP. We need to further examine the differences between the progressive liberalizations in AFAS and ACFTA.²³

Reasons for Addressing “GATS-minus”

Our analysis reveals that “GATS-minus” is commonly found in the ACFTA services packages, especially in the 1st Package. This is not an exceptional phenomenon in East Asia but is rather common practice in services liberalization around the globe. As Adlung and Miroudot (2012) pointed out, however, GATS-minus causes significant problems and confusion for services providers operating in the region. Services providers cannot rely solely on the ACFTA commitments but need to study the GATS commitments of relevant countries. Even so they cannot be entirely confident that such GATS commitments will be respected by a country which does not commit the same components in its FTA, and hence the potential value of services liberalization might not be fully realized. Future services liberalization negotiations should therefore start from the commitments schedules in the GATS and existing FTAs (e.g., existing packages), whether the ACFTA, RCEP or other FTAs.

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ENDNOTES

¹ Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China, Cebu, Philippines, 14 January 2007.

² The preamble of the ACFTA TIS Agreement refers to Arts. 4 and 8 (3) of the ACFTA Framework Agreement and repeats "progressive liberalization" as an objective of the TIS Agreement. Also, Art. 23 of the TIS Agreement is titled as "Progressive Liberalisation".

³ ASEAN Framework Agreement on Services, Bangkok, Thailand, 15 December 1995.

⁴ By 2012, ASEAN had signed up to its 8th package under AFAS as well as separate packages under financial services and air transport services.

⁵ For example, Hiong (2004) already presented the growing sectoral coverage of AFAS from

packages 1, 2, and to 3. Reviewing more recent assessments of AFAS up to its 7th Package, Dee (2013) finds that the commitments started to affect actual regulations while actual implementation lagged in some areas and some countries.

⁶ Shepherd and Pasadilla (2012) also found that there are only limited amounts of additional liberalization on both the ASEAN and the China sides.

⁷ The horizontal commitments of the FTA members are referred to in the specific commitment tables where mention is made of, e.g., “as specified in the horizontal commitments”. In this sense, this approach takes into account the horizontal commitments through specific commitments. However, horizontal commitments themselves are not directly considered in this indexation exercise. We therefore confine our analysis to the discussion of sector-wise, specific, commitments only. This way of calculating the Hoekman Index for ASEAN+1 FTAs is based on Ishido (2011).

⁸ For original members of the WTO. Among various versions of the GATS commitment tables, the ones submitted as the “2003 initial offers”, which correspond to the latest publicly available commitments, have been taken as the reference point in this analysis (the commitment tables are downloadable at the following WTO website: <http://tsdb.wto.org/default.aspx>). As for Cambodia (which acceded to the WTO in 2004) and Vietnam (in 2007), the commitment tables at the time of their accession (listed at the WTO website above) are used in this analysis. For Lao PDR (in 2013), information on commitment tables is not publicly available as of this writing.

⁹ In general, GATS-minus components are found both in horizontal commitments and specific commitments (Adlung and Miroudot, 2012). For example, the ACFTA TIS Agreement excluded subsidies and financial support from the national treatment discipline (Art. 14). However, our description of GATS-minus in this article focuses on specific commitments due to our methodology (horizontal commitments are broken down to specific sectors and modes whenever possible in our calculation of the Hoekman Index).

¹⁰ Adlung and Miroudot (2012) discuss a variety of possible legal treatments of GATS-minus.

¹¹ Adlung and Miroudot (2012) quoting WTO document (WT/REG237/4 of 26 May 2011) on the explanation by China and Pakistan at the WTO Committee on Regional Trade Agreements about the legal effect of GATS minus components, found in Pakistan’s commitments in the China Pakistan Agreement on Trade in Services. Art. 22.3 of China Pakistan Agreement on Trade in Services uses exactly the same wordings as Art. 23.3 of ACFTA TIS Agreement. Although the WTO Secretariat sent to the parties the Factual Presentation on the ACFTA TIS Agreement in February 2010, no comments had been received (WTO Secretariat, WT/REG/M/66).

¹² Another possible reason for the existence of GATS-minus in the ACFTA relates to the non-WTO member(s) in ACFTA. Lao PDR joined the WTO only in 2013. Although GATS-minus did not have any legal effect practically as most ACFTA members are also WTO members, the situation *was* different for Lao PDR until 2013. As a non-WTO member, Lao PDR could not enjoy the GATS-minus commitments. However, such a theoretical rationale may not reflect the reality of less competitive services industry in Lao PDR. Furthermore, this potential reasoning does not apply to Viet Nam who acceded to the WTO in January 2007 (*i.e.*, the same timing of signature of the ACFTA TIS Agreement).

¹³ Malaysia’s open trade policy has sometimes been intermingled with its domestic-oriented measures, hence a rather mediocre service commitment.

¹⁴ The Philippines is a unique country with strong services exports in Modes 1 (cross-border supply) and 4 (movement of people). However, its domestic services industry, which is more affected by Mode 3 (commercial presence) commitments, is not well developed yet.

¹⁵ MOFCOM Website at, http://fta.mofcom.gov.cn/enarticle/enasean/chianaseannews/201111/8415_1.html (last visited on 1 Mach, 2013).

¹⁶ See endnote 8.

¹⁷ Adlung and Miroudot (2012).

¹⁸ GATS-minus discussed earlier can also be viewed as “backtrack”.

¹⁹ Even if the FTA commitments do not change the actual regulations, such commitments provide certainty that the status quo regulations will not backtrack.

²⁰ See Fukunaga and Isono (2012).

²¹ ASEAN, Australia, China, India, Japan, Korea and New Zealand.

²² Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership.

²³ AFAS adopted a Request and Offer Approach for 1st and 2nd Packages; a Common Sub-Sector Approach for the 3rd Package; a Modified Common Sub-Sector Approach for the 4th, 5th and 6th Packages; and a AEC Blueprint Approach with clear targets and timelines since the 7th Package. See Hiong (2011). On the other hand, ACFTA services negotiation is still being negotiated in a Request and Offer approach.

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