

ERIA Discussion Paper Series**Monitoring the Implementation of
Services Trade Reform towards an
ASEAN Economic Community***

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Abstract: *This paper assesses the extent to which the Association of Southeast Asian Nations (ASEAN) Framework Agreement on Services (AFAS) is helping ASEAN member states achieve their ASEAN Economic Community (AEC) goal of free flow of services in the region. Even after eight rounds of services trade negotiations, the trade commitments lag actual practice. Thus, if the AFAS process is to do a better job of driving real reform, it will need to be more closely linked to the domestic policy development processes in each member country. One strategy would be to switch from a positive list approach to a negative list approach to negotiations. This could be the ‘game changer’; it would require a major policy review, and thereby allow countries to develop an overall services trade strategy anchored within the domestic policy development process. Other desirable changes would be a ratchet mechanism, whereby any future domestic reforms would be automatically bound into AFAS schedules, and a mechanism to ensure that whenever mode 3 commitments are made, the appropriate mode 4 commitments are also made. Supporting changes are also needed to domestic regulatory environments. For example, some ASEAN members need to improve the quality and enforcement of their prudential regulation if they are to make further progress in opening up their financial markets to foreign participation. Finally, it is critical to have regulatory frameworks that are conducive to contestability more generally, so that when foreign companies do enter the market, they do not have an unnatural AFAS-induced advantage over domestic new entrants. Thus, the key to making further real progress towards a free flow of services in the region is to focus on domestic regulatory improvement more generally.*

Keywords: ASEAN Framework Agreement on Services, AFAS, services trade policy, services trade commitments, regulatory policy, regulatory environment, actual practice

JEL Classification: F13, F15

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This paper aims to assess the extent to which the Association of Southeast Asian Nations (ASEAN) Framework Agreement on Services (AFAS) is helping ASEAN member states achieve their ASEAN Economic Community (AEC) goal of free flow of services in the region. The assessment involves a comparison of services trade commitments with actual domestic policies.

This would seem an unnecessary step. Would a growing number of binding services trade commitments not automatically lead to freer services trade? This would be the case only if the services trade commitments in question imposed a real constraint on actual domestic policies. If the services trade commitments lagged actual policy (in the sense of being not as liberal as actual policy), or if they were concentrated in subsectors that are already relatively free, a conventional services scorecard exercise may record significant progress towards achieving the AEC target on the basis of a particular percentage of sectors and modes of service delivery committed, without much real progress in terms of actual services trade reform. If this were so, it would be important to understand some of the reasons for the hidden roadblocks to ensure that the last stages of the AFAS process did, in fact, drive real reform. The paper concludes with some recommendations for overcoming any such hidden roadblocks.

1. Sectoral Coverage

Understanding and evaluating actual policies is a time-consuming exercise, so the comparison cannot be undertaken for every single service activity. For the current exercise, the comparison is carried out for seven broad sectors—three Priority Integration Sectors, two in logistics, and two others that have been shown to be critical for ASEAN’s merchandise trade performance.

- Priority Integration Sectors
 - Medical services (covering the professional services of doctors, dentists, nurses, and other paramedics);
 - Health services (covering hospitals, medical laboratories, and ambulance services);

- Tourism (covering hotels, other accommodation, food, beverages, travel agencies, tour operators, and tour guides).
- Logistics
 - Maritime services (covering seagoing shipping, internal waterways, port operation (wharves, terminals, etc.), container station and depot services, other cargo handling, storage and warehousing, freight forwarding, pilotage towing and tying, and maintenance and repair);
 - Telecommunications services (covering voice services, mobile services, data communications, leased lines and private networks, and Internet access services);
- Other services critical to merchandise trade performance
 - Banking services (covering the activities of commercial banks);
 - Insurance services (covering life insurance, which is typical of other insurance products).

The set of activities covered within each of the Priority Integration Sectors (listed above in parentheses) is relatively comprehensive, as is the coverage of maritime services. In telecommunications, the focus is primarily on basic telecommunications services, rather than value-added services. The eighth package of commitments under AFAS contained some significant liberalisation of value-added services, compared with the seventh package. Nevertheless, recent trends in technology and usage have been rendering these services significantly less important to telecommunications companies. Some of them, such as telegraph and fax services, are virtually obsolete. Other value-added services remain technologically relevant, but users are increasingly acquiring them elsewhere. For example, a recent report by the International Telecommunications Union (ITU, 2014) noted the significant extent of migration of telecommunications usage of both consumers and businesses to the public Internet.¹

¹ In 2011, 75.1 percent of all telecommunications traffic was over the public Internet, 22.1 percent was managed Internet Protocol (IP) traffic (managed by next-generation network providers), 1.9 percent was mobile data, 0.5 percent was Voice over Internet Protocol (VoIP) telephony, also public Internet-based, and 0.5 percent was traditional circuit-switched voice traffic (ITU 2014, p.75). According to the International Telecommunication Union (ITU), the next-generation network services are the latest value-added and integrated services (including high-quality video) provided by traditional telecommunications providers. The networks themselves are packet-switched networks based on Internet Protocol (IP), and are ‘the telecommunications companies’ attempt to replicate the architecture of the Internet while building on the high reliability and predictability of service that end users had come to expect over circuit-switched networks’ (ITU 2014, p.67). According to ITU, the next-general networks have been unable to stem the tide of

This suggests telecommunications companies' provision of value-added services will in future be significantly less important than their provision of broadband access, which is a basic telecommunications service.

Banking and insurance are included in the current study because empirical work carried out as part of ERIA's AEC Scorecard Phase III Project (Intal *et al.*, 2014a) showed that while customs efficiency and the contestability of logistics services both had a significant impact on the region's merchandise trade performance, so too did the efficiency of financial markets. Banking covers the activities of commercial banks (primarily lending, fund raising, settlement services, and foreign exchange services). The surveys of actual policies in the insurance sector covered a range of activities separately—life insurance, medical insurance, property insurance, reinsurance, and broking activity. The results showed very little difference in policies across these sectors, except perhaps for broking. The results reported here are for life insurance, although the results for property insurance, which is more relevant for merchandise trade, are very similar.

2. Methodology

Since 2009, members of the Research Institutes Network have been surveying the actual policies that affect services trade in various services sectors. The assessments have used sectoral surveys, each one tailored to the particular characteristics of the sector in question. First, these surveys canvas the actual policy settings in each sector with respect to foreign equity limits and some of the more common limitations on national treatment and market access by mode of service delivery in that sector^{2,3}. Second, they keep track of whether the limitations on market access affect only

migration by consumers and businesses to the public Internet, though their services will remain important where guaranteed quality-of-service matters—principally business data and high-quality video. Their market share is projected to fall to 16.4 percent by 2016.

² Following the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), limitations on market access are limitations on either (i) the number of services suppliers; (ii) the total value of services transactions or assets; (iii) the total number of services operations or the total quantity of service output; (iv) the total number of employees; (v) the type of legal entity (e.g., subsidiaries, branches, representative offices) or joint venture; or (vi) foreign equity participation. Note that some of these restrictions may also affect domestic

foreign providers, or whether they also affect domestic new entrants. Third, they map aspects of the broader regulatory environment in each sector that may thwart either the implementation or the impact of services trade liberalisation. The second and third policy dimensions may constitute hidden roadblocks to services trade reform.

For this exercise, members of the Research Institutes Network again surveyed actual policies in the sectors nominated above. Current policy settings in medical, health, banking, and insurance services were surveyed using the corresponding sectoral questionnaires from Dee (2011). Current policy settings in telecommunications were surveyed using the corresponding questionnaire from Dee (2010), while policies in maritime were canvassed using a combination of the maritime questionnaires from Dee (2010) and Dee (2013). Tourism was canvassed here for the first time, using a questionnaire that has many of the same features as those for insurance services, as well as some questions about forms of discrimination against foreign providers that are specific to tourism (e.g., discriminatory development planning approval processes or zoning requirements).

Note that all of the nominated services sectors except tourism were surveyed earlier. Medical, health, banking, and insurance services were canvassed in late 2009 and early 2010 and reported in Dee (2010), and telecommunications and maritime services were canvassed in late 2010 and early 2011 and reported in Dee (2011). All these results are referred to in this paper as being for 2010. The repeated sampling in the current exercise therefore allows an assessment of actual policy reform between 2010 and 2014 in these sectors.

The innovation in this paper is the use of the same sectoral questionnaires to score ASEAN Framework Agreement on Services (AFAS) services trade commitments. Because the AFAS schedules make commitments regarding possible limitations on market access or national treatment affecting foreign services and services suppliers, but are silent on the treatment of domestic suppliers or on the broader domestic regulatory environment, not all of the survey questions are relevant. However, a

suppliers. Limitations on national treatment are any other types of discrimination against foreign services or services suppliers (e.g., discriminatory licensing requirements).

³ The modes of services delivery are (i) mode 1—cross-border trade (where neither the consumer nor the producer move to each other's country); (ii) mode 2—consumption abroad (where the consumer moves temporarily to the producer's country); (iii) mode 3—commercial presence (where the producer sets up a permanent commercial presence in the consumer's country); and (iv) mode 4—movement of natural persons (where either individual producers or the employees of producing companies move temporarily to the consumer's country).

subset of questions can be used to score AFAS commitments and actual policies on a strictly comparable basis. Annex Tables A1 to A7 show the relevant subset of questions for each sector under study. These tables also show the scoring regime, which is essentially a simple frequency count of trade barriers. For each sector, the scoring is not only comparable between AFAS commitments and actual policies; it is also comparable across ASEAN member states or across time periods. The scoring is *not* comparable across sectors, however, because the questionnaires are sector-specific.

Both the seventh and eighth AFAS packages were scored using the regimes in Annex Tables A1 to A7. The seventh package of commitments was in place in 2010, and is comparable to the actual policies at that time. The eighth package was finalised in 2012, and is comparable to the current 2014 policies. Trade commitments for financial services are being negotiated on a separate track, and the fifth package of financial services commitments was the most recent package in both 2010 and 2014. Nevertheless, some of the horizontal commitments (i.e., applying across all sectors) in the seventh and eighth packages also filter down to affect financial services. Thus, for banking and insurance, the scoring of trade commitments combines the fifth financial package with the relevant horizontal commitments from the seventh and eighth packages of AFAS. These combinations are referred to as the ‘seventh’ and ‘eighth’ (in inverted commas) packages for banking and insurance.

The overall scoring exercise allows a comparison to be made of the levels and rates of change of commitments and actual policies between 2010 and 2014. It shows whether commitments lag actual practice or appear to be driving real services trade reforms. Even if there is a lag, the exercise shows the extent of the lag, and whether the gaps are being closed over time. It also shows which particular features of the regulatory regimes are responsible for any lags, because it shows in which particular questions from Annex Tables A1 to A7 the gaps occur.

3. Improvements in Commitments

For the sectors under study, Table 1 shows where there have been improvements in commitments between the seventh and eighth packages, broken down by mode of

delivery.⁴ For most of the sectors under study, mode 1 (cross-border trade) and mode 2 (consumption abroad) are of minor importance. Cross-border trade is critical for maritime transport, and is also feasible for insurance services and, to a lesser extent, healthcare services (via e-medicine). In most cases, however, mode 3 (commercial presence) and mode 4 (movement of natural persons, either individual professionals or intra-corporate transferees) are the critical modes of delivery.

Table 1: Areas of Improvement in AFAS Commitments between Seventh and Eighth Packages

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Health-care	mode 1		mode 1		mode 1				mode 1	mode 1
	mode 2		mode 2		mode 2				mode 2	mode 2
	mode 3		mode 3	mode 3	mode 3	mode 3	mode 3	mode 3	mode 3	mode 3
	mode 4			mode 4	mode 4					mode 4
Tourism										
	mode 3		mode 3	mode 3	mode 3	horiz.	mode 3	mode 3	mode 3	
Maritime	mode 1	mode 1			mode 1	mode 1	mode 1			mode 1
	mode 2	mode 2				mode 2	mode 2			mode 2
	mode 3	mode 3	mode 3		mode 3	mode 3	mode 3	mode 3	mode 3	mode 3
	mode 4	mode 4	mode 4			mode 4	mode 4			mode 4
Telecom	mode 1		mode 1	mode 1		mode 1		mode 1	mode 1	
	mode 2		mode 2	mode 2		mode 2		mode 2	mode 2	
	mode 3		mode 3	mode 3	mode 3	mode 3		mode 3	mode 3	
	mode 4		mode 4	mode 4		mode 4		mode 4	mode 4	
Banking										
	horiz.					horiz.				
Insurance										
	horiz.					horiz.				

Notes: Colour indicates mode, ‘horiz.’ indicates that improvement was in horizontal rather than sector-specific commitments.

Sources: Schedules of commitments for AFAS seventh and eighth packages.

AFAS commitments improved at both the extensive and intensive margins. Where additional subsectors were committed (the extensive margin), this generally involved an improvement in all four modes of delivery, even if some of those modes were not important (Table 2). Where previous commitments (such as maximum foreign equity limits) for a given sector were improved (the intensive margin), this generally involved improvements for a single mode of delivery in isolation (Table 3).

⁴ This table records all improvements, not just those that would be captured in the scoring regimes of Tables III.A1 to III.A7.

Table 2: Areas of Improvement at the Extensive Margin

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Health-care	mode 1		mode 1		mode 1				mode 1	mode 1
	mode 2		mode 2		mode 2				mode 2	mode 2
	mode 3		mode 3		mode 3				mode 3	mode 3
	mode 4				mode 4					mode 4
Tourism										
Maritime	mode 1	mode 1			mode 1	mode 1	mode 1			mode 1
	mode 2	mode 2				mode 2	mode 2			mode 2
	mode 3	mode 3	mode 3		mode 3	mode 3	mode 3			mode 3
	mode 4	mode 4	mode 4			mode 4	mode 4			mode 4
Telecom	mode 1		mode 1	mode 1		mode 1		mode 1	mode 1	
	mode 2		mode 2	mode 2		mode 2		mode 2	mode 2	
	mode 3		mode 3	mode 3	mode 3	mode 3		mode 3	mode 3	
	mode 4		mode 4	mode 4		mode 4		mode 4	mode 4	
Banking										
Insurance										

Notes: Colour indicates mode, ‘horiz.’ indicates that improvement was in horizontal rather than sector-specific commitments.

Sources: Schedules of commitments for AFAS seventh and eighth packages.

Table 3: Areas of Improvement at the Intensive Margin

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Health-care	horiz.		mode 3	mode 3	mode 3	mode 3	mode 3	mode 3	mode 3	
				mode 4	mode 4				mode 4	
Tourism	mode 3		mode 3	mode 3	mode 3	horiz.	mode 3	mode 3	mode 3	
Maritime	mode 3	mode 3	mode 3		mode 3	mode 3		mode 3	mode 3	mode 3
						mode 4				
Telecom	horiz.		mode 3	mode 3	mode 3	horiz.			mode 3	
									mode 4	
Banking	horiz.					horiz.				
Insurance	horiz.					horiz.				

Notes: Colour indicates mode, ‘horiz.’ indicates that improvement was in horizontal rather than sector-specific commitments.

Sources: Schedules of commitments for AFAS seventh and eighth packages.

On both counts, ASEAN made good progress in liberalising maritime services, telecommunications services, and healthcare services (which covers both medical professional services and the services of hospitals, medical laboratories and ambulances). It is relatively unusual for countries to make improvements at the intensive margin. Because AFAS is a process rather than a one-off event, with an end goal and milestones to be met over time, it drives improvements in both the intensive and extensive margins.

This does not guarantee, however, that the improvements in commitments are well coordinated with developments in the domestic policy space. Indonesia is one ASEAN country where, in some cases, there does seem to be a link. Its trade commitments on foreign equity have tended to follow the developments in its domestic investment negative list. And as it has developed a proper legislative framework for medical services, covering licensing and quality assurance requirements, it has then opened its medical services markets to foreign participation. In other ASEAN countries, the link between AFAS commitments and domestic policy

is less clear. In some cases, the AFAS process is merely a game played on paper—commitments are gradually improved, but they lag actual practice, so no actual policy changes are required. In other cases, improvements in commitments are heavily qualified so as to retain many existing trade barriers.

Commercial presence generally requires the temporary movement of intra-corporate transferees, first, to establish the business, and subsequently to provide training, quality control, etc., on an ongoing basis. Where mode 3 commitments are made for additional sectors, they are generally accompanied by matching mode 4 commitments, to allow for at least some mobility of intra-corporate transferees. However, in the eighth package, exceptions to this pattern have started to emerge in healthcare. Both Indonesia and Thailand have made mode 3 commitments for additional sub-sectors without making corresponding mode 4 commitments (as can be seen in Table 2). In addition, Thailand has raised its allowable foreign equity limits in some healthcare sub-sectors, while at the same time withdrawing its mode 4 commitments for those sub-sectors (so that the change for mode 4 shown in Table 3 is, in fact, retrogression).⁵

This is a cause for concern. It could in part reflect that the mobility of individual medical professionals is to be facilitated through mutual recognition agreements, which are being negotiated separately. It could also reflect the fact that a separate ASEAN Movement of Natural Persons agreement has been established. Either way, the divorcing of decisions on commercial presence from those of intra-corporate transferees will be a significant source of additional uncertainty for investors, given how crucially the two are linked for business, and could well deter foreign direct investment in the future. Suggestions are made at the end of this paper on how to re-establish a link within the AEC process.

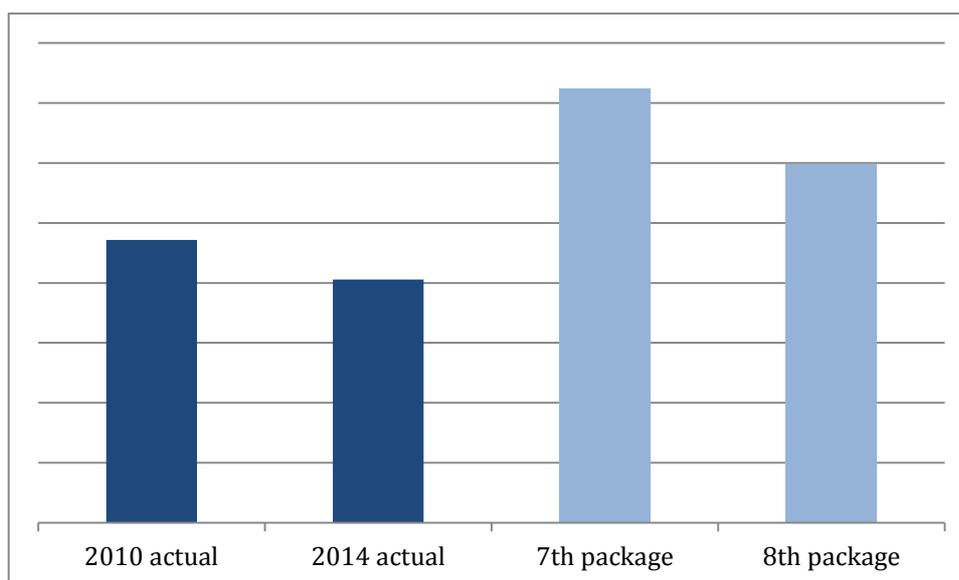
4. Commitments vs. Actual Practice

Improvements in services trade commitments only matter if they drive changes in actual practice. But of the sectors under study, the ‘typical’ pattern (averaged across

⁵ There is also some mild retrogression in the mode 4 commitments of Myanmar for maritime services and of Thailand for telecommunications services.

ASEAN member states) is shown in Figure 1.⁶ Commitments have improved over time (except in financial services), as have actual policies, but commitments continue to lag actual practice.

Figure 1: AFAS Commitments vs. Actual Practice: A ‘Typical’ Comparison of Restrictiveness



Sources: ERIA Scorecard Phase IV services questionnaire results and AFAS schedules of commitments.

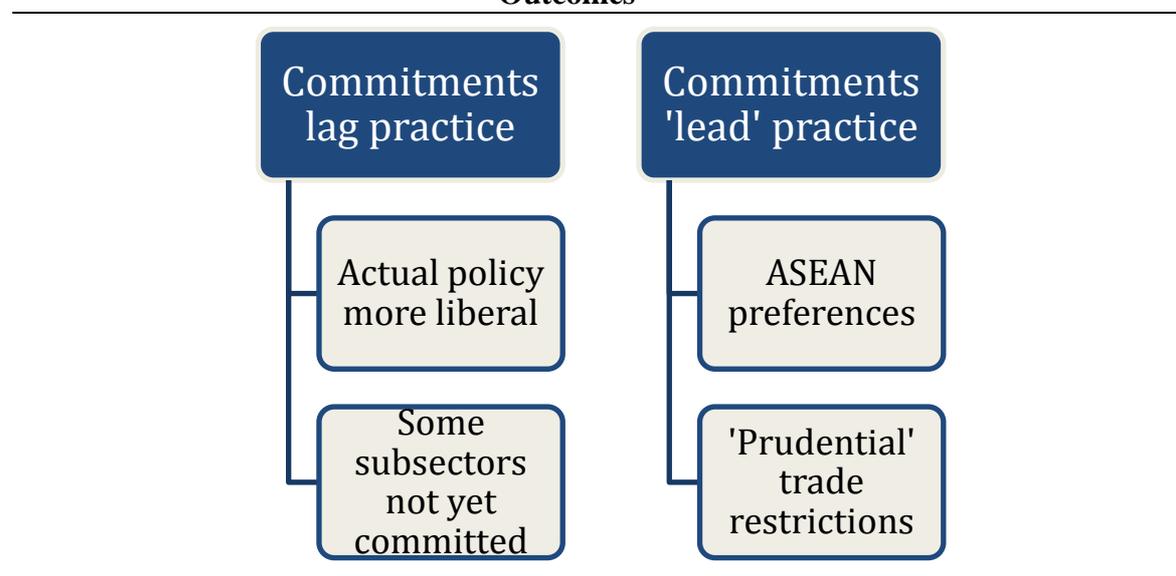
Averages do not reflect the diversity of situations and experiences of individual member states, nor do they contribute to explaining the reasons for the gaps. Looking at individual sectors, countries and policies reveal a richer and more nuanced story, but one in which there are some general messages.

For any given sector or policy, the full range of possible outcomes is shown in Figure 2. Commitments may lag actual practice, or they may ‘lead’ it. If they lag actual practice, it is either because actual policy is genuinely more liberal than the corresponding commitment or (as a special case) because some sub-sectors are not yet committed. If commitments ‘lead’ actual practice, it can be for one of two rather different reasons. In this exercise, actual policy has been scored on a most-favoured nation basis, that is, on the basis of ‘normal’ policy or practice without taking account of any ASEAN preferences. If preferences are, in fact, granted to other ASEAN

⁶ The diagram shows the average for telecommunications, but the averages for all the other sectors under study are similar.

member states, the commitments to those states may be more liberal than normal practice. Thus, the scoring can pick up preferences, where they occur. Note that when commitments lag actual practice, no meaningful preference is created.

Figure 2: AFAS Commitments vs. Actual Practice—Full Set of Possible Outcomes



Source: Author.

Commitments can also lead actual practice for a different reason. In financial services, prudential measures are typically carved out of services trade agreements—they may act as a real constraint on services trade, but they are recognised as having a genuine public policy purpose (namely, ensuring systemic stability), and so do not have to be listed explicitly as limitations on market access. However, the distinction between prudential measures and other measures is sometimes murky, and views have changed over time.⁷ More importantly, prudential regulation is underdeveloped or under-enforced in some ASEAN member states, and there has been a tendency to use other measures, including blunt barriers to new entry, ostensibly as second-best alternatives. As will be seen below, there are instances in financial services where trade barriers are in place but have not been declared as limitations in AFAS schedules. The ASEAN member states would probably argue that such measures were

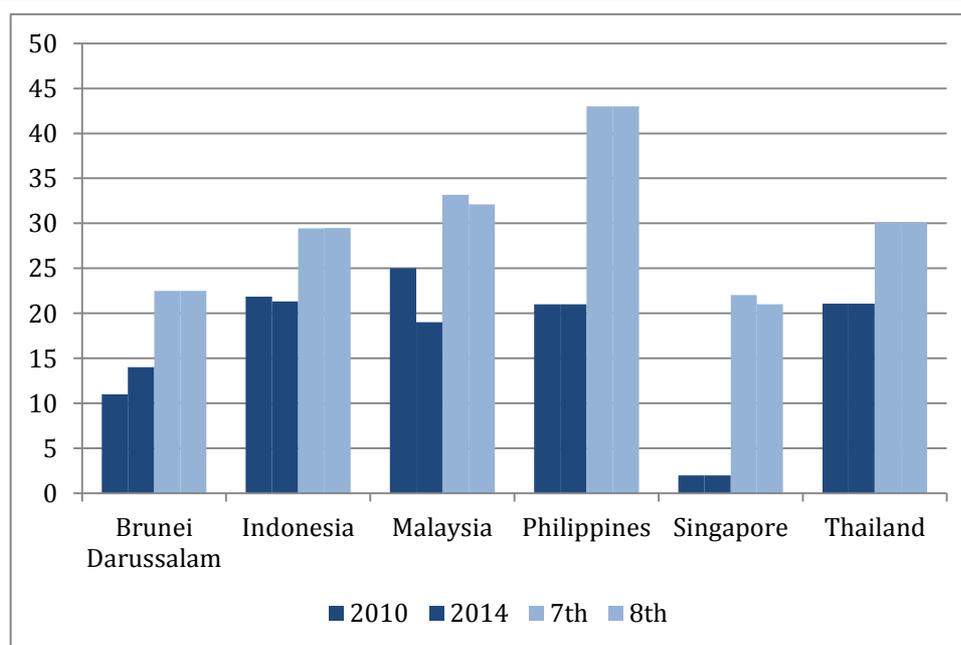
⁷ The global financial crisis highlighted how banks' ability to undertake a range of non-traditional activities (e.g., securities trading and real estate business) could create conflicts of interest (Dinh, 2013), so restrictions on such non-traditional activities are no longer scored as a restriction on services trade (see Table A6).

in place for prudential reasons. However, in some cases, that argument is particularly weak.

4.1. Medical services

The individual member states generally follow the typical pattern in medical services (Figure 3 and Annex Table A8). There are exceptions. Actual policies governing the movement of people in Brunei Darussalam have become more restrictive since 2010. There have been some changes to the Labour Department’s position of foreign workers in view of the high unemployment rate in the country. Obtaining a quota for foreign workers has become increasingly difficult unless there are justifications and proof that the posts cannot be filled by locals.

Figure 3: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for the Medical Professions



Sources: ERIA Scorecard Phase IV services questionnaire results, Dee (2011), and AFAS schedules of commitments.

Nevertheless, Brunei’s AFAS commitments on the movement of people are even more restrictive than its practice—it has made no commitments for individual professionals, and its commitments on intra-corporate transferees are 'Unbound except as in the horizontal section'. This is a ‘positive list’ way of recording commitments—no undertakings are made except those listed (including no promise

being made that a labour market test will not be imposed). This is a particularly restrictive formulation. By the same token, Brunei has apparently made a concession to its ASEAN partners on the legal requirements for mode 1 (cross-border trade). Legally, medical professionals providing services in Brunei are required to be locally registered with the relevant board, and this would appear to rule out cross-border trade. However, this restriction has not been noted in Brunei's AFAS schedule.

In some respects, Indonesia's commitments in medical services are relatively close to actual practice because its trade commitments have been coordinated with its domestic policy development. However, it has made no commitments at all on the movement of people for the services of doctors or dentists—neither for individual professionals nor for intra-corporate transferees. If this situation reflected reality, it is difficult to see how any mode 3 trade in these services could possibly occur.

Malaysia's commitments on commercial presence cover only dentists. Its mode 4 commitments are complicated. It has committed to let individual foreigners practice (if they pass a competence exam in English)—an apparent concession to its ASEAN partners—but has placed a lot of constraints on their activity, more than apply under normal practice.

The Philippines has essentially made no commitments, except for specific 'other' services (services related to ergo therapy, speech therapy, homeopathy, and acupuncture provided by paramedical personnel). Medical services are affected by its constitutional provision that certain key services must be provided by Filipinos. It could nevertheless have bound its current openness for corporate shells (much as Indonesia has done), even if the personnel have to be Filipino.

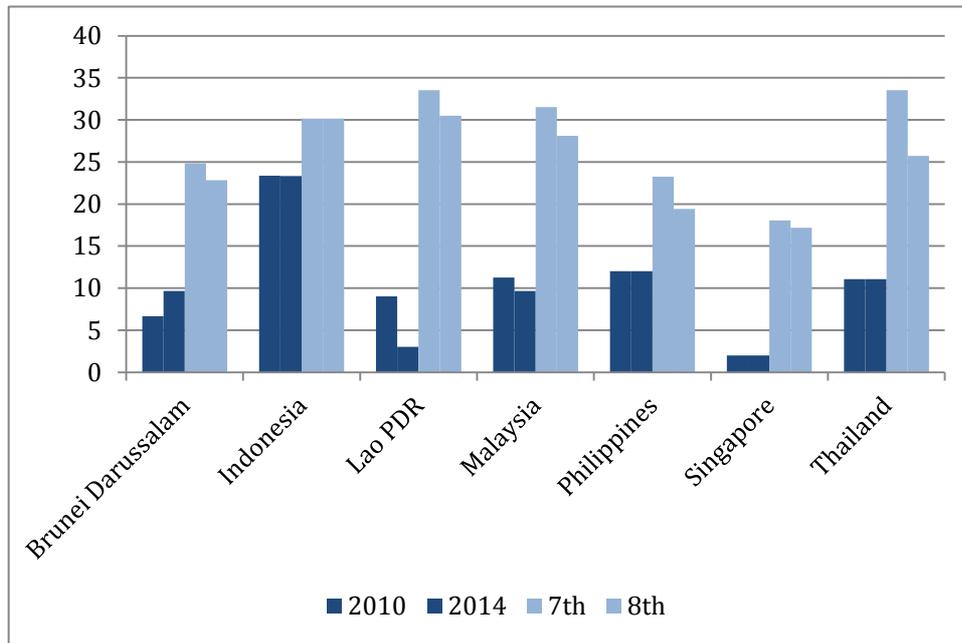
Singapore has made commitments for all medical services, but its mode 4 commitments are uniformly more restrictive than actual practice. Similarly, Thailand has restricted its commitments in medical services to inpatient care within hospitals. It has made no commitments for movement of natural persons other than for short-term business persons and intra-corporate transferees. For the latter, it has reserved the right in its schedules to impose a labour market test. In these respects, its commitments are also more restrictive than normal practice. Both Singapore and Thailand are strong producers and exporters of medical services, so presumably do not need 'policy space' to protect their domestic suppliers. And yet, even their commitments still lag actual practice.

A common feature of many of the commitments in medical services is a lack of commitments in mode 4, particularly for individual professionals. As noted, one reason no commitments regarding individual professionals are made is that mutual recognition agreements are being negotiated elsewhere. However, there is little sign of progress in those negotiations; furthermore, there is more to ensuring the mobility of individual professionals than granting mutual recognition. Healthcare services may be a priority integration sector, but without further commitments on mode 4, AFAS promises only to facilitate the movement of foreign direct investment capital for healthcare, and perhaps health management services, but not trade in medical services themselves.

4.2. Health services

Across the board in health services (Figure 4 and Annex Table A9), commitments on medical laboratories or ambulance services are sparse, despite regulatory regimes that are typically light-handed. These areas may have been reserved for ‘painless’ liberalisation in future rounds of AFAS negotiations. Brunei has made no commitments for ambulance services, and its commitments for medical laboratories are only within hospitals. Indonesia, Lao PDR, and Malaysia have made no commitments at all for these services, and Lao’s commitments for hospital services are limited to ‘modern’ private hospitals with more than 100 beds (despite its light-handed and non-discriminatory regulatory regime for hospitals of all types). Brunei has made no commitments for ambulance services, and its commitments for medical laboratories are only within hospitals. The Philippines and Thailand have made no commitments for ambulance services.

Figure 4: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for Health Services



Sources: ERIA Scorecard Phase IV services questionnaire results, Dee (2011), and AFAS schedules of commitments.

In other respects as well, the commitments are more restrictive than actual practice. ASEAN members have tended to use the 'Unbound except as specified' formulation for mode 4, a restrictive formulation. However, the Philippines has made an apparent concession on mode 4 trade because it has used the phrase 'As in horizontal section' rather than 'Unbound except as in horizontal section'. Indonesia's foreign equity limits for hospitals are scored as being less liberal than actual practice because its liberal commitment (70 percent) is geographically limited to Eastern Indonesia (its most-favoured nation treatment is 67 percent throughout Indonesia); trade policy is apparently being used as an instrument of regional development. Furthermore, its commitments state that health professionals in hospitals must be Indonesian, so once again it is promoting trade in management services, not health services.

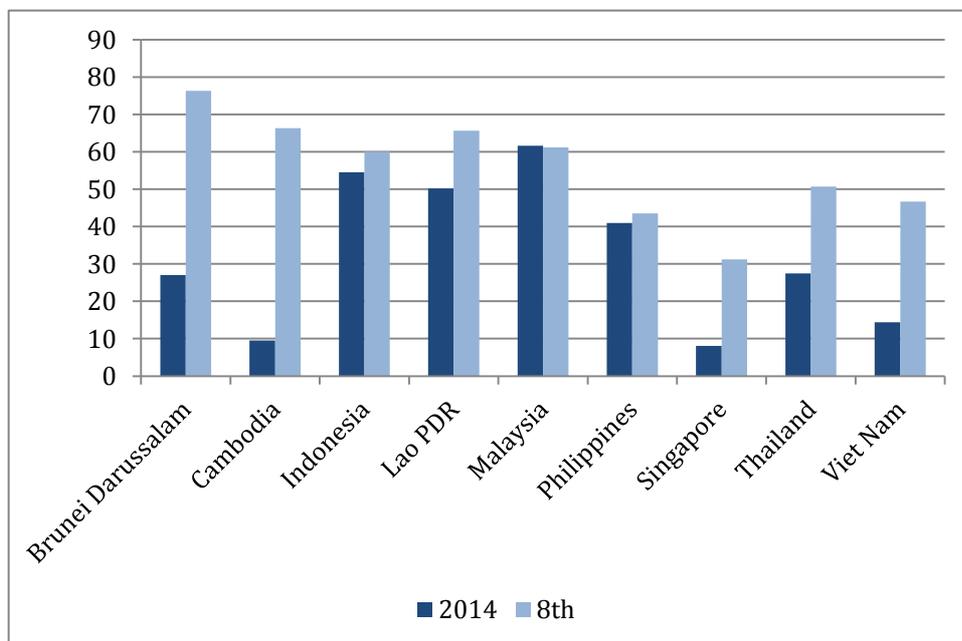
Singapore has made no commitments for cross-border trade in any health services, despite being a sophisticated producer and exporter of such services. Overall, however, its commitments are still more liberal than those in Indonesia or Thailand.

A few instances of concessions are being granted to ASEAN trading partners. Brunei has made an apparent concession on joint venture requirements (its requirement to have local partner) and both Brunei and Malaysia have made concessions on mode 1 trade. Thailand has made a concession on its normal foreign equity limits for private hospitals that meet certain criteria (excluding outpatient clinics, dental, nursing, ambulance, military hospitals, prison hospitals, and chronic case services). As noted above, Indonesia’s small concession on foreign equity limits is geographically limited.

4.3. Tourism services

For some ASEAN member states, there are significant gaps between AFAS commitments and regulatory practice (Figure 5 and Annex Table A10). In some cases, this is because no commitments at all have been made for some subsectors. In other cases, it is because the member states are holding back—their commitments are less liberal than actual practice.

Figure 5: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for Tourism Services



Sources: ERIA Scorecard Phase IV services questionnaire results and AFAS schedules of commitments.

In the former category, Brunei has made no commitments for motels, other accommodation, travel agency, or tourist guide services. Cambodia, Lao PDR, Singapore, and Viet Nam have made no commitments for other accommodation. Thailand has made no commitments for tourist guide services.

It is relatively common in the region for the activity of tour guiding to be reserved for citizens. However, this is no reason not to make trade commitments in this area. The actual policy restriction is a restriction on mode 4 trade—on which individuals can deliver the service. It does not rule out the possibility of foreign-invested tour operators setting up business, or foreign tour operators providing cross-border services, as long as they hire local employees as tour guides. As in the case of healthcare, restrictions on individual service providers under mode 4 do not preclude more liberal commitments on corporate shells and intra-corporate transferees, at least allowing trade in capital and the corresponding management services.

As an example of commitments being less liberal than actual practice, Cambodia has hedged its mode 3 commitments for food and beverage services (restaurants) by stating that permits will be granted based on criteria, such as the number of existing restaurants, the historical characteristics of the area, geographic spread, traffic, and employment creation. Apparently no such limits apply in general practice. Cambodia has also not made any commitments on national treatment for restaurants. This is particularly restrictive, given the large number of ways that discrimination can be applied to the planning, development, and licensing of tourism operations.

The commitments of Indonesia, Malaysia, and the Philippines contain some concessions (for example, in travel agency and tour operator services) as well as some holding back, although many of Indonesia's concessions in hotels and motels are geographically limited. The Philippines has made an apparent concession on some of its paid-up capital requirements for hotel development.

4.4. Maritime services

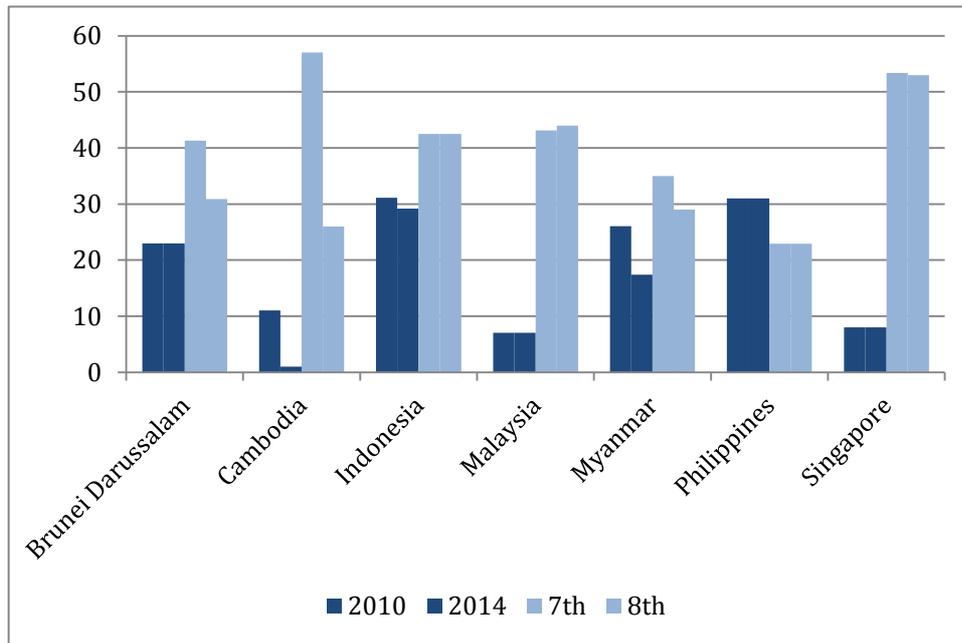
Across the various maritime services, the general tendency in actual policy is for international shipping to be very open, for coastal shipping to be reserved for national flag-carriers (although in the ASEAN region, these can often have some element of foreign investment), for port operation and pilotage, towing and tying to be monopolies (often government owned), and for cargo handling, storage and warehousing, freight forwarding, and maintenance and repair to be increasingly open

to competition, including from foreign-invested providers. Often, the monopoly in port operation is a legacy issue, but particularly in smaller ports the cost characteristics of port operation would probably not support more than one operator in any event.

These trends in actual policy tend to be reflected in AFAS commitments, except that the commitments in cargo handling and other shore-based operations are often less liberal than actual practice (Figure 6 and Annex Table A11). Singapore falls into this category. Brunei has not bound its uniformly liberal foreign equity limits, although it has made an apparent concession on the composition of boards of directors, requiring residency rather than nationality. Cambodia has not bound its openness in cargo handling and freight forwarding, and has also used the restrictive 'Unbound except as stated' formulation for mode 4. Indonesia has made some concessions on foreign equity limits for international shipping and cargo handling, but these are offset by continued restrictions on ports and storage and warehousing (though pilotage has only recently been opened, so there has not been an opportunity yet to bind this particular reform). Indonesia also maintains some oddly restrictive commitments on forms of establishment (e.g., no representative offices). Malaysia's commitments are significantly less liberal than long-standing actual practice for most maritime services, although it has made an apparent concession on mode 1 trade by not binding its normal restrictions on carrying government cargoes.⁸

⁸ To carry government cargo, companies must have a 'Multimodal Transport Operator' license from the Ministry of Finance. One of the requirements to obtain such a license is that the company must be incorporated in Malaysia.

Figure 6: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for Maritime Services



Sources: ERIA Scorecard Phase IV services questionnaire results, Dee (2010), and AFAS schedules of commitments.

Myanmar has recently opened internal waterways, and has always allowed foreign entry in port operation. Regarding cargo handling and other shore-based services, the story is more mixed. Recent reforms mean that, on paper at least, foreign equity limits have been reduced below 100 percent. However, permission is no longer required, as was in the past when it was the binding constraint. It will be interesting to see to what extent these recent reforms are bound in the next AFAS negotiating round.

The Philippines appears to have AFAS commitments that ‘lead’ normal actual practice. Part of the apparent concession to ASEAN partners is that the Philippines has not declared its accreditation requirements for freight forwarders, nor has it declared its ‘one port–one operator’ policy. The latter could be a scheduling ambiguity rather than a preferential concession. The Philippine Ports Authority (PPA) is starting to institute a form of competition *for* the market by bidding out the operation of existing roll-on roll-off terminals, with service contracts typically running for five years (renewable). Foreign operators are entitled to bid. Nevertheless, the PPA will remain the sole port operator, collecting the revenue and paying the winning bidder

for its services. Thus, there is still a limitation on the number of services providers *in* the market, even though there is competition *for* the market. For clarity, this should perhaps have been scheduled as a limitation if it is to apply to ASEAN partners. It is a particular failing of services trade schedules that they do not make clear provision for this type of competition, which is appropriate when the scale of operations will support only one operator.

4.5. Telecommunications services

In basic telecommunications services, as in value-added services, the AFAS commitments are often stuck in a technological time warp. This is not helped by the fact that the default sectoral classification of services activities used in services trade schedules is the same provisional United Nations (UN) Central Product Classification that was used in the original negotiations of the General Agreement on Trade and Services (GATS), and is therefore more than 20 years old.⁹ In particular, this classification does not list Internet access as a separate service, although some ASEAN member states have chosen to make commitments in this area. However, the classification does distinguish circuit-switched transmission services (the legacy technology typically used by incumbent operators) from packet-switched services (the technology of next generation networks).

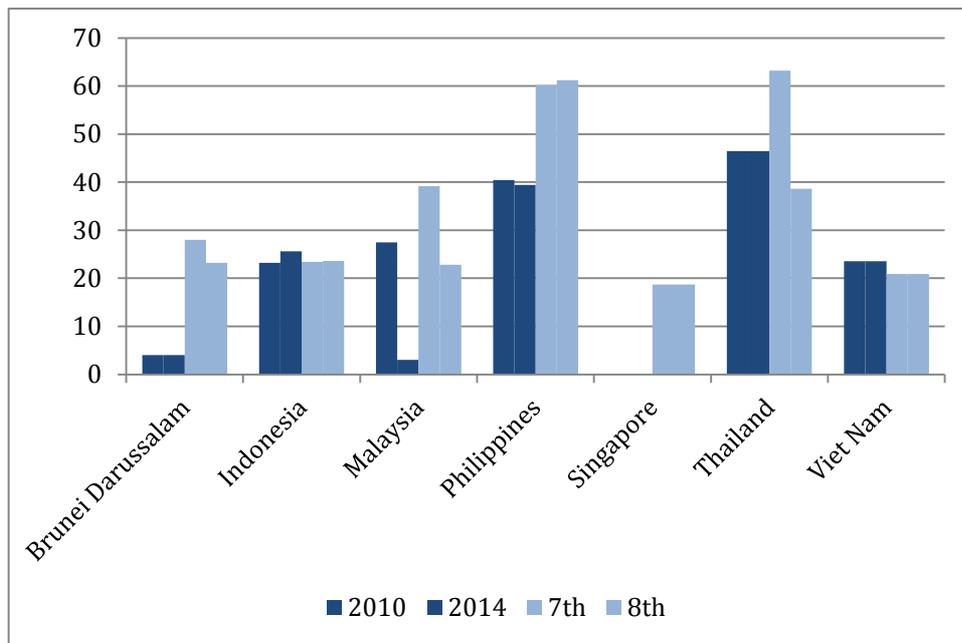
Nevertheless, the technological time warp is not restricted to AFAS commitments, but also affects actual policies. Decades ago, when international call charges were very high but facilities-based competition was prohibitively expensive, alternative forms of competition were offered via cross-border trade, through callback facilities. Many countries still have regulations on their books that prohibit callback services, even though the main form of competition is now facilities-based, and the relevant restrictions are whether rivals are required to use the incumbent's international gateway, or can make their own routing decisions.

Thus, many of the differences between AFAS commitments and actual practice are substantive, but some reflect superseded issues (Figure 7 and Annex Table A12). Brunei's commitments are less liberal than actual practice because it has not bound its liberal foreign equity limits for packet-switched data transmission services, and it has

⁹ The relevant General Agreement on Trade and Services (GATS) document (MTN.GNS/W/120) is dated 10 July 1991. This provisional UN classification has since been superseded by versions 1.1, 1.2, and 2.0.

not bound Internet access or leased lines at all (including mode 1). Malaysia has made significant improvements in both its commitments and its actual policies, but its commitments still lag. In particular, it has not bound Internet access, although it has made an apparent concession on callback restrictions. The Philippines has not made any commitments for services provided on a resale basis, whereas Viet Nam has made a concession to its ASEAN partners on foreign equity limits for resale. Singapore has not bound its liberal foreign equity limits, nor has it bound Internet access. Thailand has made an apparent concession on the requirement under its law on foreign business that Type Two and Type Three licenses shall not be held by foreigners. However, the foreign equity limits still effectively limit them to majority Thai ownership.

Figure 7: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for Telecommunications Services



Sources: ERIA Scorecard Phase IV services questionnaire results, Dee (2010), and AFAS schedules of commitments.

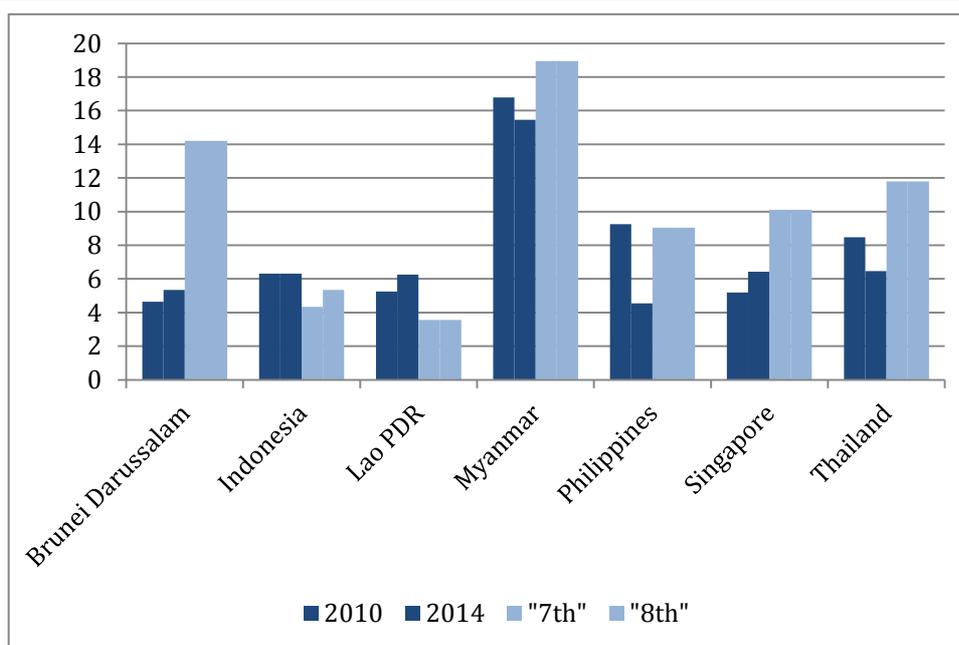
In Indonesia’s newly published negative investment list (Perpres 39/2014), there has been some progress and regress in terms of openness to foreign investment. Fixed line telephony is now open to a maximum of 65 percent foreign investment, a rise from 49 percent previously. However, a serious regress has occurred in data communications and Internet access services. The maximum foreign ownership in both services now is 49 percent; a decline from the previous 95 percent maximum

foreign ownership in data communications services and 65 percent in Internet access services. Thus, Indonesia’s policy regime is becoming more closed in precisely those services that are likely to dominate in the future. It has, however, made an apparent concession to its ASEAN partners on callback restrictions.

4.6. Banking services

For most of the ASEAN members covered by the survey, commitments in banking services lag actual practice (Figure 8 and Annex Table A13). In other instances, concessions are made to ASEAN trading partners. In yet other instances actual policies are less liberal than trade commitments, probably for real or alleged prudential reasons.

Figure 8: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for Banking Services



Sources: ERIA Scorecard Phase IV services questionnaire results, Dee (2011), and AFAS schedules of commitments.

Brunei has made no commitments for modes 1 and 2, and in mode 3 its commitment is only for the acceptance of deposits, not for lending or other commercial bank services. It has made an apparent concession to its ASEAN partners by allowing representative offices. There is also an actual restriction on legal forms of establishment that is not declared in its AFAS schedule—foreign bank branches as

well as subsidiaries are allowed, but the central bank has clarified that branches can only lend against local capital, not parent capital.

The treatment of foreign bank branches (as opposed to subsidiaries) is one of the 'grey' areas of prudential regulation. Services trade liberalisation assumes there will be no restrictions on legal forms of establishment. However, prudential regulation typically imposes capital adequacy ratios that are difficult to apply to foreign bank branches because they apply to equity capital, which is held by the parent. For this reason, some countries ban foreign bank branches outright because they are deemed to be beyond the reach of domestic prudential regulation.¹⁰ Brunei allows branches, but restricts their operations to a size that ensures there will be reasonable recourse if things go wrong. Brunei can legitimately claim that the restriction is for prudential reasons.

Indonesia's commitments in banking are a mix of concessions (for example, on labour market tests, although it is not clear that the extant regulation issued by the Office of the President in 1995 has ever been enforced) and holding back (for example, on the requirements to expand bank outlets). This mix is typical of Indonesia's now quite 'nuanced' trade commitments, which on average match its actual policies quite closely. However, it too has some restrictive regulations on foreign exchange dealings which are not declared as limitations, but which would probably be claimed to be prudential if challenged.

Lao PDR has instituted a recent moratorium on granting new licenses and has ongoing screening of applications, measures that probably reflect 'prudential' regulatory discretion. As noted above, moratoriums are a very blunt instrument of prudential regulation, and clearly provide a great deal of protection for existing players. Lao PDR has also made apparent concessions on cross-border lending and fund raising.

Myanmar's commitments lag current practice, in part because of very recent reforms that have freed up conditions for domestic banks, as well as liberalising modes 1 and 2 to some extent. The Philippines has also very recently instituted reforms that have eased foreign bank entry, but that are not yet reflected in its trade commitments. By the same token, it has also instituted tough new screening criteria to

¹⁰ Others allow them on the grounds that they trust the prudential regulation of their trading partners. For example, New Zealand allows Australian banks to operate there as branches rather than subsidiaries.

govern such entry—criteria that go beyond purely prudential considerations.¹¹ Thailand has also recently made reforms, including the issuance of new licenses to foreign banks and freeing up foreign ownership limits. However, its commitments for modes 1 and 2 are restrictive, even compared with pre-reform policies, as is its commitment on expanding bank outlets.

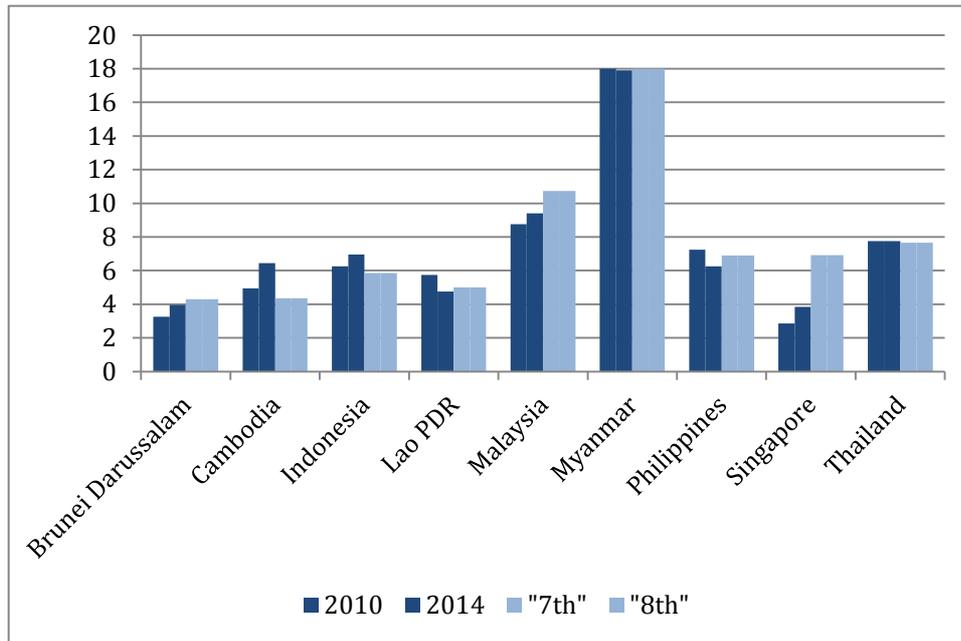
Singapore has made few commitments on mode 1 trade, and its commitments on commercial presence include a moratorium on new full and wholesale bank licenses. Its only commitment is that foreign banks can establish as offshore bank branches or representative offices.

4.7. Insurance services

For most of the ASEAN members covered by the survey, commitments on average in insurance appear reasonably close to actual practice (Figure 9). Policy by policy, however, the story is more complicated (Annex Table A14).

¹¹ Under RA10641, in approving entry applications of foreign banks, the Monetary Board shall (i) ensure geographic representation and complementation; (ii) consider strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank; (iii) study the demonstrated capacity, global reputation for financial innovations, and stability in a competitive environment of the applicant; (iv) see to it that reciprocity rights are enjoyed by Philippine banks in the applicant's country; and (v) consider willingness to fully share their technology.

Figure 9: AFAS Commitments vs. Actual Practice—Comparison of Restrictiveness for Life Insurance Services



Sources: ERIA Scorecard Phase IV services questionnaire results, Dee (2011), and AFAS schedules of commitments.

Of particular note are the prevalence of restrictive actual policies affecting reinsurance and the placement of assets, some of which have been recently instituted (explaining the apparent regression in actual policies over time in some countries), but which are not declared in AFAS schedules. For example, Cambodia has recently instituted a ceding percentage on domestic firms, and imposed a new requirement that 75 percent of total assets be invested in Cambodia. Similarly, Lao PDR has a requirement to hold all assets locally, although this is also a natural implication of its exchange controls on capital outflows. Malaysia has a mild prudential restriction on asset placement—the central bank may direct a licensed insurer in writing not to make investment of a specified class or description. The Philippines and Thailand have similar legislation.

Indonesia has instituted new requirements in reinsurance. First, there is a self-retention principle, which means some part of the risk has to be retained in the company—not all the risk can be insured with a reinsurer. Second, there is a ceding requirement—insurance companies must give priority to using the service of a nominated domestic reinsurer before being able to reinsure the risk to another insurance firm, be it domestic or international. For life insurance, companies are obliged to at least insure the risk with one domestic reinsurer, whereas for general

insurance companies (medical and property), it is mandatory to reinsure the risk with two domestic reinsurers. Once this obligation is met, the insurance company may look for a foreign reinsurer with a rating of at least BBB.

A key question is whether or not such requirements are prudential. In insurance, prudential regulation typically imposes capital adequacy ratios and liquidity reserve ratios. Regulators are also likely to pay attention to the risk and maturity profiles of insurance company assets, given that the liabilities of insurance companies are unusually long-term and often thick-tailed. Such concerns probably motivated the moderate restrictions on asset placement by Malaysia, the Philippines, and Thailand, for example, and even the self-retention principle in Indonesia. However, blanket requirements to hold assets domestically go beyond purely prudential measures, and appear to unduly restrict asset diversification for the purpose of nation building. Similarly, strong restrictions on reinsuring offshore can only have a protective purpose, given that this is one of the most globalised segments of the insurance industry. It is a particular concern that some of these measures are newly instituted while at the same time the financial services negotiations are in stasis.

In other areas, insurance commitments often lag actual practice. For example, Brunei has made no commitments for mode 1 in life insurance, although it has made an apparent concession to its ASEAN partners on visa length (largely because its commitments do not reflect the recent introduction of a 'professional' visa, which oddly makes no provision for long-term stays by intra-corporate transferees). In mode 4, Cambodia adopts the 'Unbound except as stated' construct, ensuring its commitments do not reflect actual practice.

Malaysia's commitments are tough on legal forms of entry (no representative offices), conditions of entry (screening tests), and foreign equity limits. It has no commitments on mode 2 for most insurance products. Recent reforms have taken its foreign equity limits even further ahead of its commitments, although there is also a temporary moratorium on new entry as a 'prudential' measure.

As with banking, the insurance trade commitments for the Philippines lag actual practice, in part because of very recent reforms. But the new reforms are accompanied by a requirement to show economic benefit, and the commitments on foreign equity lagged actual practice even before the reforms.

Singapore's commitments are generally not as liberal as actual practice. It has no commitments for representative offices, its commitments on mode 1 are limited, and

its mode 4 commitments take the formulation of ‘Unbound except as in horizontal section’. Nevertheless, its actual policies in mode 4 have also become less liberal recently. It has instituted a Fair Consideration Framework under which, from 1 August 2014, a labour market test will apply to the granting of employment passes to foreign workers.

5. Summary Assessment

On the positive side, services trade reform is occurring, and actual policies are being liberalised. This is occurring across the development spectrum. Where policy settings have been more trade restrictive than necessary, they are slowly being relaxed, as with recent financial reforms in Thailand and the Philippines. Where regulatory regimes have been weak and policy has been set by bureaucratic discretion, the legislative frameworks are being strengthened in ways that ensure transparent and non-discriminatory treatment, such as with Lao PDR’s private hospital legislation and Cambodia’s insurance legislation. In many of these cases, particular aspects of reforms are less trade-friendly than before. But as Figures 3 to 9 show, the movements are generally in the right direction.

In addition, AFAS commitments are being deepened and widened. In most cases, these new commitments will guard against policy backsliding, which in itself is of value. Some of the new commitments are clearly designed to bind recent reforms of actual policy. In other cases, the direct policy links are more tenuous, or absent altogether.

There are several areas of concern. One is the instances in which trade commitments lag so far behind actual practice that they impose no effective constraint on policy backsliding. This is particularly the case with the mode 4 commitments, which almost invariably take the ‘Unbound except as stated’ formulation. The carving out of mode 4 into a separate negotiating track is only going to exacerbate this problem. Another area of concern is the instances where actual policy changes have been retrogressive, even to the point of violating existing trade commitments. Some of the more egregious cases of ‘possibly prudential’ regulation in banking and insurance fall into this category. The carving out of the financial negotiations into a

separate and much slower negotiating track has no doubt contributed to the lack of scrutiny of these regressions.

More generally, there is widespread evidence that commitments lag actual practice across the development spectrum—note that this is not a development issue. In a few cases, the gaps exist because reforms to actual policy are very recent, and there has not been time to bind them in AFAS. In most cases, however, the gaps are long-standing.

Where member countries are already very liberal, the failure to completely bind their liberal regimes must be largely a negotiating strategy—they will not make further commitments until trading partners improve theirs. This in turn follows from the rules of the current negotiating game, which are based on reciprocal exchange of concessions.

The difficulty is that this principle of reciprocity is based on a myth—that liberalisation hurts the liberalising country, and should only be countenanced if there is a concession in return. The myth is exposed as such because there is no such discernible synchronisation of actual reforms—member countries have been slowly reforming their regimes at times of their own choosing because they realise that it is in their own best interests. The fact that such reforms, when added together, take ASEAN closer to a single market is a welcome additional benefit.

Where member countries are not already very liberal, or are further down the development chain, the failure to make strong services trade commitments is sometimes justified on the grounds that these countries need ‘policy space’. This term seems to have multiple meanings, but two are relevant here. One is that domestic producers are in a weak position, too weak to face foreign competition in the short term. Another meaning is associated with the right to regulate—these countries lack regulatory regimes, and do not want to place limits on their ability to regulate in the future by making strong trade commitments now.

The first rationale vanishes in cases where actual policy is already more liberal than trade commitments. In discussing the provisional results of this project, it was stated, for example, that it was reasonable not to make AFAS commitments for ‘other accommodation’ because this was an area dominated by small and medium enterprises. However, in most ASEAN member countries, this market segment is particularly lightly regulated. The sector is already open to foreign entry, but such entry does not occur, for obvious reasons—local families are in a far better position to

provide authentic home stay visits than multinational hotel chains, for example, and the business advantages of such chains (such as economies of scale) are of no help when the scale of operation needs to be small. The small and medium enterprises are already open to foreign competition, and are winning.

The second rationale is also problematic. Dating back to the development of the General Agreement on Trade and Services (GATS), it has been recognised that services trade agreements need to recognise and make room for the many legitimate reasons to regulate services markets. The prudential carveout is one example of this recognition. The rules of services trade agreements do not preclude regulating, either now or in the future, to meet legitimate public policy objectives such as quality assurance and equitable access. The only discipline they impose is that the regulation should be no more trade distorting than necessary to achieve those objectives. And if ASEAN members are serious about creating a single market for services, this constraint should be completely unobjectionable.

Where arguments for policy space do hold force is in cases where countries have bound themselves in restrictive regulations that are difficult to change for political reasons. The Philippines' constitutional restrictions on foreign provision of some services fall into this category. The Philippines will need time, space, and ingenuity to extract itself from that burden. Reform is also difficult in practice when it is opposed by vested interests that are powerful (rather than weak). Some suggestions are made in the next section on how to tackle this problem.

6. Future Directions for AFAS

Even after eight rounds of services trade negotiations, the trade commitments lag actual practice. On the one hand, this leaves scope for officials to close the remaining gaps in negotiations into 2015 and thereby improve their scorecard, without requiring their leaders to expend political capital. On the other hand, this would do little to contribute to the real AEC target of free flow of services in the region.¹²

¹² To show how misleading conventional scorecard measures are, we calculated the correlation between such measures and the scores from this paper for actual trade barriers. The expected correlation is negative—as scorecard liberalisation rates increase, the numbers of trade barriers

If the AFAS process is to do a better job of driving real reform, it will need to be more closely linked to the domestic policy development processes in each member country. One strategy that could bring the two more closely into line would be to switch from a positive list approach to a negative list approach to negotiations.

Under a positive list approach, countries can choose the sectors in which they make commitments, and can choose the level of those commitments, but there is no requirement for those commitments to be linked to actual regulatory practice. By contrast, under a negative list approach, the default treatment is that trade in all sectors is completely free, and if a country wants to retain a restriction, it has to list the actual piece of legislation or policy document that enacts that restriction.

One immediate result is that there is much less scope for unexplained and unjustified gaps between commitments and actual practice. A deeper and more systemic implication is that there needs to be a much closer interaction between trade negotiations and domestic policy development.

In fact, the first time a country signs on to a negative list agreement, it has to undertake a comprehensive exercise in policy coordination—canvassing all the legislation and policy documents affecting trade in services, and deciding which ones it wants to keep. If a document is not named, according to trade law it cannot be used as a basis to restrict trade. This review is a major undertaking, and sufficient time would need to be allowed for it to occur. However, it would only need to be undertaken once, as further changes to commitments would require only incremental reviews.

Most ASEAN countries were clearly not ready for such a process when AFAS first began. But over eight rounds of negotiations members have become much more familiar with services trade concepts and policies, and have been able to make substantial progress in the depth and breadth of their services trade commitments. Now progress is slower than it was initially—the eighth package was not released until quite some time after it was signed because many of the details still needed to be

should fall. The scorecard liberalisation rates were computed using the methodology outlined in Intal *et al.* (2014b) against the AEC goal of free flow of services—defined as 70 percent foreign equity limits, no other trade barriers in mode 3, and no barriers in modes 1 and 2, but making allowance for a 15 percent flexibility. The correlations (across ASEAN member states) are as follows: -0.69 for medical, -0.33 for health, -0.05 for tourism, $+0.03$ for maritime, -0.66 for telecommunications, $+0.92$ for banking, and $+0.08$ for insurance. Thus, high scorecard liberalisation rates in no way ensure an open market for the service, or that the remaining reform task is trivial.

worked out. In large part, this is because commitments have been catching up with actual practice, and further commitments will start to require real policy change. Such change cannot take place without serious policy development and coordination effort, yet nothing in the AFAS process itself guarantees such a process occurs. Moving to a negative list would be the ‘game changer’ that could produce a major policy review, and allow countries to develop an overall services trade strategy anchored within the domestic policy development process.

As noted, a secondary outcome of moving to a negative list approach is that many of the gaps between commitments and practice would be closed, and commitments would therefore put a tougher constraint on backsliding. However, any immediate impact on the level of commitments should be seen as secondary to the systemic impact on policy coordination and, hence, the prospects for real reform in the future. ASEAN members should therefore be willing to suspend the normal rules and practices of their trade negotiations on a once-off basis to allow the switch to occur. For example, it would be highly desirable to suspend the requirement for reciprocity and a ‘balance of concessions’ on a once-off basis. After all, the primary impact would be to bind the status quo, so little real policy change would be required. If the analysis of this paper is anything to go by, all ASEAN members have gaps, so the ‘shadow’ concessions would likely be reasonably balanced in any event. Once the switch had occurred, members could perhaps again require reciprocity and a ‘balance of concessions’ as they negotiated away their lists of reservations and exceptions.

A bolder move would be for ASEAN members to agree on a ratchet mechanism, whereby any future domestic reforms would be automatically bound into AFAS schedules. This mechanism often accompanies a negative list approach.

Irrespective of whether ASEAN members adopt this approach, they should definitely rethink their approach to the movement of natural persons. Experience shows that when areas are carved out of AFAS, the momentum from the AEC’s systems of targets and milestones is lost, and progress stalls. The carving out of mode 4 commitments means that they will begin to lag commitments in mode 3—this is already occurring in medical services. Trade negotiators see modes 3 and mode 4 to some extent as substitutes, but business sees them as complements. A common theme that emerged from the industry focus groups conducted by ERIA’s Research Institutes Network was the difficulty of obtaining the appropriate personnel to support commercial presence. Therefore, ASEAN members need to find a way to ensure that

whenever mode 3 commitments are made, the appropriate mode 4 commitments are also made.

The mechanisms for ensuring this would need to be worked out, given that mode 4 has already been separated. But it would certainly help to separate the treatment of intra-corporate transferees (including specialists) from that of individual service providers, and to allow the integration strategies for each category to be developed separately. Further progress on access for intra-corporate transferees would not then be held hostage to the development of mutual recognition agreements, progress on which appears to have been hijacked by the professional bodies.¹³

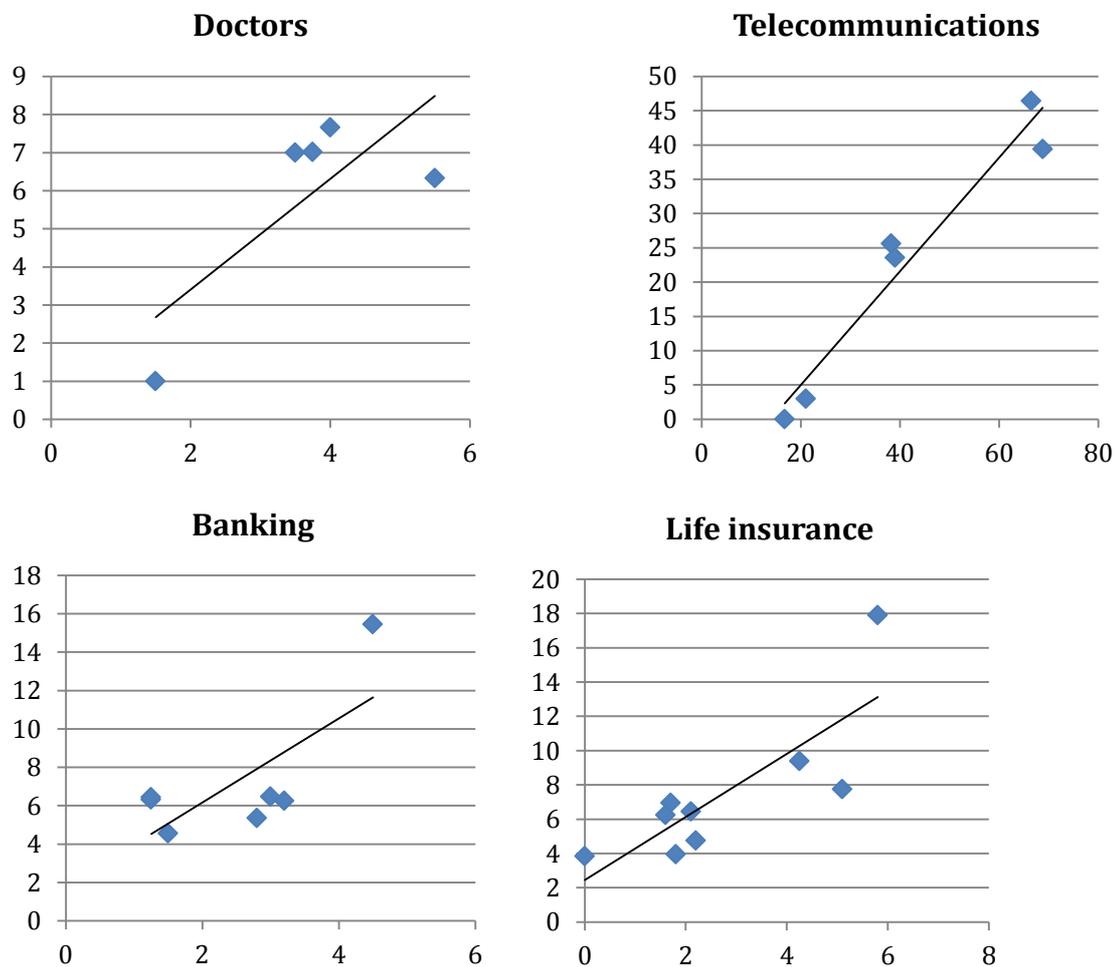
Moving to a negative list would be only part of the solution to ensuring that the AFAS process drives real reform, rather than simply improve scorecards. The other part would be to improve domestic regulatory processes. As ERIA's mid-term review of regional integration in services showed, the sticking points in services trade negotiations can also be a result of broader domestic regulatory environments not yet being conducive to allowing services markets to be opened up. In services, there are many areas where governments have legitimate regulatory objectives (such as ensuring equity, safety, quality, guarding against abuses of natural monopoly, ensuring systemic stability of the financial system, etc.). Such regulations are not in themselves a services trade barrier, but if they are missing, not enacted appropriately, or not enforced adequately, services trade reform may be difficult; if feasible, it may not achieve its intended benefits. As the results of this paper have shown, for example, some ASEAN members will need to improve the quality and enforcement of their prudential regulation if they are to make further progress in opening up their financial markets to foreign participation.

There is another hidden roadblock in current domestic regulatory frameworks. This is in the form of regulatory restrictions that are not primarily designed to meet legitimate regulatory objectives, but are instead designed to protect incumbent services providers from any new entry, be it from foreign entrants or domestic ones. The surveys of actual policies carried out by the Research Institutes Network also collected information about regulatory restrictions that affect domestic players and

¹³ With the exception of the tourism agreement, the ASEAN mutual recognition agreements are not streamlining existing accreditation processes, but adding a third, ASEAN-level accreditation process, to the national processes that still apply at each end of a bilateral move. The tourism agreement differs because its main focus is developing and harmonising curricula, rather than imposing an additional accreditation requirement.

about aspects of the broader domestic regulatory environment that are not conducive to contestability. In four of the sectors under study, there is a clear positive correlation between the level of services trade barriers, as reported in earlier sections, and the level of these domestic regulatory restrictions. This is shown in Figure 10. It is no coincidence that these are four sectors with often powerful, well-connected, vested interests. In banking, insurance, and telecommunications, the interests are corporate (and often government owned or government linked); in medical services, they are the professional bodies.¹⁴

Figure 10: Positive Correlation between Trade Barriers and Domestic Regulatory Restrictions



Note: Domestic regulatory restrictions on horizontal axis, trade barriers on vertical axis.

¹⁴ Of the three other sectors under study, the health questionnaire did not collect information about restrictions affecting domestic players, since these were picked up in the medical questionnaire. The maritime and tourism questionnaires did collect such information, but the results did not reveal a strong positive correlation. Recall that the maritime sector includes segments that are very open, as well as segments that are still monopolised.

Sources: ERIA Scorecard Phase IV services questionnaire results and AFAS eighth package of services commitments.

This situation makes it difficult to use services trade reform alone as an instrument of domestic reform. Services trade reform only asks countries to open their markets to additional foreign participation. If incumbents were previously protected from both domestic and foreign entry, new foreign entrants would then be granted an advantage relative to potential domestic new entrants. In this instance, services trade reform, on its own, would clearly be undesirable from both an economic and a political perspective (Dee, 2014).

The key is to have regulatory frameworks that are conducive to contestability more generally, so that when foreign companies do enter the market, they do not have an unnatural AFAS-induced advantage over domestic new entrants. And the key to developing such frameworks is to have regulatory processes that allow the views of the powerful vested interests to be challenged by those, including domestic new entrants, who stand to gain from the greater contestability. ERIA's Scorecard Phase III project gave recommendations for how such mechanisms for responsive regulation could be worked into a post-2015 ASEAN agenda (Intal, *et al.*, 2014a).

Hence, a post-2015 services agenda could usefully include the following:

- a switch to a negative list approach, with sufficient time allocated to initial implementation to allow comprehensive, systematic reviews by each member country of their policies and regulations restricting services trade;
- a complementary work programme of regulatory improvement in ASEAN, including capacity building, to encourage the development of broader domestic regulatory environments that promote contestability while also meeting their legitimate regulatory objectives.

The key to making further real progress towards a free flow of services in the region is to focus on domestic regulatory improvement more generally.

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Table A1: Scoring of Trade Barriers—Medical Professions

Restriction and scoring regime*	Score range
<i>Market Access</i>	
<i>Cross-border trade (Mode 1)</i>	
16. Are foreign medical professionals located abroad able to provide services cross-border to patients in your country (e.g., tele-medicine)? (1 if not permitted, 0.33 if limited in form (e.g., limited to certain kinds of diagnostic services), 0.33 if limited to specific groups (e.g., to foreign nationals in your country), 0.33 if limited in some other way)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
<i>Consumption abroad (Mode 2)</i>	
17. Can domestic residents purchase medical services while abroad? (1 if not permitted, 0.5 if quotas related to the value of transactions, the number of operations or the number of nationals travelling abroad, or restrictions on the range of services that can be acquired, 0.5 if taxes or registration/authorisation requirements on consumers travelling abroad)	0-1
<i>Commercial presence (Mode 3)</i>	
1. Are there policy restrictions (other than via foreign equity limits) on new entry by foreign-invested medical entities (firms/partnerships)? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
3. Are medical professional service firms prohibited from incorporating? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
4. Are there restrictions on joint ventures? (1 if foreign providers are prohibited from establishing in a joint venture, 1 if they are required to establish in a joint venture, 2 if they are not allowed)	
Doctors	0-2
Dentists	0-2
Para-medical (e.g., nurses)	0-2
19. Are there foreign equity limits on commercial presence? ([100-x]/100 where x is the foreign equity limit on acquiring existing providers through merger or acquisition, plus [100-y]/100 where y is the foreign equity limit on new greenfield operations)	
Doctors	0-2
Dentists	0-2
Para-medical (e.g., nurses)	0-2
20. Are there equity limits on non-professional investors taking an equity stake in professional service firms (e.g., are non-dentists allowed an equity stake in dental firms/partnerships)? ([100-x]/100 where x is the equity limit on non-professional investors acquiring an existing provider through merger or acquisition, plus [100-y]/100 where y is the equity limit on non-professional investors establishing new greenfield operations)	
Doctors	0-2
Dentists	0-2
Para-medical (e.g., nurses)	0-2
<i>Movement of natural persons (Mode 4)—Individual professionals</i>	
5. Are there policy restrictions (other than via licensing criteria) on new entry by foreign individual professionals? (1 if yes, 0 if no)	

Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
7. Is there a nationality or citizenship requirement for individual professionals to qualify or to practice (whether as a condition of license, or otherwise)? (1 if required to qualify or practice, 0.5 if required for use of professional title, but practice relatively free, 0 if no requirement)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
8. Is there a residency or local presence requirement for individual professionals to practice (whether as a condition of license, or otherwise)? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
<i>Movement of natural persons (Mode 4)—Intra-corporate transferees</i>	
11. Are there minimum requirements to have nationals/residents in any categories of position (including Board of Directors) in foreign-invested professional service firms? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
13. Are any foreign intra-corporate transferees (including Board of Directors) subject to labour market tests? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
14. Are any managerial personnel required to be locally licensed as medical professionals? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
15. Are any managerial personnel required to be locally domiciled? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
<i>Discriminatory Regulation</i>	
33. Is there a requirement for foreign-invested medical service firms to train local staff? (1 if yes, 0 if no)	
Doctors	0-1
Dentists	0-1
Para-medical (e.g., nurses)	0-1
Maximum possible restriction score	52

* Question numbering follows that in original questionnaires.

Table A2: Scoring of Trade Barriers—Health Services

Restriction and scoring regime*	Score range
<i>Market Access</i>	
<i>Cross-border trade (Mode 1)</i>	
12 Are foreign health services providers located abroad able to provide services cross-border to patients in your country (e.g., tele-medicine)? (1 if not permitted, 0.33 if limited in form (e.g., limited to certain kinds of diagnostic services), 0.33 if limited to specific groups (e.g., to foreign nationals in your country), 0.33 if limited in some other way)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
<i>Consumption abroad (Mode 2)</i>	
13 Can domestic residents purchase health services while abroad? (1 if not permitted, 0.5 if quotas related to the value of transactions, the number of operations or the number of nationals travelling abroad, or restrictions on the range of services that can be acquired, 0.5 if taxes or registration/authorisation requirements on consumers travelling abroad)	0-1
<i>Commercial presence (Mode 3)</i>	
1. Are there policy restrictions (other than via foreign equity limits) on new entry by foreign-invested firms? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
3 Are these firms prohibited from incorporating (with limited liability)? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
4. Are there restrictions on joint ventures? (1 if foreign providers are prohibited from establishing in a joint venture, 1 if they are required to establish in a joint venture, 2 if they are not allowed)	
Hospitals	0-2
Medical laboratories	0-2
Ambulance services	0-2
5. Are foreign health services firms restricted in the scope of services they can provide? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
6. Are foreign health services firms restricted in the number or type of clients (domestic and/or foreign) they can service? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
15. Are there foreign equity limits on commercial presence? ($[100-x]/100$ where x is the foreign equity limit on acquiring existing providers through merger or acquisition, plus $[100-y]/100$ where y is the foreign equity limit on new greenfield operations)	
Hospitals	0-2
Medical laboratories	0-2
Ambulance services	0-2
<i>Movement of natural persons (Mode 4)—intra-corporate transferees</i>	
7. Are there minimum requirements to have nationals/residents in any categories of	

position (including Board of Directors) in foreign-invested health service firms? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
9. Are any foreign intra-corporate transferees (including Board of Directors) subject to labour market tests? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
10. Are any managerial personnel required to be locally licensed as a medical professional? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
11. Are any managerial personnel required to be locally domiciled? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
 <i>Discriminatory Regulation</i>	
21. Are foreign-invested providers subject to different licensing requirements from domestic firms? (1 if yes, 0 if no)	
Hospitals	0-1
Medical laboratories	0-1
Ambulance services	0-1
Maximum possible restriction score	43

Note :* Question numbering follows that in original questionnaires.

Table A3: Scoring of Trade Barriers—Tourism Services

Restriction and scoring regime*	Score range
<i>Market Access</i>	
<i>Cross-border trade (Mode 1)</i>	
6. Can domestic residents purchase these tourism services cross-border from a foreign-located tourism company? (1 if not permitted, 0.5 if only through a resident intermediary, 0 if no restrictions)	
Travel agencies and tour operators	0-1
Tourist guides	0-1
7. Are there restrictions on offshore tourism firms' ability to solicit business domestically? (1 if yes, 0 if no)	
Travel agencies and tour operators	0-1
Tourist guides	0-1
<i>Consumption abroad (Mode 2)</i>	
8. Can domestic residents purchase these services from a foreign tourism company while abroad? (1 if not permitted, 0.5 if permitted with restrictions, 0 if no restrictions)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1
Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
<i>Commercial presence (Mode 3)</i>	
1. Are there policy restrictions on new entry by foreign-invested providers of these services (other than via foreign equity limits)? (1 if yes, 0 if no)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1
Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
3. Are there restrictions on legal forms of establishment for foreign-invested firms? (1 for each form restricted: subsidiaries, branches, representative offices)	
Hotels and resorts	0-3
Other accommodation	0-3
Food services	0-3
Beverage services	0-3
Travel agencies and tour operators	0-3
Tourist guides	0-3
4. Are foreign legal entities required to establish in a joint venture? (1 if yes, 0 if no)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1
Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
5. Are there restrictions on the scope of operations? (0.33 if number of outlets limited in number, 0.33 if outlets limited in location, 0.33 if expansion of outlets subject to special regulatory approval, over and above meeting licensing requirements)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1

Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
13. Are there foreign equity limits on commercial presence? ($[(100-x)/100]$ where x is the foreign equity limit on acquiring existing providers through merger or acquisition, plus $[(100-y)/100]$ where y is the foreign equity limit on new greenfield operations)	
Hotels and resorts	0-2
Other accommodation	0-2
Food services	0-2
Beverage services	0-2
Travel agencies and tour operators	0-2
Tourist guides	0-2
<i>Movement of natural persons (Mode 4)</i>	
9. Are there residency or nationality requirements or quotas for any categories of personnel (including Board of Directors) employed by locally established foreign-invested tourism companies? (1 if yes, 0 if no)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1
Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
10. Are any foreign intra-corporate transferees (including Board of Directors) subject to labour market tests? (1 if yes, 0 if no)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1
Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
11. Indicate the permitted length of short-term visit (in days) for foreign tourism personnel (0 if > 90, 0.25 if 61–90, 0.5 if 31–60, 0.75 if 1–30, 1 if not allowed)	0-1
Indicate the permitted length of long-term stay (in years) for foreign intra-corporate transferees (0 if >4, 0.2 if 3.01–4, 0.4 if 2.01–3, 0.6 if 1.01–2, 0.8 if 0.01–1, 1 if not allowed).	0-1
<i>Discriminatory Regulation</i>	
14. Are foreign-invested firms subject to different regulations or licensing requirements? (1 if they have higher paid-up capital requirements, 1 if they face restrictions on land acquisition (relative to domestic providers), 1 if they face more stringent zoning requirements (relative to domestic providers), 1 if their development proposals face tougher planning approval processes than domestic providers, 1 if they face other discriminatory regulations or licensing requirements)	
Hotels and resorts	0-5
Other accommodation	0-5
Food services	0-5
Beverage services	0-5
Travel agencies and tour operators	0-5
Tourist guides	0-5
15. Are foreign firms limited in the types of services they can provide? (1 if they can only service foreign tourists (inbound tourism), 1 if they face other restrictions on clientele, 1 if they can only provide services in particular geographic areas, 1 if they can only provide a limited range of services (e.g., can only provide	

beverage service without entertainment), 1 if they face other discriminatory restrictions on operations)	
Hotels and resorts	0-5
Other accommodation	0-5
Food services	0-5
Beverage services	0-5
Travel agencies and tour operators	0-5
Tourist guides	0-5
16. Is there a requirement for foreign-invested tourism firms to train local staff? (1 if yes, 0 if no)	
Hotels and resorts	0-1
Other accommodation	0-1
Food services	0-1
Beverage services	0-1
Travel agencies and tour operators	0-1
Tourist guides	0-1
Maximum possible restriction score	138

Note : * Question numbering follows that in original questionnaires.

Table A4: Scoring of Trade Barriers—Maritime Services

Restriction and scoring regime*	Score range
<i>Cross-border trade (Mode 1)</i>	
6. Cargo reservation (sea-going shipping and inland waterways) (0.5 if restrictions on shipping government or state-owned enterprise cargos (e.g., a requirement that they be shipped by national-flagged vessels), 0.5 if restrictions on shipping private cargos (e.g., requirement that a certain proportion be shipped by national-flagged vessels), 1 if restrictions on both government and private cargos, 0 if no restrictions)	0-1
7. Cabotage restrictions (1 if foreigners generally cannot provide domestic services, 0.75 if foreigners that fly the national flag can provide domestic maritime services, 0.5 if restrictions on length of time cargoes can be carried, 0 if no cabotage restrictions (i.e., foreign vessels can supply internal point-to-point transport services))	0-1
<i>Commercial presence (Mode 3)</i>	
1. Are there policy restrictions on new entry by foreign-invested providers of these services (other than via foreign equity limits)? (1 if yes, 0 if no)	
Seagoing shipping	0-1
Internal waterways	0-1
Port operation (wharves, terminals, etc.)	0-1
Container station and depot services	0-1
Storage and warehousing	0-1
Cargo handling	0-1
Freight forwarding	0-1
Pilotage towing and tying	0-1
Maintenance and repair	0-1
2. Are there restrictions on joint ventures? (1 if foreign providers are prohibited from establishing in a joint venture, 1 if they are required to establish in a joint venture, 2 if they are not allowed)	
Seagoing shipping	0-2
Internal waterways	0-2
Port operation (wharves, terminals, etc.)	0-2
Container station and depot services	0-2
Storage and warehousing	0-2
Cargo handling	0-2
Freight forwarding	0-2
Pilotage towing and tying	0-2
Maintenance and repair	0-2
3. Are there restrictions on legal forms of establishment for foreign-invested firms? (1 for each form restricted: subsidiaries, branches, representative offices)	
Seagoing shipping	0-3
Internal waterways	0-3
Port operation (wharves, terminals, etc.)	0-3
Container station and depot services	0-3
Storage and warehousing	0-3
Cargo handling	0-3
Freight forwarding	0-3
Pilotage towing and tying	0-3
Maintenance and repair	0-3
5. Are there foreign equity limits on commercial presence? ($[100-x]/100$ where x is the foreign equity limit on acquiring existing providers through merger or acquisition, plus $[100-y]/100$ where y is the foreign equity limit on new greenfield operations)	
Seagoing shipping	0-2
Internal waterways	0-2
Port operation (wharves, terminals, etc.)	0-2
Container station and depot services	0-2

Storage and warehousing	0-2
Cargo handling	0-2
Freight forwarding	0-2
Pilotage towing and tying	0-2
Maintenance and repair	0-2
<i>Movement of natural persons (Mode 4)</i>	
16. Is there a nationality requirement on any employees of foreign-invested firms? (1 if yes, 0 if no)	0-1
17. Is there a nationality requirement on Board of Directors of foreign-invested firms? (1 if yes, 0 if no)	0-1
Maximum possible restriction score	76

Note: * Question numbering follows that in original questionnaires.

Table A5: Scoring of Trade Barriers—Telecommunications Services

Restriction and scoring regime*	Score range
<i>Market Access</i>	
<i>Cross-border trade (Mode 1)</i>	
13. Are there restrictions on the cross-border supply or consumption of any telecommunication services over the networks of <i>facilities-based</i> service suppliers e.g., restrictions on callback? (1 if yes, 0 if no)	0-1
14. Are there routing restrictions (e.g., do new facilities-based entrants have to use the incumbent carrier's international circuits or gateways, or are they free to choose how to route their international traffic)? (1 if there are restrictions, 0 if not)	0-1
16. Are there restrictions on the cross-border supply or consumption of any telecommunication services over the networks of <i>resale-based</i> service suppliers e.g., restrictions on callback? (1 if yes, 0 if no)	0-1
17. Are there routing restrictions (e.g., do resellers have to use the incumbent carrier's international circuits or gateways, or are they free to choose how to route their international traffic)? (1 if there are restrictions, 0 if not)	0-1
<i>Commercial presence (Mode 3)</i>	
1. Are there restrictions on the entry of new foreign-invested <i>facilities-based</i> suppliers of telecommunication services (i.e., not resale) in any of these subsectors (other than via foreign equity limits or associated with scarcity of spectrum)? (1 if yes, 0 if no)	
Voice telephone services (fixed) - local	0-1
Voice telephone services (fixed) - domestic long distance	0-1
Voice telephone services (fixed) - international - wire/cable	0-1
Voice telephone services (fixed) - international - satellite	0-1
Mobile voice telephone - analogue, digital (2G)	0-1
Mobile voice telephone - 3G, 4G	0-1
Mobile voice telephone - satellite	0-1
Data communications - fixed	0-1
Data communications - mobile	0-1
Data communications - 3G, 4G	0-1
Leased lines	0-1
Internet access services - wire/cable	0-1
Internet access services - fixed wireless	0-1
4. Are foreign-invested <i>facilities-based</i> suppliers required to establish under legal forms not required for domestic operators? (1 if yes, 0 if no)	0-1
5. Are there restrictions on the entry of new foreign-invested <i>resale-based</i> suppliers of telecommunication services in any of these subsectors (other than via foreign equity limits)? (1 if yes, 0 if no)	
Voice telephone services (fixed) - local	0-1
Voice telephone services (fixed) - domestic long distance	0-1
Voice telephone services (fixed) - international - wire/cable	0-1
Voice telephone services (fixed) - international - satellite	0-1
Mobile voice telephone - analogue , digital (2G)	0-1
Mobile voice telephone - 3G, 4G	0-1
Mobile voice telephone - satellite	0-1
Data communications - fixed	0-1
Data communications - mobile	0-1
Data communications - 3G, 4G	0-1
Leased lines	0-1
Internet access services - wire/cable	0-1
Internet access services - fixed wireless	0-1

8. Are foreign <i>resale-based</i> suppliers required to establish under legal forms not required for domestic operators? (1 if yes, 0 if no)	0-1
21. Are there foreign equity limits on commercial presence for <i>facilities-based</i> services? ([100-x]/100 where x is the foreign equity limit on acquiring existing facilities-based providers through merger or acquisition, plus [100-y]/100 where y is the foreign equity limit on new greenfield facilities-based operations)	
Voice telephone services (fixed) - local	0-2
Voice telephone services (fixed) - domestic long distance	0-2
Voice telephone services (fixed) - international - wire/cable	0-2
Voice telephone services (fixed) - international - satellite	0-2
Mobile voice telephone - analogue, digital (2G)	0-2
Mobile voice telephone - 3G, 4G	0-2
Mobile voice telephone - satellite	0-2
Data communications - fixed	0-2
Data communications - mobile	0-2
Data communications - 3G, 4G	0-2
Leased lines	0-2
Internet access services - wire/cable	0-2
Internet access services - fixed wireless	0-2
23. Are there foreign equity limits on commercial presence for <i>resale-based</i> services? ([100-x]/100 where x is the foreign equity limit on acquiring existing resale-based providers through merger or acquisition, plus [100-y]/100 where y is the foreign equity limit on new greenfield resale-based operations)	
Voice telephone services (fixed) - local	0-2
Voice telephone services (fixed) - domestic long distance	0-2
Voice telephone services (fixed) - international - wire/cable	0-2
Voice telephone services (fixed) - international - satellite	0-2
Mobile voice telephone - analogue, digital (2G)	0-2
Mobile voice telephone - 3G, 4G	0-2
Mobile voice telephone - satellite	0-2
Data communications - fixed	0-2
Data communications - mobile	0-2
Data communications - 3G, 4G	0-2
Leased lines	0-2
Internet access services - wire/cable	0-2
Internet access services - fixed wireless	0-2

Discriminatory Regulation

27. Do any licenses grant exclusive rights (i.e., no other operator can provide the service)? (1 if yes, 0 if no)	0-1
30. Are foreign-invested suppliers subject to different licensing conditions from domestic suppliers? (1 if yes, 0 if no)	0-1

Maximum possible restriction score	86
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Note * Question numbering follows that in original questionnaires.

Table A6: Scoring of Trade Barriers—Banking Services

Restriction and scoring regime*	Restriction score range
Market Access	
<i>Cross-border trade (Mode 1)</i>	
11. Are foreign banks located abroad able to lend or raise funds in your country? (1 if cross-border lending not allowed, 0.33 if limited in amount, 0.33 if limited in form, 0.33 if limited to specific groups (e.g., other banks, corporations), 0 if cross-border lending not restricted)	0-1
(1 if cross-border fund raising not allowed, 0.33 if limited in amount, 0.33 if limited in form, 0.33 if limited to specific groups (e.g., other banks, corporations), 0 if cross-border fund raising not restricted)	0-1
12. Are foreign banks located abroad able to provide other core services domestically? (1 if cross-border settlement services not permitted, 1 if cross-border foreign exchange business not permitted)	0-2
<i>Consumption abroad (Mode 2)</i>	
13. Can domestic residents purchase financial services while abroad? (1 if not permitted, 0.5 if quotas related to the value of transactions, the number of operations or the number of nationals travelling abroad, or restrictions on the range of services that can be acquired, 0.5 if taxes or registration/authorisation requirements on consumers travelling abroad)	0-1
<i>Commercial presence (Mode 3)</i>	
2. Are there policy restrictions (other than via foreign equity limits) on new entry by foreign-invested banks? (1 if yes, 0 if no)	0-1
4. Is the entry of foreign banks restricted by screening or needs tests (other than licensing requirements, which are covered later)? (0.5 if must show economic benefit, 0.3 if approval granted unless contrary to the national interest, 0.2 if there are notification (pre or post) requirements, 0 if no restrictions apply)	0-1
5. Are there restrictions on legal forms of establishment for foreign-invested banks? (0.3 if subsidiaries not allowed, 0.2 if branches able to lend against local capital not allowed, 0.4 if branches able to lend against parent capital not allowed, 0.1 if representative offices not allowed)	0-1
6. Are there restrictions on the ability of foreign-invested banks to raise funds? (1 if unable to raise funds domestically, 0.25 if limited in the amount that can be raised domestically, 0.25 if limited in the form that can be raised (e.g., only through deposits or local currency), 0.25 if limited to raising funds from particular groups (e.g., only from non-resident entities), 0.25 if some or all fund raising must be conducted in subsidiaries (i.e., branches restricted to wholesale banking), 0 if fund raising subject only to prudential restrictions)	0-1
7. Are there restrictions on the ability of foreign-invested banks to lend? (1 if unable to lend domestically, 0.25 if limited in the amount that can be lent domestically, 0.25 if limited in the form that can be lent (e.g., only through credit cards, not through consumer finance), 0.25 if directed to lend to particular groups (e.g., housing, small business, government, particular regions), 0.25 if some or all lending must be conducted in subsidiaries, 0 if lending subject only to prudential restrictions)	0-1
9. Can foreign-invested banks provide other core services domestically? (1 if settlement services (e.g., collection, payment) not permitted, 1 if foreign exchange services not permitted)	0-2
10. Are there restrictions on foreign-invested banks expanding operations—street branches, offices, and ATMs? (1 if one banking outlet with no new outlets permitted, 0.5 if number of outlets limited in number and/or location, 0.5 if expansion of outlets subject to non-prudential regulatory approval, 0 if no restrictions apply)	0-1
18. Are there foreign equity limits on commercial presence by foreign-invested banks? ([100-x]/100 where x is the foreign equity limit on acquiring existing providers through	0-2

merger or acquisition, plus $[100-y]/100$ where y is the foreign equity limit on new greenfield operations)

Movement of natural persons (Mode 4)

14. Are there minimum requirements to have nationals/residents in any categories of position (including Board of Directors) in foreign-invested banks?
(1 if yes, 0 if no) 0-1
15. Are any foreign intra-corporate transferees (including Board of Directors) in banking subject to labour market tests?
(1 if yes, 0 if no) 0-1
16. Indicate the permitted length of short-term visit (in days) for foreign bank personnel
(0 if > 90, 0.25 if 61–90, 0.5 if 31–60, 0.75 if 1–30, 1 if not allowed) 0-1
- Indicate the permitted length of long-term stay (in years) for foreign intra-corporate transferees
(0 if >4, 0.2 if 3.01–4, 0.4 if 2.01–3, 0.6 if 1.01–2, 0.8 if 0.01–1, 1 if not allowed) 0-1

Discriminatory Regulation

25. Are foreign-invested banks subject to different licensing requirements from domestic banks?
(1 if yes, 0 if no) 0-1

Maximum possible restriction score 20

Note : * Question numbering follows that in original questionnaires.

Table A7: Scoring of Trade Barriers—Life Insurance

Restriction and scoring regime*	Score range
<i>Market Access</i>	
<i>Cross-border trade (Mode 1)</i>	
12. Can domestic residents purchase life insurance cross-border from a foreign-located insurance company? (1 if not permitted, 0.5 if only through a resident intermediary, 0 if permitted)	0-1
13. Are offshore life insurance firms allowed to solicit business through advertising in the domestic country? (1 if not permitted, 0 if permitted)	0-1
<i>Consumption abroad (Mode 2)</i>	
14. Can domestic residents purchase life insurance from a foreign-located insurance company while abroad? (1 if not permitted, 0.5 if permitted with restrictions, 0 if permitted without restrictions)	0-1
<i>b. Commercial presence (mode 3)</i>	
2. Are there policy restrictions (other than via foreign equity limits) on new entry by foreign-invested life insurance firms? (1 if yes, 0 if no)	0-1
4. Is foreign entry into life insurance restricted by screening or needs tests (other than licensing requirements, which are covered later)? (0.5 if must show economic benefit, 0.3 if approval granted unless contrary to the national interest, 0.2 if there are notification (pre or post) requirements, 0 if no restrictions apply)	0-1
5. Are there restrictions on legal forms of establishment for foreign-invested life insurance firms? (0.4 if subsidiaries not allowed, 0.5 if branches not allowed, 0.1 if representative offices not allowed)	0-1
6. Are there restrictions on joint ventures for foreign life insurers? (1 if foreign providers are prohibited from establishing in a joint venture, 1 if they required to establish in a joint venture, 2 if they are not allowed)	0-2
7. Are foreign-invested life insurance companies located in your country permitted to provide life insurance to domestic residents? (0 if yes, 1 if no)	0-1
9. What restrictions apply to reinsurance by resident foreign-invested life insurance companies? (1 if reinsurance prohibited, 0.3 if reinsurance restricted to being made with foreign reinsurance companies, 0.6 if a ceding percentage applies (a percentage of premiums that life insurers are required to cede or reinsure with nominated domestic reinsurers), 0.1 if other restrictions apply, 0 if no restrictions apply)	0-1
10. What restrictions apply to the placement of assets by resident foreign-invested life insurance companies? (1 if required to hold all assets locally, 0.5 if restricted in the amount of assets that can be held abroad, 0.1 if other restrictions apply, 0 if no restrictions apply)	0-1
11. What restrictions apply to resident foreign-invested life insurance companies being able to expand operations—street branches, offices? (1 if one insurance outlet with no new outlets permitted, 0.5 if number of outlets limited in number and/or location, 0.5 if expansion of outlets subject to non-prudential regulatory approval, 0 if no restrictions apply)	0-1
19. Are there foreign equity limits on commercial presence by foreign-invested life insurance companies? ($[100-x]/100$ where x is the foreign equity limit on acquiring existing providers through merger or acquisition, plus $[100-y]/100$ where y is the foreign equity limit on new greenfield operations)	0-2
<i>Movement of natural persons (Mode 4)</i>	
15. Are there minimum requirements to have nationals/residents in any categories of position (including Board of Directors) in foreign-invested life insurance firms?	

(1 if yes, 0 if no)	0-1
16. Are any foreign intra-corporate transferees (including Board of Directors) in life insurance subject to labour market tests?	
(1 if yes, 0 if no)	0-1
17. Indicate the permitted length of short-term visit (in days) for foreign life insurance personnel	
(0 if > 90, 0.25 if 61–90, 0.5 if 31–60, 0.75 if 1–30, 1 if not allowed)	0-1
Indicate the permitted length of long-term stay (in years) for foreign intra-corporate transferees	
(0 if >4, 0.2 if 3.01–4, 0.4 if 2.01–3, 0.6 if 1.01–2, 0.8 if 0.01–1, 1 if not allowed).	0-1
Discriminatory Regulation	
25. Are foreign-invested life insurance providers subject to different licensing requirements from domestic firms?	
(1 if yes, 0 if no)	0-1
Maximum possible restriction score	19

Note : * Question numbering follows that in original questionnaires.

Table A8: AFAS Commitments vs. Actual Policies—Details for Medical Professions

	BR N	ID N	MY S	PH L	SG P	TH A
Consumption abroad (Mode 2)	[Yellow]					
Doctors						
Cross-border trade (Mode 1)	[Purple]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Foreign ownership (Mode 3)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Other restrictions—Professional service firms (Mode 3)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Movement of people—Individual professionals (Mode 4)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Movement of people—Intra-corporate transferees (Mode 4)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Dental						
Cross-border trade (Mode 1)	[Purple]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Foreign ownership (Mode 3)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Other restrictions—Professional service firms (Mode 3)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Movement of people—Individual professionals (Mode 4)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Movement of people—Intra-corporate transferees (Mode 4)	[Yellow]	[Purple]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Para-Medical						
Cross-border trade (Mode 1)	[Purple]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Foreign ownership (Mode 3)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Other restrictions—Professional service firms (Mode 3)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Movement of people—Individual professionals (Mode 4)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
Movement of people—Intra-corporate transferees (Mode 4)	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]	[Yellow]
[Yellow]	Commitments less liberal than actual practice					
[Purple]	Difference explained by AFAS preferences					

Table A9: AFAS Commitments vs. Actual Policies—Details for Health Services

	BRN	IDN	LAO	MYS	PHL	SGP	THA
Consumption abroad (Mode 2)	Yellow						
Hospital							
Cross-border trade (Mode 1)	Yellow						
Foreign ownership (Mode 3)	Yellow	Yellow	Yellow	Yellow	White	Yellow	Yellow
Other restrictions—Health service firms (Mode 3)	Yellow	White	Yellow	Yellow	White	White	Yellow
Movement of people—Intra-corporate transferees (Mode 4)	Yellow	Yellow	Yellow	White	Yellow	Yellow	Yellow
Medical Laboratory							
Cross-border trade (Mode 1)	Yellow						
Foreign ownership (Mode 3)	Yellow						
Other restrictions—Health service firms (Mode 3)	Yellow	Yellow	Yellow	Yellow	Yellow	White	Yellow
Movement of people—Intra-corporate transferees (Mode 4)	Yellow						
Ambulance							
Cross-border trade (Mode 1)	Yellow						
Foreign ownership (Mode 3)	Yellow						
Other restrictions—Health service firms (Mode 3)	Yellow	Yellow	Yellow	Yellow	Yellow	White	Yellow
Movement of people—Intra-corporate transferees (Mode 4)	Yellow						

 Commitments less liberal than actual practice
 Difference explained by AFAS preferences

Table A10: AFAS Commitments vs. Actual Policies—Details for Tourism Services

	BRN	CAN	IDN	LAO	MYS	PHL	SGP	THA	VNM
Cross-border trade (Mode 1)	Yellow								
Consumption abroad (Mode 2)	Yellow	White	Yellow						
Foreign ownership (Mode 3)	Yellow	Yellow	Yellow	White	Yellow	Yellow	Yellow	Yellow	Yellow
Other market entry restrictions (Mode 3)	Yellow								
Discriminatory regulation (Mode 3)	Yellow	Yellow	Yellow	Yellow	Yellow	White	Yellow	Yellow	Yellow
Movement of natural persons (Mode 4)	Yellow								

 Commitments less liberal than actual practice
 Difference explained by AFAS preferences

Table A11: AFAS Commitments vs. Actual Policies—Details for Maritime Services

	BR N	CA M	ID N	MY S	MM R	PH L	SG P
Cross-border trade (Mode 1)							
Commercial presence (Mode 3)							
Movement of people (Mode 4)							
 Commitments less liberal than actual practice							
 Difference explained by AFAS preferences							

Table A12: AFAS Commitments vs. Actual Policies—Details for Telecommunications Services

	BR N	ID N	MY S	PH L	SG P	TH A	VN M
Facilities-based Services							
Cross-border trade (Mode 1)							
Foreign ownership (Mode 3)							
Other market entry restrictions (Mode 3)							
Resale-based Services							
Cross-border trade (Mode 1)							
Foreign ownership (Mode 3)							
Other market entry restrictions (Mode 3)							
Leased Lines and Private Networks							
Other market entry restrictions (Mode 3)							
General							
Discriminatory regulation (Mode 3)							
 Commitments less liberal than actual practice							
 Difference explained by AFAS preferences							

Table A13: AFAS Commitments vs. Actual Policies—Details for Banking Services

	BRN	IDN	LAO	MMR	PHL	SGP	THA
<i>c. Cross-border trade (Mode 1)</i>							
11 Are foreign banks located abroad able to lend in your country?	Orange		Purple	Orange	Orange	Orange	Orange
Are foreign banks located abroad able to raise funds?	Orange		Purple	Orange	Orange	Orange	Orange
12 Are foreign banks located abroad able to provide cross-border settlement services domestically?	Orange	Yellow		Orange	Orange	Orange	Orange
Are foreign banks located abroad able to undertake cross-border foreign exchange business?	Orange			Orange	Orange	Orange	Orange
<i>d. Consumption abroad (Mode 2)</i>							
13 Can domestic residents purchase banking services while abroad?	Orange			Orange			Orange
<i>Foreign ownership (Mode 3)</i>							
18 Are there foreign equity limits on commercial presence—existing providers?	Orange	Orange			Orange	Purple	Orange
New entrants?	Orange	Orange			Orange	Purple	Orange
<i>Other restrictions (Mode 3)</i>							
2 Are there policy restrictions (other than foreign equity limits) on new entry of foreign banks?			Yellow		Orange		Orange
4 Is foreign entry restricted by screening or needs tests (other than licensing requirements)?			Yellow		Yellow		Orange
5 Are there restrictions on legal forms of establishment for foreign-invested banks?	Yellow				Orange	Orange	Yellow
6 Are there restrictions on the ability of foreign banks to raise funds?					Orange		
7 Are there restrictions on the ability of foreign banks to lend?	Orange	Yellow			Yellow		
9 Which of the following services are foreign banks permitted to provide domestically?							
9 Are foreign-invested banks permitted to provide settlement services domestically?	Orange						Purple
Are foreign-invested banks permitted to provide foreign exchange services domestically?	Orange	Yellow					Purple
10 Are there restrictions to expanding operations—street branches, offices, and ATMs—for foreign banks?	Orange	Orange					Orange
25 Are foreign-invested banks subject to different licensing requirements from domestic banks?	Orange						
<i>e. Movement of natural persons (Mode 4)</i>							
14 Are there residency or nationality requirements or quotas for executives, managers, etc., employed by locally established foreign banks?					Orange		
15 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?		Purple	Orange		Orange		Orange

16 Identify the permitted length of short-term visit (in days) for foreign bank personnel.
 Identify the permitted length of long-term stay (in years) of foreign intra-corporate transferees.

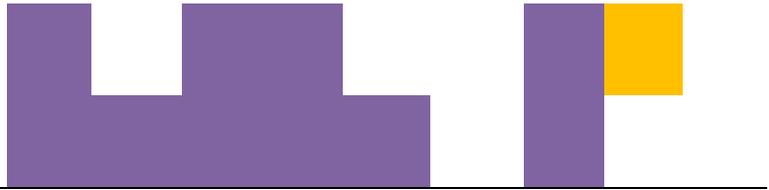


-  Difference explained by 'prudential' measures
-  Commitments less liberal than actual practice
-  Difference explained by AFAS preferences

Table A14: AFAS Commitments vs Actual Policies—Details for Life Insurance

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA
<i>Cross-border insurance trade (Mode 1)</i>									
12 Can domestic residents purchase life insurance cross-border from a foreign insurance company?	Orange		Orange				Orange		
13 Are offshore life insurance firms allowed to solicit business through advertising in the domestic country?		Purple	Yellow						
<i>Consumption abroad (Mode 2)</i>									
14 Can domestic residents purchase life insurance from a foreign insurance company while abroad?		Yellow	Orange	Purple	Orange		Orange		
<i>Commercial presence (Mode 3)</i>									
19 Are there foreign equity limits on commercial presence - existing providers?					Orange		Orange	Purple	
New entrants									
2 Are there policy restrictions (other than foreign equity limits) on new entry of foreign providers?				Orange			Orange	Orange	
4 Is foreign entry restricted by screening or needs tests (other than licensing requirements)?				Orange			Yellow		
5 Are there restrictions on legal forms of establishment for foreign-invested life insurance providers?	Purple				Orange	Orange		Orange	
6 Are foreign insurance firms prohibited from establishing in a joint venture with local firms?									
Are they required to establish in a JV?									
7 Are foreign-invested insurance companies permitted to provide life insurance domestically?									
9 Are there restrictions on reinsurance by resident foreign-invested insurance companies?			Yellow					Orange	
10 Are there restrictions on the placement of assets by resident foreign-invested insurance companies?	Yellow		Yellow	Yellow	Yellow		Yellow	Orange	Yellow
11 Are there restrictions on foreign-invested companies expanding operations—street branches, offices?			Yellow	Orange					Yellow
25 Are foreign firms subject to different licensing requirements from domestic firms?									
<i>e. Movement of natural persons (Mode 4)</i>									
15 Are there residency or nationality requirements or quotas for executives, managers, etc., employed by locally established foreign insurance companies?									
16 Are there categories of intra-corporate transferees whose entry is subject to labour market tests?	Orange							Orange	

17 Identify the permitted length of short-term visit (in days) for foreign insurance personnel.
 Identify the permitted length of long-term stay (in years) of foreign intra-corporate transferees.



- Difference explained by 'prudential' measures
- Commitments less liberal than actual practice
- Difference explained by AFAS preferences

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