

ERIA Research Project Report 2010, No. 3

**TOWARD A COMPETITIVE ASEAN SINGLE  
MARKET: SECTORAL ANALYSIS**

Edited by

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# **EXECUTIVE SUMMARY**

## **1. Background and objectives of the project**

In order to facilitate the implementation of the ASEAN Economic Community (AEC) Blueprint, the ASEAN secretariat has constructed AEC Scorecards which monitor the status of implementation of the Blueprint. The detailed results of the AEC scorecards however, have not yet been made public. Hence the scorecards still have not been shared with a wide range of people in this region. In order to complement the weakness of the Blueprint, the ERIA research working group on economic integration toward an AEC has conducted various studies on actual policies, and the current degree of liberalization of each issue area, in each country during the past three years. ERIA has published research outcomes as well as policy recommendations toward the implementation of the AEC since 2008.

This project report for the fiscal year 2010 is the latest in the series of our research projects. The working group has focused on analyses of trade in goods and services and foreign direct investment (FDI) climates, as well as skilled labor mobility during the 2010 fiscal year. In addition, by using and updating the accumulation of our studies during the past three years, it is possible to examine variations in the degree of liberalization over time. Each study aims to construct quantitative measures which are designed 1) to visualize the process of policy reforms, following the AEC blueprint; 2) to provide a framework against which milestones and end goals of each element can be defined; and 3) to evaluate the current position and progress vis-à-vis the milestones and end goals.

## **2. Major findings**

### **2.1 Free Flow of Services**

With respect to service trade liberalization, Dee (2011) has mapped the actual policy space by conducting questionnaires in five key service sectors: medical, health, banking and insurance services, and accountancy. The first four of these sectors were also mapped in 2008, enabling us to examine the extent of real reform since 2008 and assess whether this reform was generated by AFAS commitments.

In the case of banking services, recent reforms have made only a slight difference to the overall prevalence of restrictions for both domestic and foreign service providers. Thus, Dee (2011) points out that there is evidence that ASEAN countries are still using unnecessary regulatory restrictions instead of better targeted prudential requirements. Similarly, there has been very little reform of regulations which restrict trade in insurance services. Since insurance is a sector that is typically under pressure during WTO accession negotiations, she points out that other ASEAN countries will need to accelerate their reform efforts if the ASEAN Blueprint targets are to be met.

Regarding medical services, there is significant further scope to promote a single market for medical professional services by ensuring that existing regulations do not discriminate against foreign providers. In health services, Dee (2011) points out that non-discriminatory barriers to entry and operation have already been removed, so removing discrimination against foreign suppliers is the only remaining task. Progress here should prove less controversial than in the medical professions.

In accounting services, Dee (2011) finds that six ASEAN countries already meet the Blueprint's target for foreign equity participation in accountancy firms, but that restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence. A single market for this and other professional services depends crucially on the free mobility of individual professionals. Mutual recognition agreements can help, but the relaxation of other restrictions on entry and operation is also required.

## **2.2 Free Flow of Goods**

There is limited room for tariff reduction despite its well-recognized effects, therefore the current focus of ASEAN in trade facilitation is demonstrably rewarding. Otsuki (2011) finds that ASEAN countries' performance in trade facilitation is diverse, from the world's best to the world's worst, while there is slight improvement over time in ASEAN's overall score in port efficiency, and remarkable improvement in service sector infrastructure.

Otsuki (2011) also estimates the effect of trade facilitation on trade flows of manufactured goods using a gravity model. He finds that all four trade facilitation indices have positive effects on bilateral trade flows; in particular, the effect of the regulatory environment is

greatest. In addition, using a simulation analysis, he estimates that all areas of trade facilitation, taken together, would generate trade expansion of 99 billion US dollars in the ASEAN countries. About 75% of the gain comes from the region's own improvement, thus he points out that aggressive commitments to investment in trade facilitation are encouraged.

### **2.3 Free Flow of Investment**

Looking at the FDI climate, Urata and Ando (2011) analyze FDI firms' assessment of the investment climate using two types of firm surveys. In the case of Japanese firms operating in ASEAN countries, they confirm the same trends highlighted in their previous studies. The major problems faced by Japanese firms are related to FDI facilitation and, in particular, implementation problems such as complicated and/or delayed procedures with respect to investment-related regulations, and institutional problems such as lack of transparency in policies and regulations on investment. They point out that this result indicates that there is plenty of room to improve FDI facilitation in order to promote FDI in ASEAN countries. While ASEAN countries explicitly improved their investment climate, more and more indirect barriers to FDI emerged, partly reflecting more active and deepening operations by Japanese firms in ASEAN countries than before, which are therefore more likely to face various problems through their operations.

By using their original survey on non-Japanese foreign firms in ASEAN countries, they also find that institutional problems, implementation problems, and underdeveloped infrastructure and shortage of human resources are more serious. The improvement of FDI facilitation is extremely necessary in order to promote FDI in ASEAN. Urata and Ando (2011) also describe the detailed findings by score and categories for individual ASEAN 10 countries. This will be useful not only in examining variations in the FDI climate among countries, but also in identifying specific problems for each country.

### **2.4 Free Flow of Skilled labor**

In order to explore the framework of liberalization of skilled-labor mobility in ASEAN countries in anticipation of an AEC, Chia (2011) surveys provisions of movement of individuals and recognition of professional qualifications in the WTO and in ASEAN (+1)

FTAs, as well as the policy framework in ASEAN countries such as Mutual Recognition Arrangements (MRAs).

Although MRAs appear to be the main tool for skilled labor mobility in ASEAN, Chia (2011) points out that negotiating for recognition is a complex and time-consuming process given the wide variety of development levels among ASEAN countries. Bilateral MRAs might therefore be easier to achieve and implement. ASEAN countries should make even more effort to remove impediments to the free flow of skilled labor. Furthermore, greater information exchange and transparency, and the simplification of visa and employment permit applications would be useful.

### **3. Policy Implications**

#### **➤ Medical service;**

Some ASEAN countries still need to take definitive action to achieve the target of allowing foreign equity participation. Also, barriers to the movement of individual professionals are still prevalent. There is significant further scope available for promoting a single market for medical professional services by ensuring that existing regulations do not discriminate against foreign providers.

#### **➤ Health service;**

Non-discriminatory barriers to entry and operations have already been removed; removing discrimination against foreign suppliers is the only remaining task.

#### **➤ Banking services;**

Many ASEAN countries have foreign equity limits that do not yet meet the ASEAN Blueprint's benchmark, and there is evidence that some countries are still using unnecessary restrictions instead of better-targeted prudential requirements. With the recent strengthening of prudential regulation, there is scope for further market opening.

#### **➤ Accountancy services;**

Restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence. A single market for this and other professional

services depends crucially on the free mobility of individual professionals. Mutual recognition agreements can help, but relaxation of other restrictions on entry and operation is also required.

➤ **Trade facilitation;**

From a trade facilitation perspective, port efficiency and the customs environment should be priority areas for capacity development. Also, flexibility should be given according to levels of development and development goals, and a step-by-step building block approach from core principles towards expanded policies is needed.

➤ **Investment climates;**

In order to promote FDI policy liberalization, the ASEAN countries should use various existing frameworks, such as WTO/GATT's Trade Related Investment Measures agreement, bilateral investment treaties, free trade agreements, and other legal frameworks and, in particular, the ASEAN Comprehensive Investment Agreement.

The ASEAN countries should actively use various cooperation programs with developed countries to improve human resources engaged in the implementation and enforcement of FDI policies. In addition, monitoring of the achievements of FDI liberalization and facilitation has to be emphasized, in order to achieve a freer FDI environment.



# CHAPTER 1

## Overview:

### **Toward a Competitive ASEAN Single Market: Sectoral Analysis**

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*This project report of the 2010 fiscal year is the latest report in the ERIA research project on economic integration toward the ASEAN Economic Community (AEC), in which several studies on the free flow of goods, services and investment among ASEAN countries since the year 2008 have been conducted. The ERIA research project has investigated actual policies and the current degree of liberalization of each issue area in each ASEAN country, adopting a variety of methodologies. This chapter reviews research outcomes in the past two years in Section 2. We then summarize the key findings of each study on each issue area in the 2010 fiscal year in Section 3. During the 2010 fiscal year, we have continuously conducted analyses on the current status and progress of liberalization of trade in goods and services and foreign direct investment (FDI) climates. By using and updating the research accumulated during the past three years, it is possible to examine variations in the degree of liberalization over time. The research project also covers conceptual analysis of the liberalization of mobility of skilled labor in ASEAN countries, as they move toward an AEC. Based on discussion of the research outcomes of the year 2010, we introduce several policy implications for each issue area in Section 4.*

## 1. Introduction

Based on the ASEAN Vision 2020, and in anticipation of realizing the ASEAN Community, the ASEAN Economic Community (AEC) was proposed at the Bali Summit in October 2003 as the goal of regional economic integration, to be achieved by 2020. ASEAN leaders subsequently developed an action plan and roadmap to set clear targets and timelines for each sector. In 2007, the leaders agreed to bring forward the establishment of an AEC to 2015. In addition, they adopted an AEC Blueprint to serve as a coherent master plan guiding the establishment of an AEC. The AEC Blueprint sets out work plans and strategic schedules for the implementation of an AEC, as well as presenting the vision of an AEC. The key characteristics which are envisaged in an AEC are; a single market and production base; realization of a highly competitive economic region; achievement of equitable economic development; and full integration into the global market.

According to a press release issued by the ASEAN secretariat in December 2009, as of January 1<sup>st</sup> 2010, 99.1 % of total tariff lines are to be traded at zero tariff rate among ASEAN 6 countries and 98.6% at 0-5% tariff rate among the other four countries, (Cambodia, Laos, Myanmar and Vietnam), under the Common Effective Preferential Tariffs of ASEAN Free Trade Area (CEPT-AFTA). In addition, the ASEAN Trade in Goods Agreement (ATIGA) has been in place since May 2010 in order to facilitate further intra-ASEAN trade and accelerated economic integration towards an AEC by 2015. With respect to service trade, under the ASEAN Framework of Agreement in Services (AFAS), the ASEAN member countries have already signed a protocol to implement the first to the eighth packages of service commitment by October 2010. Also, up to now, ASEAN member countries have signed Mutual Recognition Agreements (MRAs) covering seven service sectors<sup>1</sup>. In addition, in order to achieve the free flow of investment which is one of the core elements of a single ASEAN market, the ASEAN Comprehensive Investment Agreement (ACIA) was entered into at the end of 2009<sup>2</sup>.

With the backdrop of such substantive progression of the implementation of economic integration in this region, there is rising concern surrounding maintaining competitiveness against faster-growing neighboring economies such as China and India in exporting, production and

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<sup>1</sup> MRAs on engineering services in December 2005, on nursing services in December 2006, on surveying qualification and architectural services in November 2007 and on accountancy services, medical and dental practitioners in February 2009 have been signed.

<sup>2</sup> The ACIA is a comprehensive agreement on investment covering improvements to the framework agreement on the ASEAN Investment Area (AIA) and the ASEAN Investment Guarantee Agreement (IGA).

attracting FDI. To ensure sustainable development and the competitive advantage of each ASEAN country, regional economic integration which realizes efficient production and sales networks and generates economies of scale is an essential option. In addition, the Asian currency and financial crisis that began in 1997 is another important factor in building momentum for economic cooperation and deepening integration in this region.

In order to facilitate the implementation of the AEC Blueprint, the ASEAN secretariat has constructed the AEC Scorecards which monitor the status of implementation of each issue area in the Blueprint, in each country. The detailed results of the AEC scorecards, however, have not yet been made public<sup>3</sup>, hence the scorecards still have not been shared with a wide range of stakeholders such as consumers, business people, administrators, scholars and policy makers from each sector and country. The AEC scorecards are not yet at the stage where they can serve as the basis for discussion among a wide range of people about the gap between the current situation and the goals set out in the Blueprint, as well as efforts necessary to fill those gaps. To complement the weakness of the Blueprint, the ERIA research project on economic integration toward an AEC includes studies, employing various methodologies, on actual policies and the current degree of liberalization of each issue area in each country since 2008<sup>4</sup>.

ERIA has organized a working group consisting of experts in each issue area and researchers from 10 ASEAN member countries, and they have discussed and developed methodologies to investigate “actual rules and regulations” and “actual situations in terms of liberalization” in each issue area and country during the last three years. They have published research outcomes in an ERIA research project report, and also made policy recommendations toward the implementation of the AEC. This research project report from fiscal year 2010 is the latest in the series of the research projects. During this fiscal year 2010, the working group focused on analyses on trade in goods and services, foreign direct investment (FDI) climates, and skilled labor mobility. Each study aims to construct quantitative measures which are designed 1) to chart the process of policy reforms following the AEC blueprint; 2) to provide a framework on which the milestones and end goals of each element can be defined; and 3) to evaluate the current state and progress vis-à-vis the

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<sup>3</sup> Although the report on the AEC scorecards from 2008 to 2009 has been released on the ASEAN Secretariat website (<http://www.asean.org/publications/AEC%20Scorecard.pdf>), the detailed scores by country and sector, and methodologies of scoring, are not referenced in the report.

<sup>4</sup> The research outcomes in 2008 were reported by ERIA Research Project Report No.1, entitled “Deepening East Asian Economic Integration” edited by Corbett and Umezaki (2009), and the 2009 research project report was published as ERIA Research Project Report No.3, entitled “Tracing the Progress toward the ASEAN Economic Community” edited by Urata and Okabe (2010).

milestones and end goals. In order to introduce this year's research report on each issue area, this chapter reviews research outcomes in the last two years and summarizes this year's study of each issue area. The remainder of this chapter is organized as follows: the main research outcomes of this research project in the last two years, namely the fiscal year 2008-2009, are reviewed in Section 2. Section 3 introduces key findings in each study of the 2010 fiscal year. Based on the discussion in Section 3, we summarize policy implications.

## **2. Review of studies on AEC implementation**

The ERIA research working group on economic integration toward an AEC has conducted several studies on trade in goods and services, and the investment climate during the 2008-2009 fiscal year. We review the main results of each issue area below.

### **2.1 Free Flow of Services**

Dee (2009) conducted a mapping of actual policies covering medical and health services, and banking and insurance services, by type of service and mode of trade based on the detailed study of existing policies in these sectors by Dee and Dinh (2009), and examined the ways in which service trade barriers interact with other domestic regulations in these fields. Using questionnaires that were completed by researchers in each of the ASEAN countries, her studies reveal actual implemented policies in detail, rather than only information contained in published version of regulations. In the case of medical services, it seems that a majority of ASEAN countries meet the foreign equity target of the Blueprint, while the other modes are more restricted and domestic regulatory regimes also impose restrictions with relatively high frequency. In addition, for health services, as compared with medical services, the regulatory restrictions in health are skewed so as to penalize foreign suppliers. Health services are also more likely to be affected by restrictions on commercial presence than medical services. Dee (2009) summarized that the ASEAN countries should work together to establish minimum acceptable standards of quality, both for individual professionals and for healthcare institutions. This will be a key prerequisite to dismantling the regulatory and other restrictions that, while having a possible rationale in quality assurance, are either more discriminatory or more burdensome than required.

With respect to banking services, the questionnaires cover all four modes of supply, and are focusing on non-prudential regulation which is the target of the Blueprint's liberalization initiatives.

It was found that the restrictions are still discriminatory against foreigners. In the case of insurance services, while restrictions on foreign ownership are less prevalent than those on banking services, restrictions on cross-border trade are imposed widely. Dee (2009) pointed out that the costs of these restrictions are very significant.

Subsequently, Dee (2010) conducted studies on air transport services, maritime services and telecommunication services. Studies on service trade in air transport covered a variety of air transport services, not only international and domestic passenger and freight-only services, but also various related sectors such as fuel provision, luggage and freight loading and unloading, aircraft repair and maintenance, and selling and marketing of air transport services. Based on survey responses and investigation of ASEAN multilateral agreements on air services, she pointed out that effective liberalization of mode 3 of trade in air services not only requires the reform of investment laws, but also requires the reform of withholding clauses in air services agreements. In addition, further reform of the agreements on air services and much greater transparency of their provisions are required among ASEAN members, in order to lift the secrecy surrounding the provision of air services agreements, in turn enabling outside observers to monitor progress.

Regarding maritime services, Dee (2010) found that most ASEAN member countries have taken a relatively liberal approach to cargo sharing arrangements, while only three countries have stated that they grant exemptions from cabotage restrictions<sup>5</sup>, but retain the restrictions in law despite their having been shown to be costly. She also found that no ASEAN countries meet the Blueprint target of allowing at least 51 per cent foreign ownership by 2010 in all maritime services. However some countries meet the target for at least some services and have moved to a relatively liberal ‘landlord port’ model for at least some ports.

Based on the survey covering actual barriers to trade in telecommunications services, and restrictions on the ability of non-telecommunications businesses to lease lines or build private networks, only two ASEAN countries meet the Blueprint’s foreign equity targets in all telecommunications services, at least on a Most Favored Nation (MFN) basis. Considering the relatively contestable market structure in most countries, the remaining restrictions on foreign equity limits are hard to understand and should be phased out.

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<sup>5</sup> “Cabotage” means that the carriage of passengers or freight within a country by an aircraft or ship registered in another country.

## 2.2 Free flow of goods

The AEC Blueprint mentions that free flow of goods is one of the principal means by which the aims of a single market and production base can be achieved. The Blueprint highlights integrating customs procedures, establishing the ASEAN Single Window, continuously enhancing the Common Effective Certification Procedures, and harmonizing standards and conformance procedures, as trade facilitation measures which would greatly facilitate the free flow of goods.

Findlay (2009) conducted two business surveys on trade facilitation with companies engaged in import transactions, and with logistics service providers within ASEAN countries. He summarized that border procedures continue to be pervasive and critically affect both goods and services businesses across ASEAN countries. Following the results of these surveys, other policies such as licensing and rules on operations, and lack of transparency generally constrain the establishment of new businesses and operations.

Using Australian c.i.f. and f.o.b. import data, Sourdin and Pomfret (2009) calculated an index of trade cost between Australia and ASEAN member countries from 1990 to 2007. They found a substantial decline in trade costs for five ASEAN members during the 1990s and convergence towards the lowest-cost country, while there was no clear pattern for the other five ASEAN countries. Sourdin and Pomfret (2010) also calculated the same index by using USA, Chilean and Brazilian import data and found that the ASEAN economies' trade costs are converging. They examined the determinants of trade cost variation by regression analysis, and found that market access, border administration, transport and communications infrastructure, and business environments, are negatively correlated to trade costs for sea-borne imports<sup>6</sup>.

As Findlay (2009) pointed out, the ASEAN Single Window program has been one of the important factors in encouraging free flow of goods among ASEAN countries; there are, however, difficulties in realizing the program since even the importance and urgency of national Single Windows are yet to be recognized in many countries. Based on the survey on implementation of the National Single Window, Dee (2010) found that there is little apparent variation in countries' participation in formal ASEAN efforts to improve customs clearance procedures. There are still only two countries which have fully electronic filing of customs documentation, and there is considerable variation in the extent to which countries have set targets and used information

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<sup>6</sup> They use "the Enabling-Trade Index" from the World Economic Forum which is composed of these four sub-indexes.

technology to automate decision-making in their clearance and release procedures.

### **2.3 Free flow of investment**

As the AEC Blueprint states, a free investment regime is the key to enhancing ASEAN's competitiveness in attracting FDI as well as intra-ASEAN investment. Building a business environment which is conducive to FDI without constraints is an important factor in making ASEAN more dynamic and competitive. ASEAN countries have made efforts to promote investment flows through the Framework Agreement on the ASEAN Investment Area (AIA) and the ASEAN Investment Guarantee Agreement (IGA), which aim to create a free and open investment regime, so as to attract investment. In addition, the ASEAN Comprehensive Investment Agreement (ACIA) was signed in 2009 and has promoted liberalization and the facilitation of investment more comprehensively, as well as making improvements to AIA/IGA provisions.

The ERIA research working group on economic integration toward an AEC has examined the actual condition of liberalization and the openness of investment flows into and within ASEAN countries by several measures since 2008. Urata and Ando (2009 and 2010) evaluated the restrictiveness of FDI rules by examining legal documents, such as FDI laws, in ASEAN countries. They constructed scores indicating restrictiveness in six areas for 21 sectors that include 88 ISIC two-digit sub-sectors for 10 member countries. They found that, among ASEAN countries, FDI policy regimes have wide variations in terms of their openness/restrictiveness. Screening and appraisal, and the movement of investors in particular, were found to be serious impediments in several countries. They pointed out that service sectors such as public administration, electricity, gas, steam and air conditioning supply, and information and communication are quite restricted by policies on restriction on the rights of establishment or market access, which are considered to be the most important policies regarding inward FDI. A fear of market domination by competitive foreign companies should be dealt with by appropriate competitive policy since the provision of greater market access to foreign companies would contribute to an improvement in technical efficiency.

Urata and Ando (2009 and 2010) also analyzed the FDI environments of ASEAN countries by using the information obtained from the survey conducted on Japanese firms operating in ASEAN

countries in order to assess the actual FDI climate in ASEAN countries<sup>7</sup>. They focused on two types of problems which Japanese firms face, namely, problems related to FDI liberalization and FDI facilitation. According to their analysis, there were various types of indirect barriers to FDI in ASEAN countries; in particular, the majority of these problems are related to FDI facilitation. More than half of the problems fall into two categories: institutional problems such as lack of transparency in policies and regulations on investment, and implementation problems such as complicated and/or delayed procedures with respect to investment-related regulations. They pointed out that although neither institutional nor implementation problems are necessarily discriminatory against foreign firms, they need to be resolved to promote investment activity in the region.

Compared with the survey results of 2008 by Urata and Ando (2009) and the 2005 survey provided by Urata et al. (2007), Urata and Ando (2010) concluded that ASEAN countries as a whole tend to have improved the explicit investment climate. The number of the incidents revealing problems preventing FDI declined in so far as FDI liberalization is concerned. However, they pointed out that direct barriers to FDI still remain; further efforts to reduce them by ASEAN countries are therefore necessary in order to attract FDI continuously. As the same time, the results of the survey demonstrated the necessity for reduction of indirect barriers to FDI or the promotion of FDI facilitation by showing the increasing number of issues identified in categories for FDI facilitation. Important areas for improvement include institutional problems, complicated and delayed procedures, underdeveloped infrastructure, inflexible labor market conditions and problems involving taxation regulations.

### **3. Key Findings in Each Study relating to Three Core Elements**

Based on studies on quantitative measures regarding key policy pillars in the ASEAN Economic Community Blueprint, conducted during the 2008-2009 fiscal years, we have continuously conducted analyses on the current status and progress of the free flow of goods, services and investment, in order to draw implications for realization of a competitive ASEAN single market and production base, which is an important target of the ASEAN Blueprint. Our studies aim to update and expand quantitative analysis and conduct in-depth analysis of trade

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<sup>7</sup> They conducted their analysis using information obtained from the survey conducted by the Japanese Machinery Center (JMC) for Trade and Investment. The respondents to the survey are its members which are involved in trade and FDI activities.



facilitation, service trade liberalization, FDI inflows and skilled labor mobility among ASEAN countries by sector and country. This chapter provides an overview of the main results of each study on the 2010 fiscal year.

### **3.1 Free Flow of Services**

With respect to service trade liberalization, Chapter 2 by Dee (2011) has mapped the actual policy space by conducting questionnaires in five key service sectors: medical, health, banking and insurance services, and accountancy. The first four of these sectors were also mapped in 2008, thus we can examine the extent of real reform since 2008 and assess whether this reform was generated by AFAS commitments.

#### **3.1.1 Updating banking and insurance**

Dee (2011) conducted a questionnaire survey covering barriers to trade in banking services which asked about actual policies affecting all four modes of supply, namely, cross-border services (mode 1), via the movement of consumers (mode 2), via commercial presence (mode 3) and the movement of individual bank personnel (mode 4). With regard to insurance services, the structure of the questionnaire is similar to that for banking, but it included some factors peculiar to insurance services, such as restrictions on reinsurance, limitations on whether insurance companies can hold assets overseas, and limitations on the form in which they must hold their assets.

She finds that six out of ten ASEAN countries have foreign equity limits that do not yet meet the ASEAN Blueprint's benchmarks for banking services; however seven ASEAN countries have already met the benchmark of the Blueprint. In addition, although the Blueprint is aimed unequivocally at liberalization of cross-border trade, barriers to this mode of service delivery in banking and insurance services are still prevalent in most countries. Liberalization of mode 1 and also mode 2 trades in financial services should proceed on a most-favored nation basis.

In the case of banking services, the recent reforms have made only a slight difference to the overall prevalence of restrictions for both domestic and foreign service providers. Dee points out that there is evidence that ASEAN countries are still using unnecessary regulatory restrictions instead of better targeted prudential requirements. Similarly, there has been very little reform of regulatory restrictions on trade in insurance services. Since insurance is a sector that is typically

under pressure during WTO accession negotiations, she points out that other ASEAN countries will need to accelerate their reform efforts if the ASEAN Blueprint targets are to be met.

### **3.1.2 Updating medical and health services**

The questionnaire covering barriers to trade in medical services, namely medical professional services via mode 3 and mode 4, and medical, dental and para-medical services via mode 1 and mode 2, used by Dee (2008) asks about policies affecting all of these modes of delivery. In addition, the questionnaire asks about potentially anti-competitive aspects of the regulatory regime, and it also reveals information about the transparency of the regulatory regime by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public. The questionnaire covering barriers to trade in health services used by Dee (2008) also asks about actual policies affecting all four modes of delivery. In addition, the questionnaire on trade in health services asks about potentially anti-competitive aspects of the domestic regulatory regime, and it also reveals information about the transparency of the regulatory regime. Using these questionnaires, Dee (2011) conducted the same survey of these sectors for all the ASEAN 10 countries, in order to highlight improvements and changes in these regulatory regimes.

She finds that three ASEAN countries still need to take definitive action to achieve the level of foreign equity participation targeted in the Blueprint, and barriers to the movement of individual professionals are still prevalent in the medical professional services sector. There is significant further scope to promote a single market for medical professional services by ensuring that existing regulation does not discriminate against foreign providers. In health services, she points out that non-discriminatory barriers to entry and operations have already been removed, so removing discrimination against foreign suppliers is the only remaining task. Progress here should prove less controversial than in the medical professions.

### **3.1.3 Accounting services**

Dee (2011) conducted a questionnaire survey covering barriers to trade in accounting services which asked whether there are restrictions on the entry of new professional service firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms, as well as restrictions on ownership. She finds that while six ASEAN countries

already meet the Blueprint's target for foreign equity participation in accountancy firms, restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence. She points out that development of a single market for this and other professional services depends crucially on the free mobility of individual professionals. Mutual recognition agreements can help, but the relaxation of other restrictions on entry and operation is also required.

### **3.2 Free Flow of Investment**

Turning to the FDI climate, Chapter 3 by Urata and Ando (2011) analyzes FDI firms' assessment of the investment climate using two types of firm survey on the FDI environment for foreign firms in the ASEAN countries. The goal is to gain a deeper understanding of the FDI policy environment of ASEAN countries, and to help those countries formulate FDI policy. The first type of survey looks at Japanese firms operating in ASEAN countries, and was conducted by JMC. As in their previous studies (Urata and Ando (2009, and 2010)), they classify the problems and obstacles faced by Japanese firms into ten categories, and group these ten categories into two problem areas, namely four categories related to FDI liberalization and six categories related to FDI facilitation. The second type of survey is the original survey conducted on mainly non-Japanese foreign firms in the ASEAN 10 countries. As with the survey on Japanese firms, they analyze the information on assessment of the FDI climate according to ten categories of problems faced by these firms.

With regard to the assessment of Japanese firms operating in ASEAN countries, they confirm the same findings as their previous studies. The major problems faced by Japanese firms are related to FDI facilitation and, in particular, the major problems are implementation problems such as complicated and/or delayed procedures with respect to investment-related regulations, and institutional problems such as lack of transparency in policies and regulations on investment. They point out that this result indicates that there is plenty of room to improve FDI facilitation in order to promote FDI in ASEAN countries. In addition, they compare the patterns of pervasiveness of identified problems with their previous studies (Urata, et al. (2005) and Urata and Ando (2009 and 2010)), and concludes that further efforts to improve the investment climate through various liberalization and facilitation measures are expected, since the number of issues in both FDI liberalization and facilitation has increased. They also point out that while ASEAN countries explicitly improved their investment climates, more and more indirect barriers to FDI emerged,

partly reflecting more active and deepening operations by Japanese firms in ASEAN countries than before, which are therefore more likely to face various problems through their operations.

Basing the assessment of FDI climate on their original survey on mainly non-Japanese foreign firms in ASEAN countries, they find that institutional problems, implementation problems, and underdeveloped infrastructure and shortage of human resources are more serious than others, similar to the results of the above mentioned survey on Japanese firms in ASEAN countries. Therefore, they again point out the necessity of improvement of FDI facilitation in order to promote FDI in ASEAN. Urata and Ando (2011) also present detailed findings by score and categories for individual ASEAN 10 countries. This will be useful not only for examining the variation of FDI climates among countries, but also in identifying specific problems for each country. Based on their results on the trend of FDI assessment by foreign firms in ASEAN countries, further studies are expected on the various types of obstacles facing FDI firms in each individual ASEAN country.

### **3.3 Free flow of skilled labor**

The AEC Blueprint covers only “free flows of skilled labor” and is silent on flows of unskilled/semi-skilled labor. However, as ASEAN countries move up the technology ladder, demand for skills will increase. In order to explore the framework of liberalization of skilled-labor mobility in ASEAN countries toward an AEC, Chapter 4 by Chia (2011) examines the provisions of movement of people and recognition of professional qualifications in the WTO and in ASEAN(+1) FTAs, as well as policy frameworks in ASEAN countries with MRAs.

ASEAN countries have been working to facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labor, to facilitate movement of professional service providers under Mutual Recognition Arrangements (MRAs), and to enhance cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region. Although MRAs appear to be the main tool for skilled labor mobility in ASEAN, Chia points out that negotiating for recognition is a complex and time-consuming process given the wide differences in development levels among ASEAN countries. Therefore, negotiating bilateral MRAs might be easier to achieve and implement. Towards implementation of the free flow of skilled labor under the AEC, ASEAN countries should try to remove, as far as possible, impediments to such flow. In addition, more information exchange and transparency and simplifying visa and employment permit applications would help.

Based on Chia's (2011) conceptual analysis on the free flow of skilled labor in ASEAN countries toward an AEC, further investigation on actual implementation of these agreements in each country, such as surveys on firms and professional persons, is expected.

### **3.4 Empirical analyses on free flow of goods among ASEAN countries.**

In order to investigate the actual situation of the free flow of goods from a different perspective, we conducted a comprehensive and extensive empirical analysis using bilateral trade data and various indexes on trade barriers in order to find significant impediments to trade in goods in ASEAN countries.

Chapter 5 by Otsuki (2011) develops measures of trade facilitation indicators, and provides empirical investigation by applying a gravity model with trade facilitation indicators including four areas of trade facilitation, namely port efficiency; customs environment; regulatory environment and service sector infrastructure, to estimate the effect of trade facilitation on trade flows of manufactured goods with particular focus on the ASEAN countries. He also conducts a simulation of the impact of trade facilitation on trade flows based on the empirical results.

From these analyses, he finds that ASEAN countries' performance in trade facilitation is diverse, from the world's best to the world's worst. He also points out that there is slight improvement in the ASEAN countries' score over time in port efficiency, and remarkable improvement in service sector infrastructure. Based on the estimation analysis, he finds that all four trade facilitation indices have positive effects on bilateral trade flows. In particular, the effect of regulatory environment is greatest. Using a simulation analysis, he finds that, taken together, all the areas in trade facilitation generate trade expansion of 99 billion US dollars in the ASEAN countries. About 75% of the gain comes from the region's own improvement, thus encouraging aggressive commitment to investment in trade facilitation. In addition, although efforts by ASEAN only marginally contribute to creation of intra-regional trade, they will have a much greater effect on trade expansion with the rest of the world.

## **4. Policy Implications**

### **4.1 Policy implications from research on the free flow of services**

- Medical services: Some ASEAN countries still need to take definitive action to achieve the target of allowing 70% foreign equity participation, and barriers to the movement of individual professionals are still prevalent. There is significant further scope to promote a single market for medical professional services by ensuring that existing regulations do not discriminate against foreign providers.
- Health service: Non-discriminatory barriers to entry and operations have already been removed, and removing discrimination against foreign suppliers is the only remaining task.
- Banking services: Six out of ten ASEAN countries have foreign equity limits that do not yet meet the ASEAN Blueprint's benchmark. Also, there is evidence that some countries are still using unnecessary restrictions in place of better-targeted prudential requirements. With the recent strengthening of prudential regulation, there is scope for further market opening.
- Accountancy services: Although six ASEAN countries already meet the Blueprint's targets for foreign equity participation, restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence. A single market for this and other professional services depends crucially on the free mobility of individual professionals. Mutual recognition agreements can help, but relaxation of other restrictions on entry and operation is also required.

#### **4.2 Policy implications from research on the free flow of goods**

- It has been proved that trade facilitation in this region contributes to long-term growth. Collective actions are needed, as well as a step-by step building block approach from core principles towards expanded policies.
- Capacity building in below-average countries is found to be particularly effective in promoting intra-ASEAN trade and its trade with the rest of the world.
- It is recommended that primary focus be on enhancing governance and the transparency of government policy, and particularly trade regulations, in order to realize the returns to their effort rapidly, and on fostering capacity building of the member countries that lag behind in terms of trade facilitation.

#### **4.3 Policy implications from research on the free flow of investment**

- In order to promote FDI policy liberalization, the ASEAN countries should use various existing frameworks, such as WTO/GATT's Trade Related Investment Measures agreement, bilateral investment treaties, free trade agreements, and other legal frameworks. In particular, ASEAN should use the ASEAN Comprehensive Investment Agreement.
- To overcome obstacles concerning FDI facilitation, the ASEAN countries should actively use various cooperation programs with developed countries to improve human resources engaged in the implementation and enforcement of FDI policies. Possible multilateral and regional sources of technical assistance in this area may be UNCTAD, the OECD, and ERIA.
- Monitoring of the achievements of FDI liberalization and facilitation has to be emphasized, in order to achieve a freer FDI environment. In this regard, a monitoring mechanism should be established by ASEAN, if it has not been established yet, or by ERIA.

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## CHAPTER 2

### Services Liberalization towards an ASEAN Economic Community

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*The purpose of this paper is to map the actual policy space in five key services sectors — medical services (medical, dental, and paramedical services), health services (hospital, medical laboratory and ambulance services), banking, insurance and accountancy. The first four of these were also mapped in 2008. Thus the paper can indicate the extent of real reform since 2008 in these four sectors and indicate whether this reform was generated by AFAS commitments or by other processes. In all five sectors, it can also give an indication of the extent of further real policy reform that will be needed in each ASEAN member country in order to achieve the liberalization targets laid out in the ASEAN Economic Community Blueprint.*

*There has been at least some progress since 2008 in all four of the sectors that are repeat-sampled. Some of this has been in direct response to AFAS commitments, but most has other proximate causes. Not surprisingly, some of the policy changes in banking and insurance services involved a tightening of prudential regulation in response to the global financial crisis. Cambodia and Vietnam have also relaxed interest rate controls. Lao PDR has implemented a package of reforms in the insurance sector, although at the same time, the government does not want to issue any new licences. In the fields of medical and health services, there have been significant reforms in Indonesia and the Philippines.*

*Nevertheless, in all five sectors there is a significant way to go in order to achieve the Blueprint targets.*

*In the medical professions, three ASEAN countries still need to take definitive action to achieve the target of allowing up to 70 per cent foreign equity participation, and barriers to*

*the movement of individual professionals are still prevalent. It may prove difficult for ASEAN countries to ensure that their non-discriminatory regulation is no more burdensome than necessary to ensure quality of service, since this will require agreement on minimum acceptable standards of quality in each country. Nevertheless, there is significant further scope to promote a single market for medical professional services by ensuring that existing regulation does not discriminate against foreign providers.*

*In health services, non-discriminatory barriers to entry and operations have already been removed, so removing discrimination against foreign suppliers is the only remaining task. Progress here should prove less controversial than in the medical professions.*

*In banking, six out of the ten ASEAN countries have foreign equity limits that do not yet meet the ASEAN Blueprint's benchmarks. More progress has been made in insurance — seven ASEAN countries already meet the benchmark. In both banking and insurance, barriers to cross-border trade are still prevalent, despite the fact that the Blueprint is unequivocal about the liberalization of this mode of service delivery. And in banking, there is evidence that some countries are still using unnecessary restrictions in place of better-targeted prudential requirements. With the recent strengthening of prudential regulation, there is scope for further market opening.*

*In accountancy, six ASEAN countries already meet the Blueprint's targets for foreign equity participation — they have no restrictions on foreign equity at all. But restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence. They contribute to marked discrimination against foreign services suppliers. A single market for this and other professional services depends crucially on the free mobility of individual professionals. Mutual recognition agreements can help, but the relaxation of other restrictions on entry and operation is also required.*

## **1. Services Targets in the ASEAN Economic Community**

The establishment of the ASEAN Economic Community is intended to deepen economic integration in East Asia as a whole. It envisages the free flow of services, investment, and skilled labour, along with the free flow of goods and the freer flow of capital.

To achieve that end, the ASEAN Economic Community Blueprint has laid out an ambitious reform agenda designed to establish an ASEAN single market. In services, it is intended that by 2015, there should be substantially no restriction to ASEAN services suppliers in providing services and in establishing companies across national borders within the region, subject to domestic regulations. For four priority sectors — air transport, healthcare, e-ASEAN and tourism — this target was to be achieved earlier, by 2010. For logistics services, the target is to be achieved by 2013.

The blueprint contains detail about the scheduled sequence of events by which these targets are to be achieved. Liberalization is to occur through consecutive rounds of negotiations, every two years. The number of sectors to be liberalized is to be expanded in each round. For each new group of sectors, the liberalization commitments are to include:

- no restrictions on service delivery via mode 1 (cross-border trade, where neither the producer nor the consumer moves, and trade often occurs via the internet) and mode 2 (consumption abroad, where the consumer moves temporarily to the country of the producer), except where there are bona fide regulatory reasons, such as public safety;
- gradual expansion of the foreign (ASEAN) equity participation permitted in each sector, to be no less than 70 per cent by 2010 in the four priority sectors, and to be no less than 51 per cent by 2010 and 70 per cent by 2015 in all other sectors; and
- progressive removal of other limitations on market access via mode 3 (commercial presence, where the producer sets up a permanent commercial presence in the country of the consumer) by 2015.

The negotiations were also to set the parameters of liberalization for limitations on national treatment (i.e. liberalization involving the removal of discrimination against foreign providers), liberalization of service delivery via mode 4 (the movement of natural persons, whereby the individual service provider moves temporarily to the country of the consumer)

and the liberalization of horizontal limitations on market access (i.e. limitations that apply across a range of services sectors, possibly affecting both domestic and foreign providers) by 2009. Commitments were then to be made according to these parameters from 2009.

The blueprint allows for some overall flexibilities in achieving these objectives, including via an ASEAN minus X formula (where countries that are ready to liberalize can proceed first and be joined by others later). In financial services, the process of liberalization should also take place with due respect for national policy objectives and the level of economic and financial sector development of the individual members.

Accordingly, the ASEAN countries have been negotiating successive rounds of commitments under the ASEAN Framework Agreement on Services (AFAS). They have finalized their seventh package of commitments and are currently working on the eighth. In some respects, the commitments in the seventh package go further than the broad targets outlined in the ASEAN Economic Community Blueprint, because they make specific commitments on national treatment and market access for each mode of service delivery in each sector. But in other respects, the seventh package of commitments still lags the targets outlined in the Blueprint. In particular, the limits on foreign equity participation in the seventh package are often less than would be required by the Blueprint in 2010.

In many ASEAN countries, the commitments made under the ASEAN Framework Agreement on Services have tended to lag behind actual practice. Where this has been the case, the commitments have generally not had any real effect on 'policies on the ground'. Nevertheless, reforms have still taken place gradually on a unilateral basis, or in some cases in response to the process of accession to the World Trade Organization (WTO). However, the gap between AFAS commitments and actual practice has been closing over time. Thus from now on, we would expect AFAS commitments to be a source of direct policy change on a more frequent basis. If the ASEAN Economic Blueprint targets are to be met, the commitments should also start to generate policy changes at an accelerating rate.

One key purpose of this paper is to map the actual policy space in four key services sectors — medical services (medical, dental, and paramedical services), health services (hospital, medical laboratory and ambulance services), banking services and insurance services. The medical and health sectors are priority sectors, which according to the Blueprint were to be liberalized by 2010.

The four sectors were also mapped in 2008 (Dee 2008). The current exercise can therefore provide two kinds of information:

- it can demonstrate the extent of real reform since 2008 in these four sectors, and indicate whether this reform was generated by AFAS commitments or by other processes — unilateral reform or commitments under the General Agreement on Trade in Services (GATS) under the WTO; and
- it can give an indication of the extent of further real policy reform that will be needed in each ASEAN member country in order to achieve the liberalization targets laid out in the ASEAN Economic Community Blueprint.

A second purpose of this paper is to map for the first time the actual policy space in a fifth sector — accounting services. This is one of a number of professional services that support all business activity, including those services in priority sectors. The current mapping also lays down a baseline against which future reforms in accounting can be measured.

The current exercise maps the actual policy space in each sector, not just with respect to foreign equity limits, but also with respect to some of the more common limitations on national treatment and market access by mode of service delivery in these sectors. The exercise also maps aspects of the regulatory regimes in each sector that may reduce contestability and performance, and may therefore continue to limit trade even when all trade barriers (more narrowly defined) are removed. It is important to monitor these regulatory restrictions as potential additional impediments to achieving the ASEAN Economic Community.

In the first instance, the current exercise maps existing policies on a most-favoured nation (MFN) basis, meaning that it maps policies without taking into account any real, binding preferences that have been granted to other ASEAN member countries. This basis for information collection is appropriate, for several reasons. First, many services trade barriers are difficult or impossible to liberalize on a preferential basis. Second, some services trade barriers would be unwise to liberalize on a preferential basis. Third, the wording of the Blueprint itself only suggests preferential liberalization in the case of foreign equity limits. Nevertheless, where AFAS commitments have led to recent liberalization on a

preferential basis in healthcare or financial services, these preferences are also recorded. When these and similar mapping exercises are repeated in future, they will similarly record any preferences that emerge.

The information on actual policies affecting trade in medical, health, banking, insurance and accounting services has been collected using five separate questionnaires. The questionnaire instruments for the first four sectors were documented in Dee (2008). The instrument used for accounting services is reproduced as Appendix 1 at the end of this paper. The questionnaires were completed for each ASEAN economy over the period September 2010 to March 2011 by researchers contracted by the Economic Research Institute for ASEAN and East Asia (ERIA). The researchers involved in undertaking or supervising the project in their home countries, and whose hard work is gratefully acknowledged, are as follows:

- Brunei — Shazali Sulaiman, KPMG Brunei;
- Cambodia — Chap Sotharith and Chiek Chansamphors, Cambodian Institute for Cooperation and Peace;
- Indonesia — Raymond Atje, Ira Titiheruw and Pratiwi Kartika, Centre for Strategic and International Studies;
- Lao PDR — Leeber Leebouapao and Somnak Yawdhacksa, National Economic Research Institute;
- Malaysia — Zakariah Abdul Rashid, Quah Boon Huat, Samirul Ariff Bin Othman, Musalmah Binti Johan, Elayne Yee and K. K. Foong, Malaysian Institute of Economic Research;
- Myanmar — Kan Zaw, Kyaw Min Htun, Sanda Oo, Thapye Nyo, Nu Nu Lwin and Le Le Wai, Yangon Institute of Economics;
- Philippines — Rafaelita M. Aldaba, Kathrina G. Gonzales, Jo-Ann J. Latuja, Rufo R. Mendoza, Pinky S. Padronia and Joseph T. Yap, Philippine Institute of Development Studies;

- Singapore — Hank Lim and Bernard Aw, Singapore Institute of International Affairs;
- Thailand — Wisarn Pupphavesa Viroj Naranong, Punpreecha Bhuthong and Songporn Ketthong, Thailand Development Research Institute, and
- Vietnam — Vo Tri Thanh, Trinh Quang Long, Tran Binh Minh and Nguen Cong Manh, Central Institute of Economic Management.

The survey responses, along with any accompanying explanatory notes that were provided by the survey respondents, have been compiled in five spreadsheets, one for each survey. The spreadsheets are an integral part of the output of this project. They make transparent and publicly available both the detailed qualitative information contained in the survey responses, as well as the methods by which summary indexes have been generated. It is anticipated that scrutiny of this detailed information by stakeholders in the ASEAN region will lead to greater general understanding of the policies and practices affecting healthcare, finance and accounting in each economy.

It should be stressed, however, that the relative rankings of countries in the results should be regarded as indicative, rather than definitive. Despite efforts to develop a common understanding about the survey questions among the respondents, there is inevitable variation in the ways in which questions have been interpreted, and in the depth and quality of responses. Nevertheless, these differences have been narrowed in the process of repeat-sampling healthcare and finance.

The next section gives a brief qualitative overview of recent progress towards an ASEAN Economic Community in medical, health, banking and insurance services. The following sections summarize the survey results for each of the sectors under study. Each section describes the survey instrument and the survey results, both in terms of recent changes and future reform requirements, and outlines the main findings on achieving the services targets of the ASEAN Economic Community Blueprint.

## **2. Progress in Healthcare and Financial Services during 2008-10**

A brief summary of the policy changes affecting trade in medical, health, banking and insurance services in ASEAN countries during 2008-10 is shown in Table 1. It is based on longer country reports in Appendix 2 at the end of this paper. The table shows that there has been at least some progress in all four sectors.



**Table 1. Progress in Healthcare and Financial Services During 2008-10**

	<b>Brunei</b>	<b>Cambodia</b>	<b>Indonesia</b>	<b>Lao PDR</b>	<b>Malaysia</b>
<b>BANKING</b>					
<i>Recent</i>	Since the Ministry of Finance issued clarification on lending in 2009, foreign bank branches can only lend against local capital.	An amendment was made in September 2009 to liberalize interest rate setting.	None	None	In Nov 2010, the central bank announced several measures to curb property speculation as well as to address the rising household debt problem. Among these, the monetary regulator imposed a maximum loan-to-value (LTV) ratio of 70%, which will be applicable to the third house financing facility taken out by a borrower.
<i>Prospective</i>	With effect from 1 January 2011, the Monetary Authority Brunei Darussalam ("MABD") will be established as a Statutory Body to regulate the banking, finance and insurance sector, independent of the Ministry of Finance.	None	None	None	The Central Bank of Malaysia is currently preparing for a 'new' Financial Sector Masterplan, which would further liberalise the banking and securities markets.
<i>Notes</i>	None	Both the minimum capital requirement and the reserve requirement were changed in 2009 in response to the global financial crisis.	Changes to banking industry regulation concerned a few prudential measures.	None	None

<b>INSURANCE</b>					
<i>Recent</i>	None	None	None	New Law on Investment Promotion 2009 means that 100% foreign ownership is allowed, the minimum foreign equity in joint ventures has been reduced from 30% to 10%, and the term of licenses has been extended from 50 to 99 years. However, the government does not want to issue new licenses because of the small size of the market.	None
<i>Prospective</i>	None	None	None	The Law on Insurance is expected to be amended to be more appropriate to the current situation of a more liberalized and open economy to the world and regional integration. In the coming years, the scope of the compulsory insurance-based social security system will be extended.	None
<i>Notes</i>	None	None	The only change in insurance regulation during 2008-2010 concerned prudential measures.	None	None

<b>MEDICAL PROFESSIONS</b>					
<i>Recent</i>	None	New mutual recognition agreement signed with ASEAN countries in 2009.	Law no. 44/2009 covers medical professionals for hospitals. Hospitals can employ foreign medical professionals, but the employment must be intended for the purpose of knowledge and technology transfers - this rules out foreigners in unskilled positions. Permenkes no. 028 issued on 4 January 2011 says clinics cannot hire foreign healthcare workers. Foreign equity limits for medical and dental clinics (specialist only) have been raised from 65% to 67%. Those for nursing have been raised from 49% to 51% in Medan and Surabaya, and from zero to 49% in the rest of Indonesia.	None	None
<i>Prospective</i>	None	None	None	None	The Malaysian National Healthcare Financing Scheme (similar to Australia's Medicare system) may finally be implemented. The government is keen to push 'telemedicine', and has also been promoting 'medical tourism'. It has been promoting the recruitment of foreign doctors and specialists and establishing new medical colleges and twinning programs to raise the ratio of doctors per head of population.

<b>HEALTH SERVICES</b>					
<i>Recent</i>	None	None	Law no. 36/2009 on health requires all foreign healthcare facilities to obtain operating license. Law no 44/2009 on hospitals regulates their establishment and management and introduces mandatory accreditation every 3 years. Foreign equity limits for hospitals and medical laboratories have been raised from 65% to 67%. The minimum size of foreign hospitals has been lowered from 300 to 200 beds for ASEAN investors, though the hospitals still have to be specialist. Foreign medical professionals can be employed in hospitals and medical laboratories, but this must be intended for the purpose of knowledge and technology transfer - this now rules out foreigners in unskilled positions. Universal service obligations have been spelt out in law.	None	None
<i>Prospective</i>	None	None	None	None	None
<b>HORIZONTAL</b>					
<i>Recent</i>	None	None	None	None	None
<i>Prospective</i>	None	None	None	None	None

**Table 1. Progress in Healthcare and Financial Services During 2008-10 (Continued)**

	<b>Myanmar</b>	<b>Philippines</b>	<b>Singapore</b>	<b>Thailand</b>	<b>Vietnam</b>
<b>BANKING</b>					
<i>Recent</i>	None	None	None	The Bank of Thailand has permitted commercial banks to employ personnel of ASEAN nationality with unlimited numbers in any positions, but foreign institutions face consideration on a case-by-case basis. This policy change implements commitments under AFAS. A foreign bank with branches in Thailand is allowed to establish up to 2 additional branches by the approval of the Bank of Thailand. This implements commitments under the GATS.	In mid 2010, the Government removed the control over the lending interest rate (commercial banks could arrange the lending interest rate with customers), but the State Bank used some administrative procedures to impose the borrowing rate below 14% (the rate that commercial banks in the Vietnam banking association have committed). Circular 09 sets out stricter requirements for shareholders, especially founding shareholders, who wish to establish a joint stock commercial bank, and new longer timeframes of the application process for a licence. Prior to 2010, foreign bank branches could lend against the parent capital but from 2010, branches have to lend against their own chartered capital, not their parent capital.

<i>Prospective</i>	None	None	None	None	Under the Law on Credit Institutions which will take effect on 1 January 2011, the prime interest rate structure is abolished. The prime rate was eliminated as unreflective of the supply-demand relationship on the market and was viewed as interventionist by financial markets.
<i>Notes</i>	None	None	None	None	Certain prudential requirements have been raised, including the minimum capital adequacy ratio.

<b>INSURANCE</b>					
<i>Recent</i>	Myanma Insurance can supply insurance services including quasi-medical insurance for expatriates going abroad. In 2008 quasi-medical insurance did not exist.	None	None	None	None
<i>Prospective</i>	None	None	None	None	The draft amendment and supplement to the Law on Insurance Business would recognize the cross-border provision of insurance services by foreign insurance organizations and individuals. It would also recognize the right to set up branches of foreign non-life insurance enterprises in Vietnam. It would also abolish ceding percentages. All are in accordance with Vietnam's WTO commitments. It would expand the range of recognised insurance products and insurance enterprises.
<i>Notes</i>	None	None	None	None	None

<b>MEDICAL PROFESSIONS</b>					
<i>Recent</i>	Same as for health services.	The process for issuing employment permits to foreign nationals has been extended from 1 to 3 working days. Otherwise, the lack of progress in liberalization stems from the constitutional provision that the practice of all professions in the Philippines shall be limited to Filipino citizens.	None	None	None
<i>Prospective</i>	None	None	None	None	None



<b>HEALTH SERVICES</b>					
<i>Recent</i>	Some easing of cross-border trade. Some joint venture hospitals have been established since 2008.	A major policy change is the suspension for one year of the need to obtain a Certificate of Need (CON), the only restriction on new entry of private hospitals. The DOH Administrative Order No. 2007-0027 created the improved quality assurance and monitoring program for clinical laboratories in the Philippines and rendered the DOH-BHFS Circular No. 3 Series of 2003, which suspends issuance of permit to new entry of laboratories, obsolete. The process for issuing employment permits to foreign nationals has been extended from 1 to 3 working days. In 2009, the Health and Wellness Alliance of the Philippines (HEAL Philippines) was established to organize industry and government stakeholders involved with global healthcare and wellness services, tourism and retirement.	None	None	The Health Insurance Law took effect on 1 July 2009, aiming to ease the load on provincial and central hospitals, and expand policyholder categories to include drug addicts and people with congenital defects who were previously excluded.
<i>Prospective</i>	None	There are emerging demands for the amendment of the Republic Act 4226 or the Hospital Licensure Act to expand the coverage of the law to include health facilities other than hospitals.	None	None	None

<b>HORIZONTAL</b>					
<i>Recent</i>	None	None	None	One distinctive change is the replacement of the Working of Alien Act 1978 by the new act, Working of Alien Act 2008. Among other things, it extends the validity period of the work permit from not exceeding one year to not exceeding two years. However, non-immigrants visas are normally granted for one year.	None
<i>Prospective</i>	None	None	None	None	None

Not surprisingly, some of the policy changes in banking and insurance services involved a tightening of prudential regulation in response to the global financial crisis. Prudential regulation has a legitimate purpose of ensuring systemic stability. It is generally not regarded as a barrier to trade in financial services, and for this reason it is carved out of the GATS. Recent prudential reforms are recorded under ‘Notes’ in Table 1, rather than as recent reforms of trade barriers. Nevertheless, Vietnam appears to have instituted stricter licensing requirements for banks to an extent that goes beyond purely prudential oversight. Within ASEAN, this is an isolated example of possible overreaction to the global financial crisis. In addition, both Brunei and Vietnam have required (or clarified) that foreign bank branches must lend against their local capital rather than their parent capital. As explained later, this is a ‘grey area’ measure — while it further constrains the activities of foreign bank branches, it also gives the local prudential authorities some control over the capital reserve requirements of foreign branches, rather than having to rely on the prudential oversight of the authorities in the branches’ home countries.

The table also shows the extent to which countries in the region have instituted genuine trade reforms in response to commitments made under AFAS or the GATS. In banking, both Thailand and Vietnam have instituted multilateral reforms in line with commitments under the GATS, while Thailand has also relaxed restrictions on hiring foreign personnel on a preferential basis under its AFAS commitments. In insurance, Vietnam expects to implement a package of reforms in the near future in line with its WTO commitments. In health services, Indonesia has relaxed the minimum bed size for foreign-invested hospitals on a preferential basis. In medical professional services, Cambodia has implemented a mutual recognition agreement with its ASEAN neighbours. In all other respects, the reforms recorded in Table 1 are unilateral and non-preferential, or if they have a regional dimension, it is because of geographical constraints rather than preferential commitments.

Some of the more notable unilateral reform efforts are the relaxations of interest rate controls in Cambodia and Vietnam. Malaysia also awaits a new Financial Master Plan that will further liberalize the banking and securities markets in the near future. Lao PDR has implemented a package of reforms in the insurance sector, although at the same time, the government does not want to issue any new licences. While this moratorium is explained because of the small market size, it also has the potential to

offer protection to the existing government-foreign joint ventures. In Myanmar there has been a slight expansion in the range of insurance products on offer, although there has been no weakening of the monopoly position of Myanma Insurance.

In the fields of medical and health services, there have been significant reforms in Indonesia and the Philippines, and a slight easing in Myanmar. In Indonesia, new legislation has been introduced to fill the significant gaps in the regulatory framework that were noted in 2008 (Dee 2008). In a few cases, the introduction of explicit legislative guidelines has the potential to limit practices (such as the hiring of foreigners into relatively unskilled positions) that might have occurred otherwise. In most cases, however, the legislation will have somewhat reduced the scope for bureaucratic discretion. It also tightens the quality assurance framework in Indonesia by making the hospital accreditation process mandatory every three years. Finally, the Indonesian legislative reforms have also been accompanied by a slight easing of foreign equity limits. In the Philippines, there has been a lifting of the regulatory restrictions on the entry of new hospitals and medical laboratories. In Myanmar there has been a growth in cross-border trade in medical and health services and some limited evidence of foreign investment occurring.

Thus there is evidence of worthwhile reform efforts in all four of the services industries that have been repeat-sampled since 2008. A key question is how far these reforms take ASEAN towards reaching its end goal of a single market for services. That question can be addressed by comparing the extent of reform with the level of restrictive regulation that remains in place. That is the purpose of the remaining sections in this paper.

### **3. Medical Professional Services**

#### **3.1. A scorecard for services liberalization — medical services**

Healthcare services can be provided by individual medical professionals, or in a broader institutional setting. Accordingly, the Central Product Classification, which is used to classify the different services covered by the GATS, recognizes two types of healthcare services:

- The services of medical professionals, including medical and dental professionals and midwives, nurses, physiotherapists and paramedical personnel;
- Health services, including hospital services (including psychiatric hospitals), and the services of medical laboratories, ambulances, and residential health care other than hospitals.

This section covers the first of these, while the next section covers the second.

Medical professional services can be traded via mode 3 (commercial presence, in the form of medical clinics), and mode 4 (the movement of either individual professionals or the employees of foreign-located professional services firms). Medical, dental and para-medical services are sometimes provided via mode 1 (e.g. remote diagnostic services) and mode 2 (consumption abroad).

The questionnaire covering barriers to trade in medical services is reproduced in Dee (2008). It asks about actual policies affecting all these modes of delivery. Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new professional services firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms (e.g. whether they are prohibited from incorporating, whether foreign entrants are required to establish in a joint venture). It also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in professional service firms, or whether there are restrictions on medical service firms being owned by people who are not licensed professionals.

Under mode 4, the questionnaire asks whether there are restrictions on the entry into professional practice of new individual professionals, either domestic, foreign or both, and asks about any nationality, citizenship or residency requirements for individual professionals to practice. The questionnaire also asks about restrictions on the ability of individual professionals to leave their home country, as this can also affect mode 4 trade. Finally, the questionnaire asks about limitations on the movement of intra-corporate transferees (i.e. the employees of professional service firms), which might take the form of nationality or residency requirements on certain classes of directors, executives, managers or employees, or a requirement for labour

market testing to establish that there is no qualified domestic person available for a position before a foreign person can be hired.

Under modes 1 and 2, the questionnaire asks whether foreign medical professionals located abroad can provide services cross-border to patients in the home country (e.g. via telemedicine), and whether domestic residents can purchase medical services while abroad.

In addition, the questionnaire recognizes that certain aspects of the domestic regulatory regime could have a detrimental effect on trade in medical services by unduly restricting the ability of domestic and/or foreign professionals to provide services. A key restriction here is limitations on the recognition of foreign qualifications, which can limit the ability of foreign professionals to obtain a licence to practice. Accordingly, the questionnaire asks about the requirements that foreign professionals need to undergo to obtain a licence to practice, including whether they need to retrain or sit a local examination, and whether their foreign qualifications are automatically accepted or are subject to a case-by-case assessment.

The questionnaire also asks about other potentially anti-competitive aspects of the regulatory regime, including whether there are activities reserved by law to the profession, whether there are restrictions on advertising or fee setting, whether there are restrictions on the ability of foreign service providers to access government subsidies (where these are available), either for themselves or for their clients, whether there are limitations on foreign professionals participating in government contracts, and whether there are requirements for foreign invested firms to train local staff (which could raise their costs).

Finally, the questionnaire reveals information about the transparency of the regulatory regime, by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public. For information purposes only, it also asks for details about the regulator and about the licensing criteria used.

As noted earlier, the detailed responses (including comments) are recorded in separate spreadsheets. For ease of summarizing the survey responses, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-

one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of medical professionals, partial scores are assigned as follows. For private, foreign and non-professional equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limit is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75. When scoring restrictions on cross-border trade, limitations on either the form of services or the groups to which they can be offered are scored at 0.33 each. When scoring restrictions on consumption abroad, limitations in the form of quotas or authorization requirements are scored at 0.5. When scoring the requirements for foreign professionals to obtain a local licence, retraining is scored as the most restrictive (1.0), having to pass an examination is scored as the next most restrictive (0.75), while case-by-case assessment, having to pass an aptitude test or having to have local practice is scored at 0.5. When scoring restrictions on advertising, ‘soft’ restrictions are scored at 0.5.

To obtain a restrictiveness score for a broad restriction category, such as a score for all the restrictions affecting a particular mode of service delivery, the zero-one scores for each of the restrictions affecting that mode have been simply added together. This means that each of the different restrictions affecting that mode have been given equal weight — no attempt has been made to make an assessment of the relative severity of the different restrictions. Accordingly, the overall restrictiveness scores for broad categories of restrictions reflect the frequency, but not necessarily the severity, of individual restrictions. To normalize the scores for a group, they have then been divided by the maximum possible restrictiveness score for that group. This gives a final restrictiveness score expressed as a percentage, where a score of 75 per cent means that three-quarters of the restrictions that could potentially apply to that category of trade do in fact apply.

### **3.2. Scorecard results for medical professional services**

Most of the survey questions are answered separately for three different types of professionals — medical, dental, and para-medical (nurses, midwives, etc.). The detailed scoring for medical professionals is shown in Table 2. As will be seen from Table 3, the responses for dental and para-medical professions are similar to those for medical professions, and detailed scoring is available by request from the author.



**Table 2. Restrictions on trade in medical services (index 0-1)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>A. Market Access – commercial presence (mode 3) – Professional service firms</i>											
1 Are there restrictions on new entry - by any firm?	0	0	0	0	0	0	0	0	0	0	0
By foreign firms?	0	0	1	1	0	1	0	0	0	0	0.3
3 Are firms prohibited from incorporating?	0	0	0	0	0	0	0	0	0	0	0
4 Are foreign firms prohibited from est. in a joint venture?	0	0	0	0	0	0	0	0	0	0	0
Are they required to establish in a JV?	0	0	1	1	1	1	0	0	0	0	0.4
<i>B. Market Access – Inward movement of natural persons (mode 4) – Individual professionals</i>											
5 Are there restrictions on new entry - by any individual?	0	0	0	0	0	0	0	0	0	0	0
Entry by foreign individuals	1	0	0	0	0	1	1	0	0	0	0.3
7 Is there a nationality or citizenship requirement?	1	0	0	0	1	1	1	0	1	0	0.5
8 Is there a residency or local presence requirement?	1	1	1	1	1	1	1	0	1	0	0.8
<i>C. Market Access – Outward movement of natural persons (mode 4) – Individual professionals</i>											
9 Are there restrictions on outward movement?	0	1	0	0	0	1	1	0	0	1	0.4
10 Are there other restrictions on exit?	0	0	0	0	1	0	0	0	0	0	0.1
<i>D. Market Access – Inward movement of natural persons (mode 4) – Intra-corporate transferees</i>											
11 Are there requirements to have nationals/residents?	1	1	1	0	1	1	1	0	1	1	0.8
12 Are there restrictions on employing locally trained professionals in foreign firms?	0	0	0	0	1	1	0	0	0	0	0.2
13 Are intra-corporate transferees subject to labour market tests?	0	1	1	1	1	1	1	0	0	0	0.6
14 Are managerial personnel required to be locally licensed as a professional?	0	1	1	1	1	1	1	0	0	1	0.7
15 Are managerial personnel required to be locally domiciled?	0	1	1	1	1	1	0	0	0	1	0.6

**Table 2. Restrictions on trade in medical services (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>E. Cross-border trade (Mode 1)</i>											
16 Are professionals located abroad able to provide services cross-border to patients in your country (eg tele-medicine)?	0.67	0	0	0.00	0.33	0.67	0	0	0	0	0.17
<i>F. Consumption abroad (Mode 2)</i>											
17 Can domestic residents purchase medical services while abroad?	0	0	0	0	0	0.5	0	0	0	0	0.1
<i>G. Ownership</i>											
18 Is private ownership allowed - existing operators?	0	0	0	0	0	0	0	0	0	0	0.0
New entrants	0	0	0	0	0	0	0	0	0	0	0.0
19 Is foreign ownership allowed - existing operators?	0.75	0	0.35	0.75	0.3	1	0.75	0	0.51	0	0.4
New entrants	0.75	0	0.33	0.75	0.3	1	0.75	0	0.51	0	0.4
20 Are non-professional investors allowed an equity stake in professional service firms - existing operators?	0	0.01	0	0.01	0.01	0	0	0	0	0	0.0
New entrants	0	0.01	0	0.01	0.01	0	0	0	0	0	0.0
<i>H. Regulation – licensing</i>											
24 What are the requirements for foreign individual professionals to be licensed to practice locally	0.5	0	1	0.5	0.5	0.5	0.5	0.5	0.75	0	0.5
25 Are there any other requirements for the licensing and accreditation of foreign individual professionals?	0	0	1	0	0	1	0	0	1	1	0.4

**Table 2. Restrictions on trade in medical services (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>I. Regulation – restrictions on operation</i>											
29 Are there activities reserved by law to the profession?	1	1	1	0	1	1	1	0	0	0	0.6
30 Are there restrictions on the profession having a partnership or association with other professions?	0	0	0	0	0	0	0	0	0	0	0
31 Are there restrictions on the profession advertising, marketing or soliciting?	0	1	1	0	0.5	0.5	1	1	0	0	0.5
32 Are there restrictions on fee setting?	0	0	0	0	1	0	0	0	0	0	0.1
33 Is there a requirement for foreign-invested firms to train local staff?	1	1	0	1	1	1	0	0	0	0	0.5
34 Are there restrictions on the participation of foreign professionals or firms in government contracts?	0	0	0	0	0	1	1	0	0	0	0.2
35 Is there a requirement to have the work of a foreign professional approved by a locally trained/licensed professional?	1	0	0	0	1	1	0	0	0	0	0.3
39 Are foreign providers restricted in their access to producer subsidies?	0	0	0	0	1	1	0	0	0	0	0.2
Are their clients restricted in their access to consumer subsidies?	0	0	0	0	1	1	1	0	0	0	0.3
36 Which of the following are consulted in advance of regulatory changes (eg licensing requirements)?											
Service providers	1	1	1	0	1	0	1	1	0	1	0.7
Professional bodies	1	1	1	1	1	1	1	1	1	1	1
Users	0	1	0	0	0	0	0	1	0	0	0.2
Other	0	0	0	0	0	0	1	0	0	0	0.1
37 How are laws and regulatory decisions made public?											
Government website	0	0	1	0	1	0	1	1	0	1	0.5
Professional body's website	0	0	1	0	0	0	1	1	1	1	0.5
Official gazette	1	1	1	1	1	1	1	1	1	1	1
Other	0	0	0	1	0	0	1	0	0	1	0.3

Summary restrictiveness scores (obtained as described above) are shown in Table 3 for each of the medical professions under consideration, while a summary of the restrictions affecting domestic and foreign suppliers (firms or individual professionals) separately is shown, for medical professionals only, in Table 4.

**Table 3. Restrictions on trade in medical services by profession and by mode of delivery (per cent)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
Consumption abroad (Mode 2)	0	0	0	0	0	50	0	0	0	0	5
<b>MEDICAL</b>											
Commercial presence (mode 3) – Professional service firms	0	0	40	40	20	40	0	0	0	0	14
Inward movement of natural persons (mode 4) – Individual professionals	75	25	25	25	50	75	75	0	50	0	40
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	50	0	0	50	25
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	80	60	100	100	60	0	20	60	58
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	25	0	11	25	10	33	25	0	17	0	15
Regulation – licensing	25	0	100	25	25	75	25	25	88	50	44
Regulation – restrictions on operation	33	33	22	11	72	72	44	11	0	0	30
<b>TOTAL</b>	<b>28</b>	<b>27</b>	<b>34</b>	<b>27</b>	<b>50</b>	<b>64</b>	<b>38</b>	<b>4</b>	<b>17</b>	<b>15</b>	<b>30</b>
Transparency	38	50	63	38	50	25	88	75	38	75	54
<b>DENTAL</b>											
Commercial presence (mode 3) – Professional service firms	0	0	40	40	20	40	0	0	0	0	14
Inward movement of natural persons (mode 4) – Individual professionals	75	25	25	25	50	75	75	0	50	0	40
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	0	0	0	50	20
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	80	60	100	100	60	0	20	60	58
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	25	0	11	25	10	33	25	0	17	0	15
Regulation – licensing	25	0	100	25	25	75	25	25	88	50	44
Regulation – restrictions on operation	33	33	22	11	72	72	22	11	0	0	28
<b>TOTAL</b>	<b>28</b>	<b>27</b>	<b>34</b>	<b>27</b>	<b>50</b>	<b>64</b>	<b>29</b>	<b>4</b>	<b>17</b>	<b>15</b>	<b>29</b>
Transparency	38	50	63	38	50	25	88	75	38	75	54

Source: Author.

**Table 3. Restrictions on trade in medical services by profession and by mode of delivery (per cent) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<b>PARA-MEDICAL</b>											
Commercial presence (mode 3) – Professional service firms	0	0	40	40	20	40	0	0	0	0	14
Inward movement of natural persons (mode 4) – Individual professionals	75	25	25	25	50	75	75	0	50	0	40
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	0	0	0	50	20
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	40	60	100	100	60	0	20	60	54
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	25	0	25	25	10	33	25	0	17	0	16
Regulation – licensing	25	0	0	25	25	75	25	0	88	50	31
Regulation – restrictions on operation	33	33	11	11	72	72	22	0	11	0	27
<b>TOTAL</b>	<b>28</b>	<b>27</b>	<b>22</b>	<b>27</b>	<b>50</b>	<b>64</b>	<b>29</b>	<b>0</b>	<b>20</b>	<b>15</b>	<b>28</b>
Transparency	38	50	63	38	50	25	88	100	38	75	56

Source: Author.

**Table 4. Restrictions on trade in medical services by ownership category and mode of delivery (per cent)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<b>DOMESTIC MEDICAL</b>											
Commercial presence (mode 3) – Professional service firms	0	0	0	0	0	0	0	0	0	0	0
Inward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	50	0	0	50	25
Ownership	0	0	0	0	0	0	0	0	0	0	0
Regulation – restrictions on operation	25	50	50	0	63	38	50	25	0	0	30
<b>TOTAL</b>	<b>5</b>	<b>21</b>	<b>11</b>	<b>0</b>	<b>24</b>	<b>18</b>	<b>21</b>	<b>5</b>	<b>0</b>	<b>11</b>	<b>12</b>
<b>FOREIGN MEDICAL</b>											
Commercial presence (mode 3) – Professional service firms	0	0	57	57	29	57	0	0	0	0	20
Inward movement of natural persons (mode 4) – Individual professionals	100	33	33	33	67	100	100	0	67	0	53
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	80	60	100	100	60	0	20	60	58
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	50	0	23	50	20	67	50	0	34	0	29
Regulation – licensing	25	0	100	25	25	75	25	25	88	50	44
Regulation – restrictions on operation	36	29	14	14	75	82	43	7	0	0	30
<b>TOTAL</b>	<b>37</b>	<b>29</b>	<b>44</b>	<b>37</b>	<b>60</b>	<b>81</b>	<b>45</b>	<b>4</b>	<b>24</b>	<b>16</b>	<b>38</b>

Source: Author.

It is possible to use the information in these tables to assess the extent to which individual countries have reached the explicit targets of the ASEAN Economic Community Blueprint. However, in the case of medical services (in this section) and health services (in the next), a major caveat is in order. First, these are two areas where governments have a legitimate reason to regulate to ensure the quality of the service. Second, they also tend to do so ‘before the event’ by regulating the quality of inputs into service provision (the quality of medical professionals, the quality of hospital facilities), rather than ‘after the event’ by monitoring the quality of service outputs. Finally, there tends to be what economists call a ‘targets/instruments’ problem — the same restrictions on entry that are used to ensure quality can also be used to protect incumbent service providers from domestic or foreign competition. Therefore, it may not be possible to promote a single market by removing absolutely all barriers to entry without jeopardizing service standards. Accordingly, some middle ground needs to be found. As argued in Dee (2008), this requires ASEAN member countries to define what they regard as *minimum acceptable* service standards, and to allow the mobility of any medical professional service providers who meet those standards. It also requires that regulatory structures are no more burdensome than necessary to ensure this minimum acceptable quality of the service. In most cases, this means that they should operate on a non-discriminatory basis.

Tables 3 and 4 show that modes 1 and 2 are already relatively liberal. Consumption abroad involves consumption beyond the jurisdiction of domestic quality control processes, so quality control rationales for regulatory restrictions do not apply. Furthermore, most governments recognize that it is impossible in practice to control what their citizens purchase while abroad. It would be a relatively low cost exercise for ASEAN countries to commit formally to keeping this mode of trade free of government restrictions, and on a most-favoured nation basis (i.e. for trade with all countries, not just with ASEAN partners).

Mode 1 trade in medical services is less liberal than mode 2 trade. Some countries restrict mode 1 trade to certain procedures, but this runs the risk of locking out trade in new procedures or services that have yet to be developed. To the extent that there are quality concerns, the development of ASEAN minimum acceptable standards would facilitate the removal of more burdensome barriers to trade among ASEAN members. But some of the most competitive suppliers of mode 1 diagnostic

and medical laboratory services are in places like Hong Kong — outside of the ASEAN region. Hence, to maximize the benefits of mode 1 liberalization, it should also be on a most-favoured nation basis.

A further liberalization target in the Blueprint is liberalization of limits on foreign equity participation. Four ASEAN countries already meet or exceed the Blueprint's foreign equity target of 70 per cent (where a score lower than 0.3 against question 19 in Table 2 indicates that the country allows the foreign ownership share to reach 70 per cent or higher). These are Cambodia, Malaysia, Singapore and Vietnam. In addition, Indonesia now comes very close to meeting the target. Two additional countries probably meet the target. Brunei has a requirement that at least one of the owners of a medical service firm must be local. Whether this meets a 70 per cent foreign equity target depends on the size of the firm. In the Philippines, professional service firms may be foreign owned as long as the service providers are Filipino citizens. Therefore, there are technically no restrictions on the equity participation of foreigners in corporations. However, for general partnerships and single proprietorships for which the owners are the services providers, foreign ownership is not allowed because of the Constitutional provision restricting the practice of professions to citizens.

Thus it seems that a majority of ASEAN countries already meet, or probably meet, the Blueprint's foreign equity target. This reflects the fact that ASEAN is already relatively liberal in healthcare services, and foreign equity limits have typically been among the first targets of further services trade liberalization initiatives. However, these targets were to be achieved by 2010. Thus three ASEAN members still need to take definitive action. In Lao PDR there is still a potential disconnect between its relatively liberal investment law and its more opaque sectoral regulation. Thailand still requires government approval for majority foreign ownership. And Myanmar has yet to allow its legislation permitting foreign ownership to be reflected in actual practice.

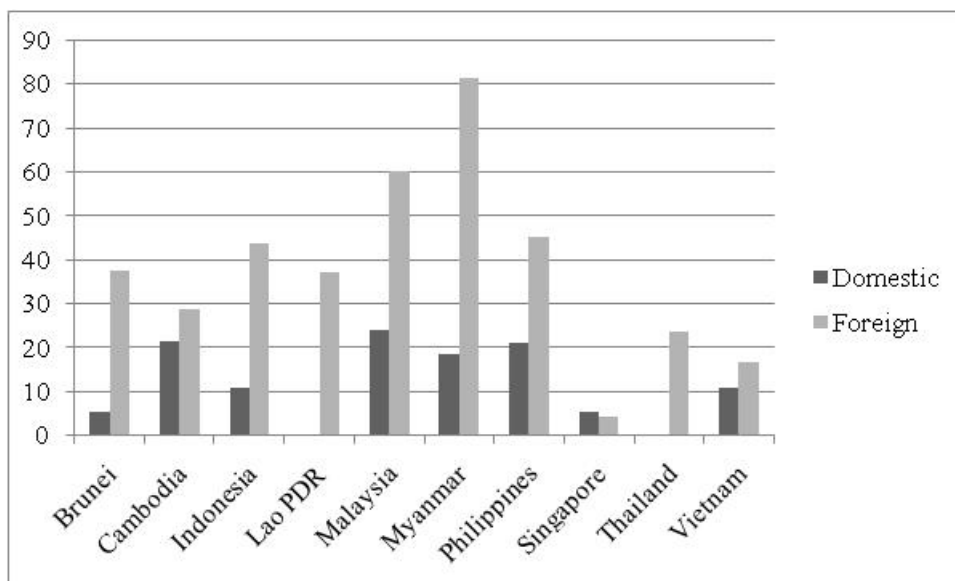
But Tables 3 and 4 also indicate that the greatest prevalence of restrictions is on Mode 4 trade, with restrictions affecting the inward movement of both individual professionals and intra-corporate transferees. Domestic regulatory regimes also impose a relatively high frequency of restrictions. This is particularly significant, as



some of these restrictions also affect domestic services suppliers, and may therefore doubly penalize economic performance in the health sector. However, some of these have been justified on the grounds of quality assurance. At minimum, ASEAN countries should remove the discrimination against foreign services providers.

A visual presentation of the extent of discrimination against foreign providers is shown in Figure 1. This plots the prevalence of restrictions against domestic and foreign medical professionals across all modes of delivery — the domestic and foreign totals from table 4. The figure shows that in most ASEAN countries, the *proportion* of restrictions that actually apply is much higher for foreign service providers than for their domestic counterparts. But this only captures one aspect of the discrimination against foreigners. Foreigners also face a higher *total number* of restrictions. So the overall extent of discrimination against foreigners is even greater than indicated in Figure 1.

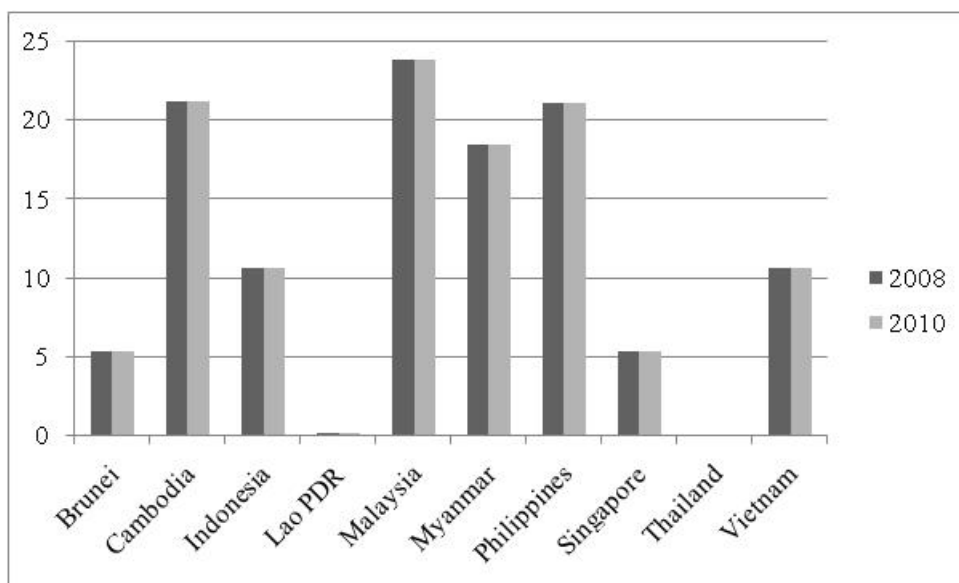
**Figure 1. Restrictions on trade in medical services by ownership category (per cent)**



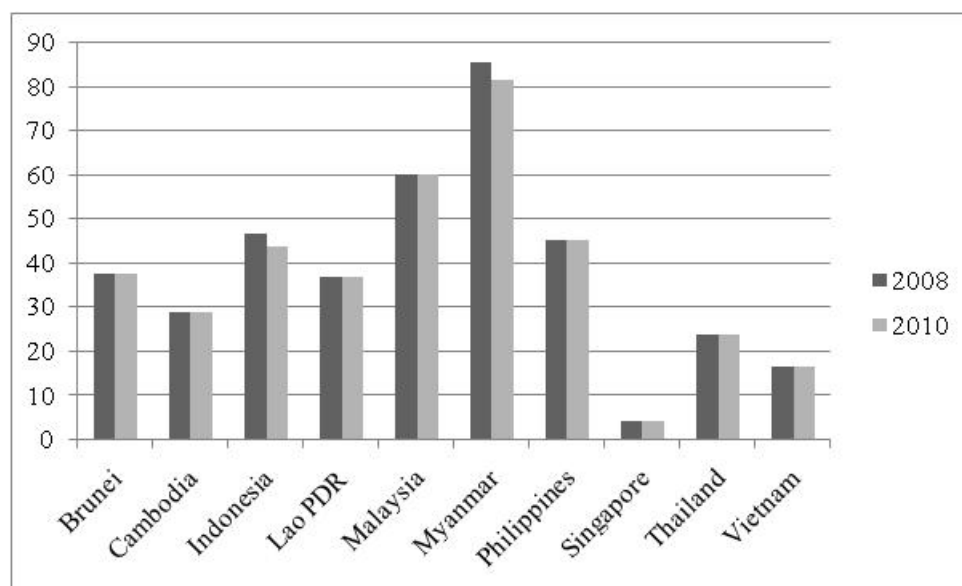
Ensuring that non-discriminatory restrictions were no more burdensome than necessary is likely to be a very difficult process — it will require obtaining agreement on minimum acceptable standards. Figure 1 demonstrates that a great deal can be done in the meantime. There is considerable scope for ASEAN countries to make additional commitments to remove derogations from national treatment and thereby to remove discrimination against foreign suppliers.

A final question is whether the recent reforms have made a significant difference. This is indicated in Figures 2 and 3, for domestic and foreign services providers respectively. These figures compare the overall prevalence of restrictions in 2008 and 2010. The differences reflect the reforms summarized in Table 1. The reforms have made only a slight difference to the overall prevalence of restrictions on foreign suppliers, and no difference to the prevalence of restrictions on domestic suppliers. Thus ASEAN reforms are indeed focused on reducing the extent of discrimination against foreign suppliers. But a great deal more remains to be done.

**Figure 2. Changes in restrictions on domestic medical services over time (per cent )**



**Figure 3. Changes in restrictions on foreign medical services over time (per cent)**



## **4. Health Services**

### **4.1. A scorecard for services liberalization — health services**

Health services are primarily facilities-based services that are traded via mode 3, that is, by the entry and operation of foreign-invested operators. Increasingly, however, hospital and medical laboratory services are traded via mode 1 (e.g. telemedicine or remote diagnostic services). Hospital services are also traded via mode 2 (consumption abroad). Once again, the questionnaire covering barriers to trade in health services (Dee 2008) asks about actual policies affecting all these modes of delivery. The format is similar to that for medical services, but focusing on restrictions that affect health institutions rather than individual professionals.

Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new health services firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms (e.g. whether they are prohibited from incorporating, whether foreign entrants are required to establish in a joint venture), and whether they are restricted in the scope of services they can provide or the number or type of clients they can service. It also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in health service firms.

Under mode 4, the questionnaire asks essentially the same types of questions about restrictions on intra-corporate transferees as in the professional services questionnaire.

Under modes 1 and 2, the questionnaire asks whether foreign health services firms located abroad can provide services cross-border to patients in the home country (e.g. via telemedicine), and whether domestic residents can purchase health services while abroad.

The questionnaire also asks about potentially anti-competitive aspects of the domestic regulatory regime, including whether foreign-invested firms are subject to different licensing or quality assurance requirements from domestic firms, and whether there are restrictions on the ability of foreign health service providers to

access government subsidies (where these are available), either for themselves or for their clients.

Finally, the questionnaire reveals information about the transparency of the regulatory regime, by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public.

As with medical services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of health services, partial scores are assigned as follows. For private and foreign equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limit is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75. When scoring restrictions on cross-border trade, limitations on either the form of services or the groups to which they can be offered are scored at 0.33 each. When scoring restrictions on consumption abroad, limitations in the form of quotas or authorization requirements are scored at 0.5.

#### **4.2. Scorecard results for health services**

The scoring has been done separately for hospital, medical laboratory and ambulance services. The detailed results for hospital services are shown in Table 5. Comparable tables for medical laboratory and ambulance services are similar, and are available by request from the author.

**Table 5. Restrictions on trade in hospital services (index 0-1)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>A. Market Access – commercial presence (mode 3)</i>											
1 Are there policy restrictions on new entry - by any firm?	0	0	0	0	0	0	0	0	0	0	0
By foreign firms?	1	0	0	0	0	1	0	0	0	0	0.2
3 Are these firms prohibited from incorporating (with limited liability)?	0	0	0	0	0	0	0	0	0	0	0
4 Are foreign health services firms prohibited from establishing in a joint venture with local professionals?	0	0	0	0	0	0	0	0	0	0	0
Are they required to establish in a JV?	1	0	1	0	1	1	0	0	0	0	0.4
5 Are foreign health services firms restricted in the scope of services they can provide?	0	0	1	0	0	1	1	0	0	0	0.3
6 Are foreign health services firms restricted in the number of clients (domestic and/or foreign) they can service?	1	0	0	0	0	1	1	0	1	0	0.4
<i>B. Market Access – movement of natural persons (mode 4) – intra-corporate transferees</i>											
7 Are there minimum requirements to have nationals/residents as executives, managers etc in foreign invested health service firms?	1	1	1	1	1	1	1	0	1	1	0.9
8 Are there prohibitions or maximum restrictions on employing locally trained professionals in foreign invested professional service firms?	0	0	0	0	1	1	0	0	0	0	0.2
9 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	0	1	1	1	1	1	1	0	0	0	0.6
10 Are there categories of managerial personnel who must be locally licensed as a medical professional?	0	1	1	1	1	1	1	0	1	1	0.8
11 Are there categories of managerial personnel who must be locally domiciled?	0	1	1	0	1	1	0	0	1	1	0.6
<i>C. 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 (eg tele-medicine)?	0.67	0	0	0	0.33	0.67	0	0	0	0	0.2

**Table 5. Restrictions on trade in hospital services (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>D. Consumption abroad (Mode 2)</i>											
13 Can domestic residents purchase health services while abroad?	0	0	0	0	0	0.5	0	0	0	0	0.1
<i>E. Ownership</i>											
14 Is private ownership allowed - in existing operators?	0	0	0	0	0	0	0	0	0	0	0
New entrants	0	0	0	0	0	0	0	0	0	0	0
15 Is foreign ownership allowed - in existing operators?	0.75	0	0.35	0	0.3	1	0	0	0.51	0	0.3
New entrants	0.75	0	0.33	0	0.3	1	0	0	0.51	0	0.3
<i>F. Regulation</i>											
21 Are foreign providers subject to different licensing requirements from domestic firms?	0	0	1	1	0	1	0	0	0	0	0.3
22 Are foreign providers required to train local staff?	1	1	1	1	1	1	0	0	0	0	0.6
23 Do quality assurance obligations on foreign providers differ from those for domestic institutions?	0	0	0	0	0	0	0	0	0	0	0
24 Are foreign providers of these services restricted in their ability to charge fees?	0	0	0	0	1	1	0	0	0	0	0.2
26 Are foreign providers restricted in their access to producer subsidies?	0	0	1	0	1	1	1	0	0	0	0.4
Are their local clients (nationals) restricted in their access to consumer subsidies?	0	0	1	0	1	1	1	1	0	0	0.5
29 Which of the following are consulted in advance of regulatory changes (eg accreditation requirements) affecting service providers?											
Service providers	1	1	1	1	1	1	1	1	1	1	1
Users	0	1	1	1	0	0	1	1	1	0	0.6
Other	0	0	0	0	0	1	1	0	0	1	0.3
30 How are laws and regulatory decisions affecting these service providers (see name of sheet) made public?											
Regulator's website	0	0	1	0	1	0	1	1	1	1	0.6
Official gazette	1	1	1	0	1	1	1	1	1	1	0.9
Other	0	0	1	1	0	0	1	1	0	1	0.5

Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Tables 6 and 7.

**Table 6. Restrictions on trade in health services by service and by mode of delivery (per cent)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
Consumption abroad (Mode 2)	0	0	0	0	0	50	0	0	0	0	5
<b>HOSPITAL</b>											
Commercial presence (mode 3)	43	0	29	0	14	57	29	0	14	0	19
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	80	60	100	100	60	0	60	60	62
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	38	0	17	0	15	50	0	0	26	0	15
Regulation	17	17	67	33	67	83	33	17	0	0	33
<b>TOTAL</b>	<b>31</b>	<b>22</b>	<b>46</b>	<b>22</b>	<b>48</b>	<b>72</b>	<b>30</b>	<b>4</b>	<b>22</b>	<b>13</b>	<b>31</b>
Transparency	33	50	83	50	50	50	100	83	67	83	65
<b>MEDICAL LABORATORY</b>											
Commercial presence (mode 3)	43	0	14	0	14	57	29	0	14	0	17
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	80	60	100	100	60	20	20	60	60
Cross-border trade (Mode 1)	0	0	0	0	33	67	0	0	0	0	10
Ownership	38	0	17	0	15	50	0	0	26	0	15
Regulation	17	17	67	33	67	83	0	0	0	0	28
<b>TOTAL</b>	<b>28</b>	<b>22</b>	<b>42</b>	<b>22</b>	<b>48</b>	<b>72</b>	<b>22</b>	<b>4</b>	<b>13</b>	<b>13</b>	<b>29</b>
Transparency	33	50	83	50	50	50	100	83	67	67	63
<b>AMBULANCE</b>											
Commercial presence (mode 3)	43	0	71	0	14	57	29	0	14	0	23
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	100	60	100	100	60	20	20	60	62
Cross-border trade (Mode 1)	0	0	0	0	0	0	0	0	0	0	0
Ownership	38	0	50	0	15	50	0	0	26	0	18
Regulation	17	17	83	33	67	83	0	0	0	0	30
<b>TOTAL</b>	<b>28</b>	<b>22</b>	<b>74</b>	<b>22</b>	<b>46</b>	<b>70</b>	<b>22</b>	<b>4</b>	<b>13</b>	<b>13</b>	<b>31</b>
Transparency	33	50	67	50	50	50	0	67	67	67	50

Source: Author.

**Table 7. Restrictions on trade in hospital services by ownership category and mode of delivery (per cent)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<b>DOMESTIC HOSPITAL</b>											
Commercial presence (mode 3)	0	0	0	0	0	0	0	0	0	0	0
Ownership	0	0	0	0	0	0	0	0	0	0	0
Regulation	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>											
<b>FOREIGN HOSPITAL</b>											
Commercial presence (mode 3)	55	0	36	0	18	73	36	0	18	0	24
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	80	60	100	100	60	0	60	60	62
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	75	0	34	0	30	100	0	0	51	0	29
Regulation	17	17	67	33	67	83	33	17	0	0	33
<b>TOTAL</b>	<b>37</b>	<b>26</b>	<b>55</b>	<b>26</b>	<b>56</b>	<b>85</b>	<b>36</b>	<b>5</b>	<b>26</b>	<b>15</b>	<b>37</b>

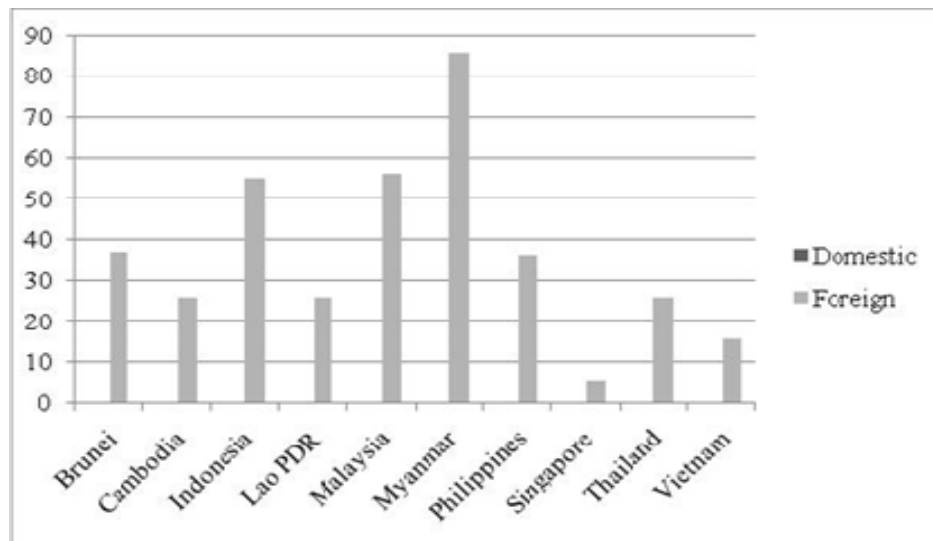
*Source:* Author.



The pattern of restrictions across modes of delivery is also similar to that for medical services. Restrictions that are most prevalent are those affecting the movement of intra-corporate transferees and regulatory restrictions. Table 7 indicates that, compared with medical services, the regulatory restrictions in health are skewed to penalizing foreign suppliers, rather than affecting domestic and foreign suppliers equally.

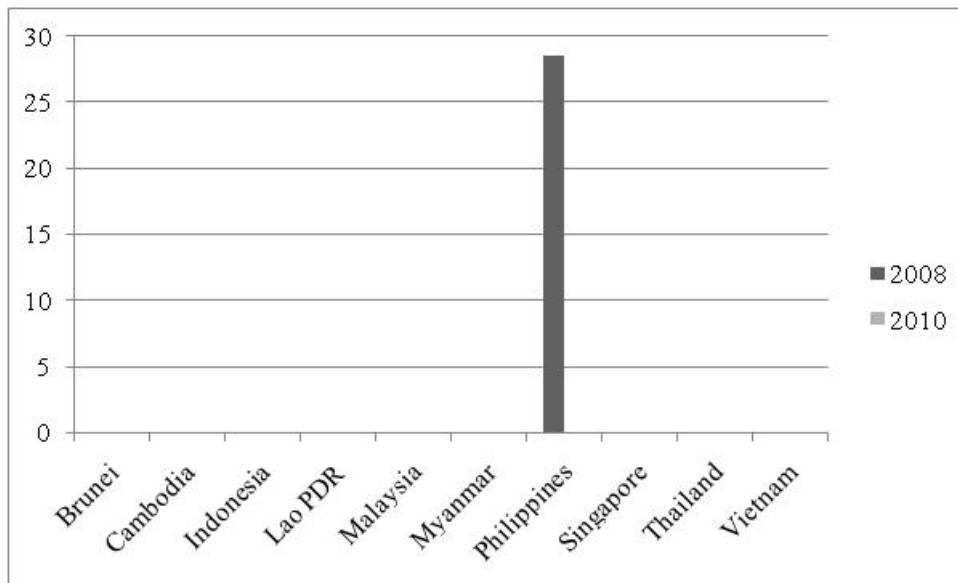
This latter impression is confirmed in Figure 4 for hospital services. By 2010, there are no non-discriminatory restrictions affecting domestic suppliers. Figure 5 shows that the last of these was removed between 2008 and 2010, when the Philippines removed its last regulatory barrier to entry.

**Figure 4. Restrictions on trade in hospital services by ownership category (per cent)**

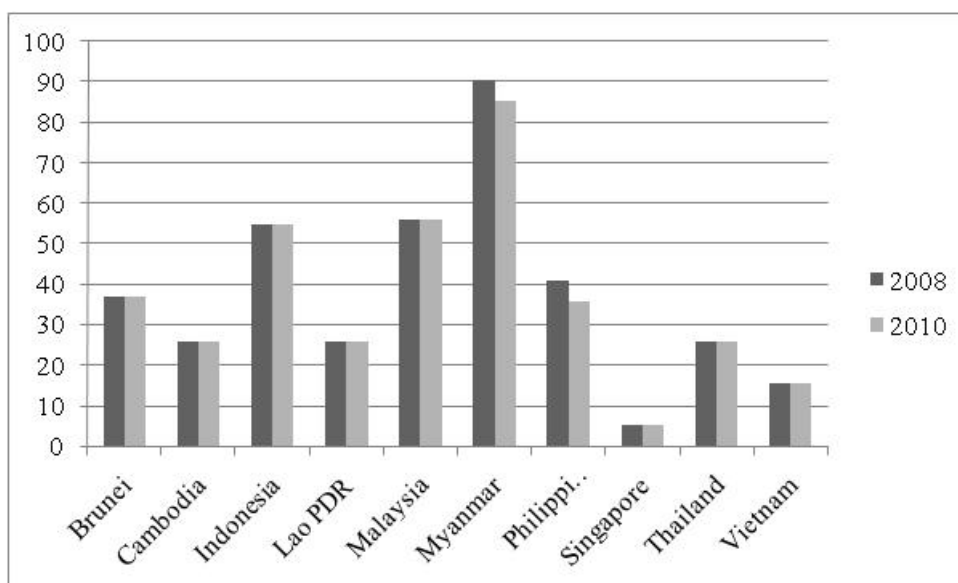


By contrast, the prevalence of restrictions against foreign health services providers is still quite high (Figure 4), and the recent reforms since 2008 have made only slight inroads into those trade barriers (Figure 6).

**Figure 5. Changes in restrictions on domestic hospital services over time (per cent)**



**Figure 6. Changes in restrictions on foreign hospital services over time (per cent)**



There is considerable scope for ASEAN countries to make additional commitments to remove derogations from national treatment and thereby to remove discrimination against foreign suppliers. And this process is likely to be less difficult and controversial than dealing with the remaining trade barriers in medical professional services.

## **5. Banking Services**

### **5.1. A scorecard for services liberalization — banking services**

Banking services involve the acceptance of deposits and other payable funds from the public, and lending of all types, including consumer credit and mortgages. In open economies, banking also involves the provision of foreign exchange services. While banking involves risks, some research has suggested that there are economies of scale in risk management, so that it can be an advantage if banks can combine their banking activities with other activities involving risk management, including insurance and securities management (see Barth, Caprio and Levine 2004 for a survey of the arguments and evidence). Nevertheless, there is also evidence that allowing banks to diversify into such non-traditional activities can create conflicts of interest that may have contributed to the global financial crisis (e.g. Blundell-Wignall et al. 2009). Recent research has tended to confirm that restrictions on banks' ability to undertake non-traditional banking activities should be regarded as prudential restrictions rather than as trade barriers (Dinh 2011).

Banking services can be delivered through all four modes of supply — cross-border (mode 1), via the movement of consumers (mode 2), via commercial presence and via the movement of individual bank personnel (particularly intra-corporate transferees, mode 4).

The questionnaire covering barriers to trade in banking services (Dee 2008) asks about actual policies affecting all these modes of delivery. However, one key aspect of the macroeconomic environment will affect trade in banking services via all four modes of supply. This is whether there are any controls on short- or long-term capital flows between countries. The questionnaire asks first about the existence of such capital controls.

Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new banks, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of foreign banks (e.g. whether branches and/or subsidiaries are allowed), and whether banks are restricted in the scope of services they can provide (including non-traditional services) or the number or outlets (street branches, offices and ATMs) they can have.

As alluded to earlier, the issue of the legal form that foreign banks are allowed to take is one area where the distinction between prudential and non-prudential regulation becomes blurred. When foreign banks establish subsidiaries, they must automatically hold equity capital in those subsidiaries locally, and the host country's prudential rules governing minimum capital ratios can be applied to that local equity capital. By contrast, when foreign banks establish branches, their equity capital can stay in the home country, and the host country's prudential rules cannot be as easily applied. Some countries are prepared to allow this, essentially relying on the prudential regulation of the foreign bank's home country to determine capital ratios. Other countries allow foreign branches, but constrain them to lend against local capital. This is more restrictive than allowing them to lend against parent capital, although it can be justified for prudential reasons. It has nevertheless been counted as a restriction if branches are not allowed to lend against parent capital.

The banking questionnaire also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in banks.

Under modes 1 and 2, the questionnaire asks about limitations on the movement of intra-corporate transferees (i.e. the directors, executives, managers and employees of banks), which might take the form of nationality or residency requirements on

certain classes of personnel, or a requirement for labour market testing. It also asks about the permitted length of short- or long-term stay for such transferees, an aspect of the regulatory regime that is typically set horizontally by immigration departments rather than by banking regulators.

Finally, the questionnaire asks about potentially anti-competitive aspects of the domestic regulatory regime, including whether foreign-invested banks are subject to different licensing requirements from domestic banks, and whether interest rates are set or approved by government.

As with medical and health services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of banking services, partial scores are assigned as follows. When scoring restrictions on capital flows, restrictions on inflows and outflows over either the short or long term are each given a score of 0.25. These scores are additive. For private and foreign equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limit is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75.

Other restrictions on commercial presence are given partial scoring as follows. When scoring economic needs tests, the requirement to show an economic benefit is scored as 0.5, approval unless contrary to the national interest is scored as 0.3, and notification requirements are scored as 0.2. More than one of these may apply at once. When scoring permissible legal forms, restrictions on subsidiaries are scored as 0.3, restrictions on branches able to lend against local capital are scored as 0.2, restrictions on branches able to lend against parent capital are scored as 0.4, and restrictions in representative offices are scored as 0.1. These scores are additive. When scoring

restrictions on banks' ability to raise funds or lend, restrictions on the amount or form of activity, the groups to which it can be directed, or the restriction that it be conducted through a subsidiary, are each scored as 0.25. These scores are additive. Restrictions on providing settlement services or foreign exchange services via commercial presence (mode 3) or cross-border (mode 1) are scored at 0.5 when banks are able to undertake some but not all of these services. Expansion of branches or ATMs is scored as 0.5 if these are limited in number or location, or if they are subject to non-prudential regulatory approval.

When scoring restrictions on consumption abroad, limitations in the form of quotas or authorization requirements are scored at 0.5. When scoring restrictions on interest rates, if lending or borrowing rates or the gap between them are set by government, each receives a score of 0.33. If instead they need to be approved by government, they each receive a score of 0.17.

Finally, the scoring of the permitted length of short or long term stay for foreign bank personnel is inversely proportional to the length of stay. Permitted lengths longer than 90 days (short term) or 4 years (long term) are scored as being unrestricted.

As noted earlier, perceptions have changed recently about restrictions on banks' ability to undertake non-traditional activities — securities, real estate or insurance business or the ownership of non-financial firms. These are increasingly recognized as having a prudential purpose (primarily to avoid conflicts of interest), instead of being barriers to trade. Thus while these restrictions were included in the original scoring for 2008 (Dee 2008), they have been omitted from the scoring of either 2008 or 2010 in this paper.

## **5.2. Scorecard results for banking services**

The detailed results for foreign services providers are shown in Table 8. Comparable tables for domestic service providers are essentially a subset of those in table 8, and are available by request from the author.

**Table 8. Restrictions on banking services - foreign banks (index 0-1)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>A. Market Access</i>											
<i>a. Macroeconomic policies</i>											
1 Are there restrictions on capital flows?	0	0	0	0	0	0.5	0.25	0	0.5	0	0.1
<i>b. Commercial presence (mode 3)</i>											
2 Are there policy restrictions on new entry of foreign banks?	0	0	0	0	1	1	1	1	1	1	0.6
4 Is the entry of foreign banks restricted by screening or needs tests (other than licensing requirements, which are covered later)?	0.8	0	0	0.7	0.3	0	0.5	0	0.5	1	0.4
5 Which legal forms of establishment are allowed for foreign banks?	0.5	0	0	0.6	0.4	0.9	0	0.2	0.4	0.4	0.3
6 Are there restrictions on the ability of foreign banks to raise funds?	0	0	0	0	0.25	1	0	0	0	0.25	0.2
7 Are there restrictions on the ability of foreign banks to lend?	0	0	0.25	0	0.75	1	0.5	0	0	0.25	0.3
9 Which of the following services are foreign banks permitted to provide domestically?											
Settlement services (eg collection, payment)	0	0	0	0.5	0.5	1	0	0	0.5	0	0.25
Foreign exchange services	0	0	0.5	0	0.5	1	0	0	0.5	0	0.3
10 Are there restrictions to expanding operations — street branches, offices and ATMs - for foreign banks?	0.5	0.5	0.5	0	0.5	1	0.5	1	0.5	0.5	0.55
<i>c. Cross-border trade (Mode 1)</i>											
11 Are foreign banks located abroad able to lend or raise funds in your country?											
Lending	0	0	0	1	1	0.33	0	0	0	1	0.3
Raising funds	0	0	0	1	1	1	0	0.33	0	0	0.33
12 Are foreign banks located abroad able to provide the following services domestically?											
Cross-border settlement services	0	0	0.5	0.5	0	0.5	0	0	1	0.5	0.3
Cross-border foreign exchange business	1	0	0	0.5	0	0.5	1	0	1	0.5	0.5
<i>d. Consumption abroad (Mode 2)</i>											
13 Can domestic residents purchase financial services while abroad?	0	0	0	0	0	0	1	0	0	0.5	0.2

**Table 8. Restrictions on banking services - foreign banks (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<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?	1	1	1	1	0	1	1	1	1	1	0.9
15 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	0	0	1	0	0	1	1	0	0	0	0.3
16 Identify the permitted length of short-term visit (in days) for foreign bank personnel.	0.75	0.75	0	0.25	0.25	0.75	0	0.5	0.25	0.25	0.375
Identify the permitted length of long-term stay (in years) of foreign intra-corporate transferees.	0.6	0.8	0.4	0.8	0	0.8	0	0.6	0.8	0.4	0.52
<b>B. Ownership</b>											
18 Is foreign ownership in the provision of banking services allowed existing banks?	0	0	0.01	0	0.7	1	0.6	0.75	0.51	0.7	0.4
New entrants	0	0	0.01	0	0.7	1	0.6	0.75	0.51	0.7	0.4
<b>C Regulation</b>											
24 Are licenses allocated by discretionary decisions of the issuing authority?	1	0	0	1	1	1	0	0	1	1	0.6
25 Are foreign firms subject to different licensing requirements from domestic firms?	1	0	1	0	0	1	0	0	0	0	0.3
26 Are interest rates set or approved by government for foreign banks?	0	0	0	0	0.5	1	0	0	0	0.33	0.2

Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Table 9.



**Table 9. Restrictions on trade in banking services by ownership category and mode of delivery (per cent)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
a. Macroeconomic policies	0	0	0	0	0	50	25	0	50	0	13
d. Consumption abroad (Mode 2)	0	0	0	0	0	0	100	0	0	50	15
<b>DOMESTIC FIRMS</b>											
b. Commercial presence (mode 3)	19	7	18	17	0	43	14	14	43	35	21
B. Ownership	0	0	0	0	0	0	0	0	0	0	0
C Regulation	50	0	0	50	75	100	0	0	50	67	39
<b>TOTAL</b>	<b>21</b>	<b>5</b>	<b>11</b>	<b>20</b>	<b>14</b>	<b>45</b>	<b>9</b>	<b>9</b>	<b>36</b>	<b>34</b>	<b>20</b>
<b>FOREIGN FIRMS</b>											
b. Commercial presence (mode 3)	23	6	16	23	53	86	31	28	43	43	35
c. Cross-border trade (Mode 1)	25	0	13	75	50	58	25	8	50	50	35
e. Movement of natural persons (Mode 4)	59	64	60	51	6	89	50	53	51	41	52
B. Ownership	0	0	1	0	70	100	60	75	51	70	43
C Regulation	67	0	33	33	50	100	0	0	33	44	36
<b>TOTAL</b>	<b>34</b>	<b>15</b>	<b>25</b>	<b>37</b>	<b>45</b>	<b>85</b>	<b>32</b>	<b>29</b>	<b>45</b>	<b>47</b>	<b>39</b>

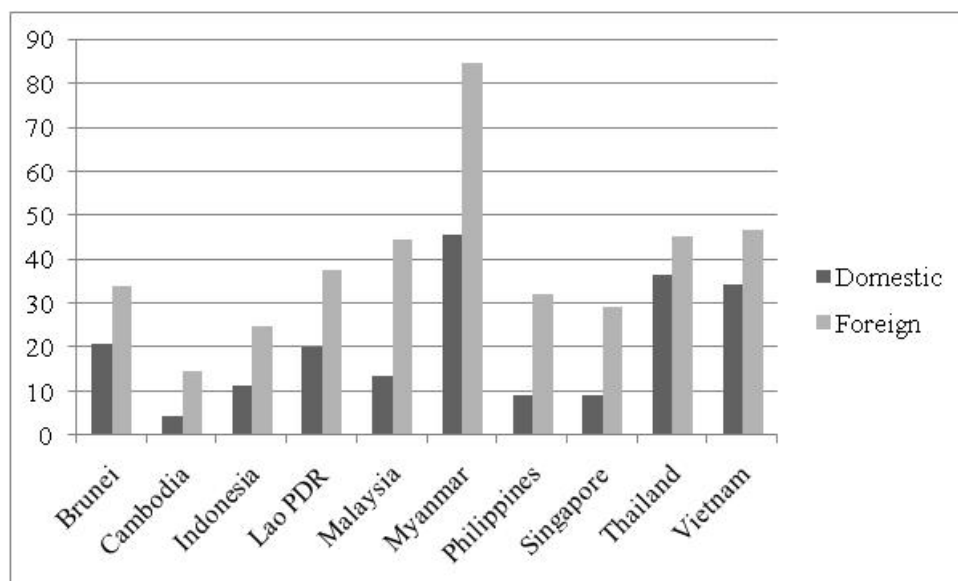
Source: Author.

The most prevalent restrictions are foreign ownership restrictions and restrictions on the movement of intra-corporate transferees. Six out of the ten ASEAN countries have foreign equity limits that do not meet the ASEAN Blueprint’s benchmarks (where a score higher than 0.3 against question 18 in table 8 indicates that the country does not allow the foreign ownership share to reach 70 per cent or higher).

Also relatively prevalent are regulatory restrictions (other than ownership restrictions) on commercial presence, and other forms of regulation. These include restrictions on expanding operations, on lending or raising funds, and on the legal form of commercial presence. They also include government control or approval of interest rates. These restrictions may affect domestic as well as foreign banks. Restrictions on cross-border delivery (mode 1) trade are still as prevalent as restrictions on commercial presence (mode 3), despite the priority placed by the Blueprint on liberalizing mode 1. The restrictions that are least prevalent are those on the delivery of banking services via mode 2 (consumption abroad).

Figure 7 confirms the impression that there are still significant barriers to trade in banking services in most ASEAN countries. The prevalence of restrictions is most marked for foreign banking services providers, but is also non-trivial for domestic providers.

**Figure 7. Restrictions on trade in banking services by ownership category (per cent)**

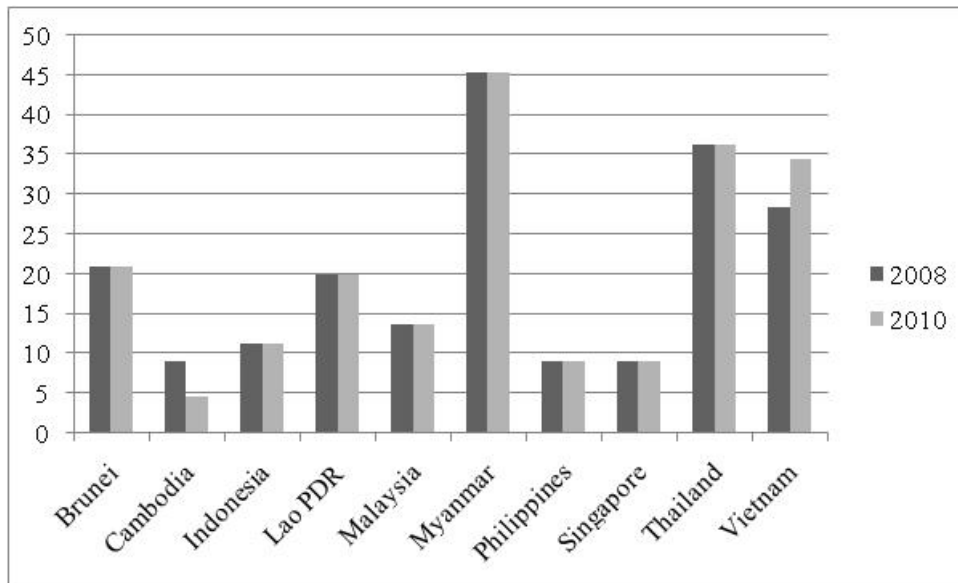


Financial services do not suffer from the same ‘targets/instruments’ problem as medical and health services. The instruments used to achieve the legitimate target of systemic stability — capital reserve ratios, liquidity ratios, deposit insurance schemes, disclosure requirements — are distinct from the barriers to entry and operations that protect incumbent service providers from competition. Thus trade liberalization need not jeopardize systemic stability, so long as such prudential measures are in place. If anything, the recent global financial crisis has encouraged ASEAN countries to strengthen their prudential regulations. But on trade reform, the situation has been at least partly one of stasis, if not backsliding. Ironically, this can be attributed in part to the earlier Asian financial crisis. In the wake of that crisis, many ASEAN countries also undertook significant reform of their prudential regulation, and some loosened restrictions on foreign ownership on a most-favoured nation basis, albeit sometimes only temporarily. Even in trade circles, this created an impression that ‘everything that needs to be done, has been done’.

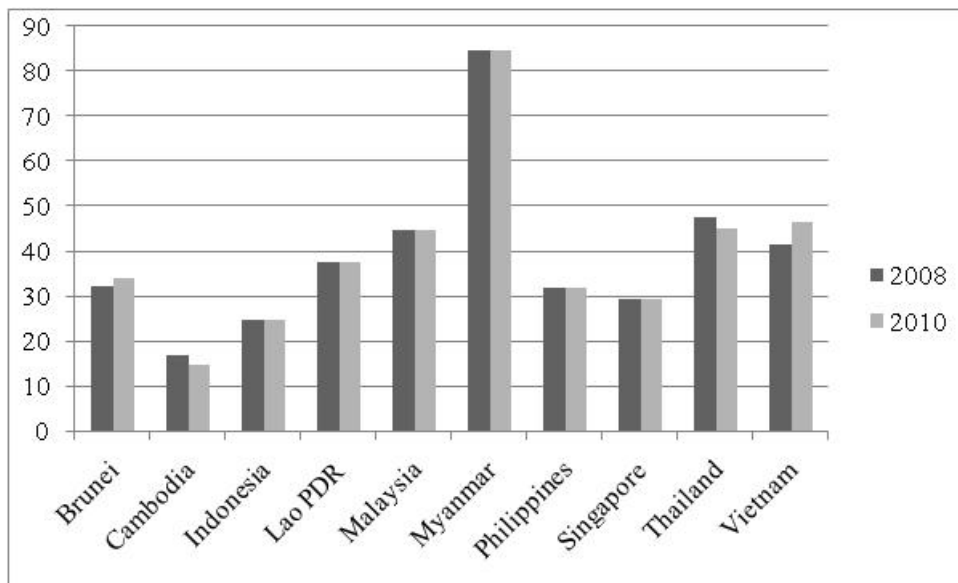
Yet the results in Figure 7 suggests otherwise. A majority of ASEAN countries have yet to reach the ASEAN Blueprint targets for foreign equity limits. And barriers to trade extend far beyond these limits, as the Blueprint itself recognizes. With the recent strengthening of prudential regulations, there is little justification for the remaining restrictions on forms of lending and raising funds. As the operation of monetary policy is strengthened, there is little justification for the remaining controls over interest rates. In some ASEAN countries, however, it is not just the design, but also the implementation of prudential regulation that needs strengthening.

A final question is whether the recent reforms have made a significant difference. This is indicated in Figures 8 and 9, for domestic and foreign services providers respectively. These figures compare the overall prevalence of restrictions in 2008 and 2010. As in other sectors, the reforms have made only a slight difference to the overall prevalence of restrictions. In some countries, such as Vietnam, reforms in some dimensions (as easing of interest rate controls) have been offset by a tightening in others (more stringent non-prudential licensing requirements). Thus there is evidence that ASEAN countries are still using unnecessary regulatory restrictions in place of better-targeted prudential requirements.

**Figure 8. Changes in restrictions on domestic banking services over time (per cent)**



**Figure 9. Changes in restrictions on foreign banking services over time (per cent)**



## **6. Insurance Services**

### **6.1. A scorecard for services liberalization — insurance services**

Insurance services involve the provision of different types of insurance, including life insurance, medical insurance, property insurance (which can cover marine, aviation and transport (MAT), automobile, freight, and building insurance), reinsurance, and broking services. Perhaps more than any other service, insurance is traded actively through all four modes of supply.

The structure of the insurance questionnaire (Dee 2008) is similar to that for banking. In addition to the general restrictions on commercial presence, there are a few that are peculiar to insurance. One is restrictions on reinsurance — whether it is prohibited, whether reinsurance is restricted to foreign insurance companies, or whether a certain percentage of premiums need to be reinsured with domestically appointed insurers (the so-called ceding percentage). Another is limitations on whether insurance companies can hold assets overseas, or limitations on the form in which they must hold their assets.

Included in the restrictions on cross-border trade is whether there are restrictions on offshore insurance companies being allowed to solicit business through advertising in the home country. Included in the regulatory restrictions is whether the insurance premiums for the various insurance products are set or approved by government.

Note that although the insurance questionnaire includes questions about whether medical insurance can be traded internationally, it does not include questions about whether domestic medical insurance policies are mobile, in the sense of covering medical procedures that are obtained outside of the home country. The mobility of medical insurance coverage is an important prerequisite for promoting trade in medical and health services, but mobility is determined as much by the decision of individual medical insurance companies as it is by government policy.

As with the previous services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of banking services, partial scores are assigned as follows. When scoring restrictions on capital flows, restrictions on inflows and outflows over wither the short or long term are each given a score of 0.25. These scores are additive. For private and foreign equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limited is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75.

Other restrictions on commercial presence are given partial scoring as follows. When scoring economic needs tests, the requirement to show an economic benefit is scored as 0.5, approval unless contrary to the national interest is scored as 0.3, and notification requirements are scored as 0.2. More than one of these may apply at once. When scoring permissible legal forms, restrictions on subsidiaries are scored as 0.3, restrictions on branches are scored as 0.5 and restrictions in representative offices are scored as 0.1. These scores are additive. When scoring restrictions on insurers' ability to reinsure, a restriction that it must be with foreign reinsurers is scored as 0.3, a minimum ceding percentage is scored as 0.6 and other restrictions are scored as 0.1. These scores are additive. When scoring restrictions on insurers' placement of assets, partial restrictions on placement overseas are scored as 0.5, and other restrictions on placement (such as on the type of financial instrument) are scored as 0.1. Expansion of branches is scored as 0.5 if these are limited in number or location, or if they are subject to non-prudential regulatory approval.

When scoring restrictions on consumption abroad, partial limitations are scored at 0.5. When scoring restrictions on the prices of insurance products, if these are set by government they receive a score of 1.0, whereas if they need to be approved by government they receive a score of 0.5.

Finally, the scoring of the permitted length of short or long term stay for foreign insurance personnel is inversely proportional to the length of stay. Permitted lengths

longer than 90 days (short term) or 4 years (long term) are scored as being unrestricted.

## **6.2. Scorecard results for insurance services**

The detailed results for providers of life insurance are shown in Table 10. Comparable tables for providers of medical and property insurance, reinsurance and broking activity are available by request from the author.

**Table 10. Restrictions on trade in life insurance services (index 0-1)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>A. Market Access</i>											
<i>a. Macroeconomic policies</i>											
1 Are there restrictions on capital flows?	0	0	0	0	0	0.5	0.25	0	0.5	0	0.1
<i>b. Commercial presence (mode 3)</i>											
2 Are there policy restrictions on new entry of insurance providers - any provider?	0	0	0	1	0	1	0	0	1	0	0.3
Foreign providers?	0	0	0	1	0	1	1	0	1	0	0.4
4 Is entry restricted by screening or needs tests (other than licensing requirements, which are covered later)?											
Domestic providers	0.8	0	0	1	0	0	0	0	0.5	0	0.2
Foreign providers	0.8	0	0	1	0.3	0	0	0	0.5	0	0.3
5 Which legal forms of establishment are allowed for foreign insurance providers?	0.6	0.4	0.6	0	0	1	0	0	0.1	0.5	0.3
6 Are foreign insurance firms prohibited from establishing in a joint venture with local firms?	0	0	0	0	0	1	0	0	0	0	0.1
Are they required to establish in a JV?	0	0	1	0	1	1	0	0	1	0	0.4
7 Are insurance companies located in your country permitted to provide life insurance domestically?											
Domestic firms?	0	0	0	0	0	0	0	0	0	0	0
Foreign firms?	0	0	0	0	0	1	0	0	0	0	0.1
8 Is life insurance subject to monopoly provision?	0	0	0	0	0	1	0	0	0	0	0.1
9 What restrictions (if any) apply to reinsurance by resident insurance companies?											
Domestic insurance companies	0	0	0	0	0	0.3	0	0	0	0	0.0
Foreign insurance companies	0	0	0	0	0	1	0.7	0	0	0	0.2
10 What restrictions (if any) apply to the placement of assets by resident insurance companies?											
Domestic insurance companies	0	0	0.5	0	0	1	0.6	0	0.6	1	0.4
Foreign insurance companies	0	0	0.5	0	0	1	0.6	0	0.6	1	0.4



**Table 10. Restrictions on trade in life insurance services (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
11 What restrictions (if any) apply to expanding operations — street branches, offices?											
Domestic insurance companies	1	0	0.5	0	0	0	0	0	0.5	0.5	0.3
Foreign insurance companies	1	0	0.5	0	0.5	1	0	0	1	0.5	0.45
<i>c. Cross-border insurance trade (Mode 1)</i>											
12 Can domestic residents purchase life insurance cross-border from a foreign insurance company?	0	1	0	0	1	1	1	0	0	0	0.4
13 Are offshore life insurance firms allowed to solicit business through advertising in the domestic country?	1	1	1	1	1	1	0	1	1	1	0.9
<i>d. Consumption abroad (Mode 2)</i>											
14 Can domestic residents purchase life insurance from a foreign insurance company while abroad?	0	0	0	0.5	0	1	0.5	0	0	0	0.2
<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?	1	1	1	1	0	1	1	0	1	1	0.8
16 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	0	0	0	0	0	1	1	0	0	0	0.2
17 Identify the permitted length of short-term visit (in days) for foreign insurance personnel.	0.75	0.75	0.5	0.75	0.25	1	0	0.5	0.25	0.25	0.5
Identify the permitted length of long-term stay (in years) of foreign intra-corporate transferees.	0.6	0.8	0	0.8	0	1	0	0.6	0.8	0.4	0.5
<b>B. Ownership</b>											
18 Is private ownership in the provision of insurance services allowed - existing providers?	0	0	0	0	0	1	0	0	0	0	0.1
New entrants	0	0	0	0	0	1	0	0	0	0	0.1
19 Is foreign ownership in the provision of insurance services allowed - existing providers?	0	0	0.01	0	0.7	1	0	0	0.75	0	0.2
New entrants	0	0	0.2	0	0.7	1	0	0	0.75	0	0.3
<b>C Regulation</b>											
24 Are licenses allocated through discretionary decisions by the issuing authority?	1	0	0	0	1	1	0	0	1	0	0.4
25 Are foreign firms subject to different licensing requirements from domestic firms?	0	1	1	1	0	1	0	0	0	1	0.5
26 Are the prices of life insurance products set or approved by government?											
Domestic companies	0.5	0	0	0.5	0.5	1	0	0	0.5	0.5	0.35
Foreign companies	0.5	0	0	0.5	0.5	1	0	0	0.5	0.5	0.35

Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Tables 11 and 12.

**Table 11. Restrictions on trade in insurance services by insurance product and by mode of delivery (per cent)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
Macroeconomic policies	0	0	0	0	0	50	25	0	50	0	13
<b>LIFE INSURANCE</b>											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	50	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	50	0	0	0	20
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	25	25	50	50	100	0	0	50	50	40
<b>TOTAL</b>	<b>31</b>	<b>19</b>	<b>24</b>	<b>32</b>	<b>24</b>	<b>85</b>	<b>21</b>	<b>7</b>	<b>43</b>	<b>26</b>	<b>31</b>
<b>MEDICAL INSURANCE</b>											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	50	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	100	50	0	0	30
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	25	50	50	75	0	0	50	75	45
<b>TOTAL</b>	<b>31</b>	<b>26</b>	<b>24</b>	<b>32</b>	<b>24</b>	<b>82</b>	<b>22</b>	<b>8</b>	<b>43</b>	<b>30</b>	<b>32</b>
<b>PROPERTY INSURANCE</b>											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	100	50	50	70
Consumption abroad (Mode 2)	0	0	0	50	0	100	50	50	0	0	25
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	75	50	50	100	0	0	50	50	50
<b>TOTAL</b>	<b>31</b>	<b>26</b>	<b>30</b>	<b>32</b>	<b>24</b>	<b>85</b>	<b>21</b>	<b>12</b>	<b>43</b>	<b>26</b>	<b>33</b>

**Table 11. Restrictions on trade in insurance services by insurance product and by mode of delivery (per cent) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<b>REINSURANCE</b>											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	0	50	100	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	0	0	0	0	15
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	25	50	50	75	0	0	50	50	43
<b>TOTAL</b>	<b>31</b>	<b>26</b>	<b>24</b>	<b>32</b>	<b>24</b>	<b>82</b>	<b>19</b>	<b>4</b>	<b>43</b>	<b>30</b>	<b>31</b>
<b>BROKING</b>											
Commercial presence (mode 3)	26	3	23	25	11	71	18	1	33	22	23
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	100	70
Consumption abroad (Mode 2)	0	0	0	50	0	100	0	0	0	0	15
Movement of natural persons (Mode 4)	59	64	63	64	6	100	50	28	51	41	53
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	25	0	50	75	0	0	50	50	38
<b>TOTAL</b>	<b>31</b>	<b>26</b>	<b>27</b>	<b>26</b>	<b>24</b>	<b>82</b>	<b>19</b>	<b>7</b>	<b>38</b>	<b>30</b>	<b>31</b>

Source: Author.

**Table 12. Restrictions on trade in life insurance services by ownership category and mode of delivery (per cent)**

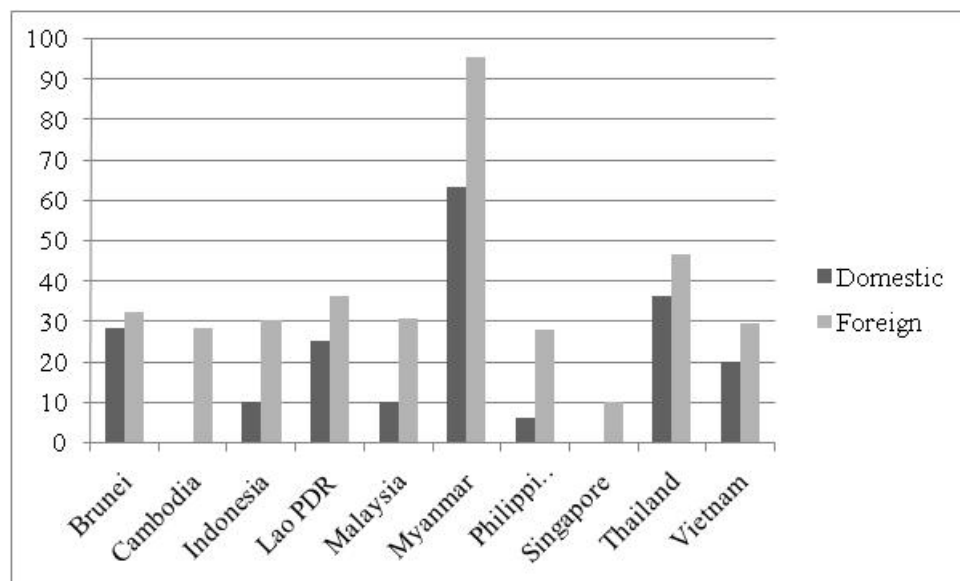
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<b>LIFE INSURANCE - DOMESTIC</b>											
Commercial presence (mode 3)	28	0	15	31	0	43	9	0	40	23	19
Ownership	0	0	0	0	0	100	0	0	0	0	10
Regulation	67	0	0	33	67	100	0	0	67	33	37
<b>TOTAL</b>	<b>28</b>	<b>0</b>	<b>10</b>	<b>25</b>	<b>10</b>	<b>63</b>	<b>6</b>	<b>0</b>	<b>36</b>	<b>20</b>	<b>20</b>
<b>LIFE INSURANCE - FOREIGN</b>											
Commercial presence (mode 3)	25	4	27	21	19	89	24	0	44	21	28
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	50	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	50	0	0	0	20
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	11	0	70	100	0	0	75	0	26
Regulation	40	40	40	60	40	100	0	0	40	60	42
<b>TOTAL</b>	<b>32</b>	<b>28</b>	<b>30</b>	<b>36</b>	<b>31</b>	<b>95</b>	<b>28</b>	<b>10</b>	<b>46</b>	<b>29</b>	<b>37</b>

Source: Author.

The table indicates that foreign ownership restrictions in insurance are not as prevalent as they are in banking — seven of the ten ASEAN countries already meet the ASEAN Blueprint benchmark. However, cross-border trade in insurance services is still widely restricted. This is significant because unlike banking, insurance does not rely on extensive networks of local retail outlets, so it is feasible for cross-border trade to be a significant mode of delivery. Insurance is also widely affected by restrictions on the movement of intra-corporate transferees. Insurance is also affected by regulatory restrictions (other than ownership restrictions) on commercial presence, including discretionary licensing and government controls or approvals of insurance premiums.

As with banking, the prevalence of restrictions in insurance is most marked for foreign services providers (Figure 10). However, it is also non-trivial for domestic providers in at least some ASEAN countries.

**Figure 10. Restrictions on trade in insurance services by ownership category (per cent)**

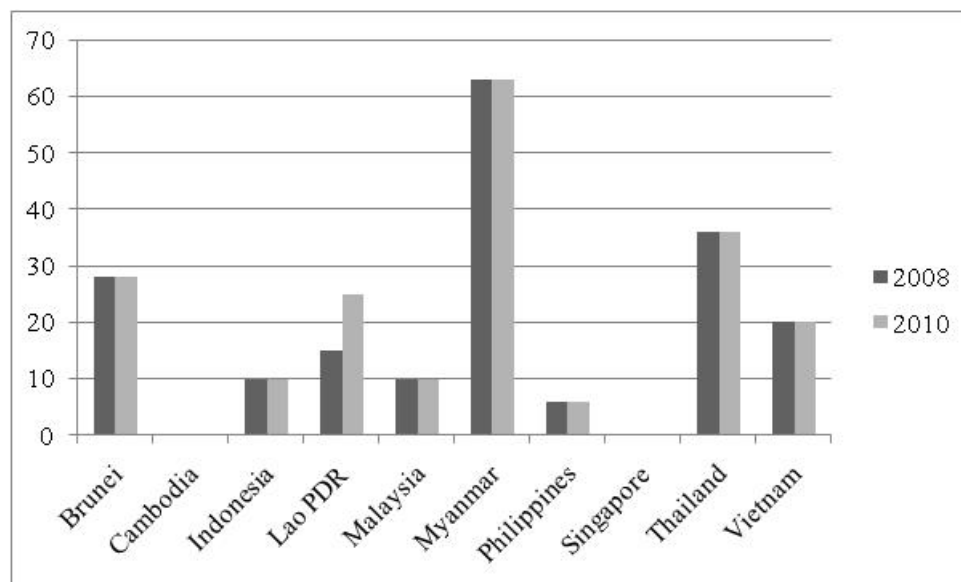


Note that both insurance and banking services face significant barriers to cross-border (mode 1) trade, despite the fact that the Blueprint is unequivocal about the liberalization of this mode of delivery. Consumers who undertake such cross-border transactions may need to be reminded of the limits of consumer protection in such cases. But there is little reason why transactions should not be allowed currently on a ‘caveat emptor’ basis, while governments also work to strengthen both the

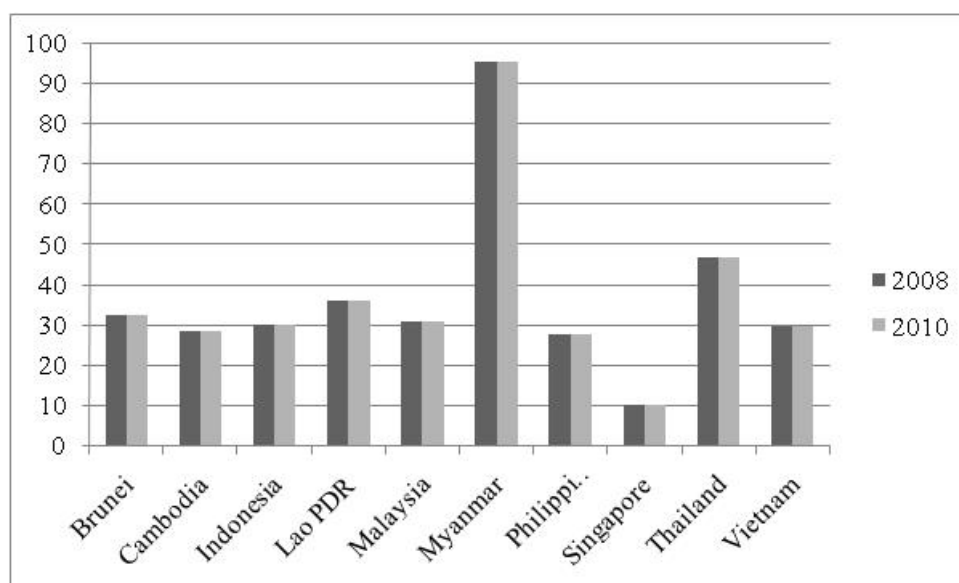
government and private sector mechanisms that have developed to handle disputes over cross-border e-commerce transactions. And similar comments apply to mode 2 trade. The most significant developments in the protection of cross-border e-commerce transactions have been outside of the ASEAN region, spearheaded by countries such as Australia. Thus ASEAN liberalization of mode 1 and mode 2 trade in financial services, hand in hand with a strengthening of cross-border consumer protection, should proceed on a most-favoured nation basis.

A final question is whether the recent reforms have made a significant difference. Figures 11 and 12 tell the same story as Table 1 — there has been very little reform of regulatory restrictions on trade in insurance services during 2008-10. In Lao PDR, legislative reforms have been essentially negated by the recent moratorium on granting new licences. Insurance is a sector that is typically under pressure during WTO accession negotiations, so some ASEAN countries will have already undergone market opening in this context. Other ASEAN countries will need to accelerate their reform efforts in this sector if the ASEAN Blueprint targets are to be met.

**Figure 11. Changes in restrictions on domestic insurance services over time (per cent)**



**Figure 12. Changes in restrictions on foreign insurance services over time (per cent)**



## **7. Accounting Services**

### **7.1. A scorecard for services liberalization — accounting services**

Like most professional services, accounting services can be provided by individual accountants, or in a broader institutional setting. They can be traded via mode 3 (commercial presence, in the form of accounting firms), and mode 4 (the movement of either individual accountants or the employees of foreign-invested accounting firms). Accounting back office functions are increasingly being provided via mode 1, although the full service generally requires face-to-face contact through mode 3 or mode 4.

The questionnaire covering barriers to trade in accounting services is reproduced in Appendix 1 at the end of this paper. It is similar to that for medical professionals. Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new professional services firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms (e.g. whether they are prohibited from incorporating, whether foreign entrants are required to establish in a joint venture). It also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in accounting firms, and whether there are

restrictions on accounting firms being owned by people who are not licensed accountants.

Under mode 4, the questionnaire asks whether there are restrictions on the entry into professional practice of new individual professionals, either domestic, foreign or both, and asks about any nationality, citizenship or residency requirements for individual professionals to practice. The questionnaire also asks about restrictions on the ability of individual professionals to leave their home country, as this can also affect mode 4 trade. Finally, the questionnaire asks about limitations on the movement of intra-corporate transferees (i.e. the employees of professional service firms), which might take the form of nationality or residency requirements on certain classes of directors, executives, managers or employees, or a requirement for labour market testing to establish that there is no qualified domestic person available for a position before a foreign person can be hired. Finally, the questionnaire asks about the requirements that foreign professionals need to undergo to obtain a licence to practice, including whether they need to retrain or sit a local examination, and whether their foreign qualifications are automatically accepted or are subject to a case-by-case assessment.

The questionnaire also asks about other potentially anti-competitive aspects of the regulatory regime, including whether there are activities reserved by law to the profession, whether there are restrictions on advertising or fee setting, whether there are limitations on foreign accountants participating in government contracts, whether the work of foreign accountants needs to be signed off by a locally trained or licensed accountant, and whether there are requirements for foreign invested firms to train local staff (which could raise their costs).

Finally, the questionnaire reveals information about the transparency of the regulatory regime, by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public. For information purposes only, it also asks for details about the regulator and about the licensing criteria used.

As with the previous services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of the accounting profession, partial scores are assigned as follows. For private, foreign and non-professional equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limit is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75. When scoring the requirements for foreign professionals to obtain a local licence, retraining is scored as the most restrictive (1.0), having to pass an examination is scored as the next most restrictive (0.75), while case-by-case assessment, having to pass an aptitude test or having to have local practice is scored at 0.5.

## **7.2. Scorecard results for accounting services**

The detailed results for accountancy are shown in Table 13. Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Table 14.



**Table 13. Restrictions on trade in accounting services (index 0-1)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>A. Market Access – commercial presence (mode 3) – Professional service firms</i>											
1 Are there restrictions on new entry - by domestic firms	0	0	0	0	0	0	0	0	0	0	0
By foreign firms	1	0	0	0	0	1	1	0	0	0	0.3
3 Are accounting firms prohibited from incorporating?	1	0	1	0	1	0	1	0	0	0	0.4
4 Are foreign firms prohibited from est. in a joint venture?	0	0	0	0	0	1	1	0	0	0	0.2
Are they required to establish in a JV?	1	0	0	0	0	1	1	0	1	0	0.4
5 Are foreign firms prohibited from/limited in undertaking certain services?	0	1	0	0	0	1	1	0	0	0	0.3
<i>B. Market Access – Inward movement of natural persons (mode 4) – Individual professionals</i>											
6 Are there restrictions on new entry - by domestic individuals	0	0	0	0	0	0	0	0	0	0	0
By foreign individuals	0	0	0	0	0	1	1	0	1	0	0.3
8 Is there a nationality or citizenship requirement?	0	0.5	0	0	0	1	1	0	1	1	0.45
9 Is there a residency or local presence requirement?	1	1	1	0	1	1	0	0	1	1	0.7
10 Are foreign individuals prohibited from/limited in undertaking certain services?	0	1	0	0	0	1	1	0	1	0	0.4
<i>C. Market Access – Outward movement of natural persons (mode 4) – Individual professionals</i>											
11 Are there policy restrictions on outward movement?	0	0	0	0	0	0	0	0	0	0	0
12 Are there other restrictions on exit?	0	0	0	0	0	0	0	0	0	0	0

**Table 13. Restrictions on trade in accounting services (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>D. Market Access – Inward movement of natural persons (mode 4) – Intra-corporate transferees</i>											
13 Are there requirements to have nationals/residents?	1	1	1	1	1	1	1	1	1	1	1
14 Are there restrictions on employing locally trained professionals in foreign firms?	1	1	1	1	1	1	1	1	1	0	0.9
15 Are intra-corporate transferees subject to labour market tests?	0	1	0	1	1	1	1	0	0	1	0.6
16 Are managerial personnel required to be locally licensed as a professional?	1	1	1	0	1	0	1	0	1	1	0.7
17 Are managerial personnel required to be locally domiciled?	1	0	1	0	1	1	1	0	0	1	0.6
<i>E. Ownership</i>											
18 Is private (ie non-government) ownership allowed? - existing operators	0	0	0	0	0	0	0	0	0	0	0
New entrants	0.75	0	0	0	0	0	0	0	0	0	0.08
19 Is foreign ownership allowed? - existing operators	0.75	0	0	0	0	1	1	0	0.51	0	0.33
New entrants	0.75	0	0	0	0	1	1	0	0.51	0	0.33
20 Are non-professional investors allowed an equity stake? Existing operators	1	0.51	0.75	0.67	1	1	1	0	0	0	0.59
New entrants	1	0.51	0.75	0.67	1	1	1	0	0	0	0.59
<i>F. Regulation – licensing</i>											
24 What are the requirements for foreign individual accountants to be licensed to practice locally?	0.5	1	0.75	0.5	0.5	1	1	0.75	1	0.75	0.775
25 Are there any other requirements for the licensing and accreditation of foreign individual accountants?	0	0	0	1	0	1	0	0	0	0	0.2

**Table 13. Restrictions on trade in accounting services (index 0-1) (Continued)**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<i>G. Regulation – restrictions on operation</i>											
27 Are there activities reserved by law to this profession?	1	1	1	1	1	1	1	0	1	1	0.9
28 Are there restrictions on partnership or association with other professions?	1	0	1	0	1	1	1	1	0	0	0.6
29 Are there restrictions on advertising, marketing or soliciting?	0	0	1	0	1	1	1	1	1	0	0.6
30 Are there restrictions on fee setting?	0	0	0	0	0	0	0	0	0	0	0
31 Is there a requirement for foreign invested accounting firms to train local staff?	1	1	0	1	0	1	0	0	0	0	0.4
32 Are there restrictions on the participation of foreigners in government contracts?	0	0	0	0	1	0	0	0	0	0	0.1
33 Is there a requirement to have the work of a foreigner approved by a locally trained/licensed accountant?	0	0	0	1	1	1	0	0	0	0	0.3
34 Which of the following are consulted in advance of regulatory changes (eg licensing requirements)?											
Service providers	1	1	1	1	1	0	1	0	0	0	0.6
Professional bodies	0	1	1	1	1	1	1	1	0	1	0.8
Users	0	1	1	1	1	0	1	0	0	0	0.5
Other	0	0	0	0	0	0	1	1	0	0	0.2
35 How are laws and regulatory decisions affecting this profession made public?											
Government website	0	1	1	1	1	0	1	1	1	1	0.8
Professional body's website	0	1	0	0	1	0	1	1	1	1	0.6
Official gazette	1	1	0	0	1	1	1	1	1	1	0.8
Other	0	0	0	1	0	0	1	1	0	1	0.4

**Table 14. Restrictions on trade in accounting services (per cent)**

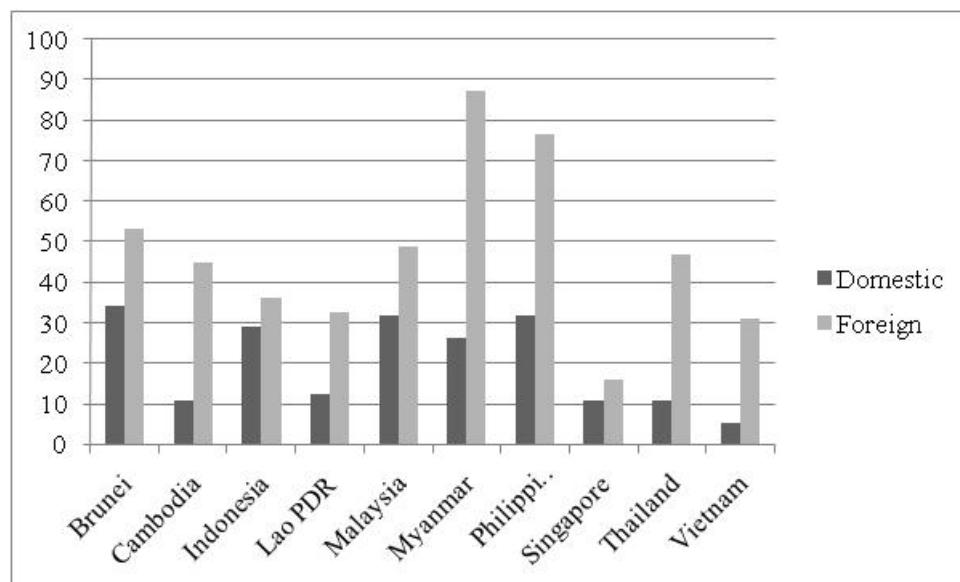
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
<b>OVERALL</b>											
Commercial presence (mode 3) – Professional service firms	50	17	17	0	17	67	83	0	17	0	27
Inward movement of natural persons (mode 4) – Individual professionals	20	50	20	0	20	80	60	0	80	40	37
Outward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Inward movement of natural persons (mode 4) – Intra-corporate transferees	80	80	80	60	100	80	100	40	60	80	76
Ownership	71	17	25	22	33	67	67	0	17	0	32
Regulation – licensing	25	50	38	75	25	100	50	38	50	38	49
Regulation – restrictions on operation	43	29	43	43	71	71	43	29	29	14	41
<b>TOTAL</b>	<b>48</b>	<b>35</b>	<b>34</b>	<b>27</b>	<b>44</b>	<b>70</b>	<b>64</b>	<b>14</b>	<b>36</b>	<b>23</b>	<b>40</b>
Transparency	25	75	50	63	75	25	100	75	38	63	59
<b>DOMESTIC</b>											
Commercial presence (mode 3) – Professional service firms	33	0	33	0	33	0	33	0	0	0	13
Inward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Outward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Ownership	58	17	25	22	33	33	33	0	0	0	22
Regulation – restrictions on operation	50	25	75	25	75	75	75	50	50	25	53
<b>TOTAL</b>	<b>34</b>	<b>11</b>	<b>29</b>	<b>12</b>	<b>32</b>	<b>26</b>	<b>32</b>	<b>11</b>	<b>11</b>	<b>5</b>	<b>20</b>
<b>FOREIGN</b>											
Commercial presence (mode 3) – Professional service firms	56	22	11	0	11	89	100	0	22	0	31
Inward movement of natural persons (mode 4) – Individual professionals	25	63	25	0	25	100	75	0	100	50	46
Inward movement of natural persons (mode 4) – Intra-corporate transferees	80	80	80	60	100	80	100	40	60	80	76
Ownership	83	17	25	22	33	100	100	0	34	0	42
Regulation – licensing	25	50	38	75	25	100	50	38	50	38	49
Regulation – restrictions on operation	40	30	30	50	70	70	30	20	20	10	37
<b>TOTAL</b>	<b>53</b>	<b>45</b>	<b>36</b>	<b>33</b>	<b>49</b>	<b>87</b>	<b>77</b>	<b>16</b>	<b>47</b>	<b>31</b>	<b>47</b>

Source: Author.

Six ASEAN countries already meet the Blueprint’s targets for foreign equity participation in accountancy firms — they have no restrictions on foreign equity at all. The Philippines has a constitutional requirement that certified practising accountants be Filipino citizens, in the absence of an enabling law allowing foreign practice. This requirement will be difficult to reform. The bureaucratic discretion exercised in Brunei and Thailand over foreign commercial entry can more readily be rolled back.

As with other professional services, restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence — this is the key method by which services trade is usually impeded, and it accounts for the marked overall discrimination against foreign services suppliers shown in Figure 13.

**Figure 13. Restrictions on trade in banking services by ownership category (per cent)**



Nevertheless, regulatory restrictions affecting both domestic and foreign suppliers are also reasonably common.

As noted earlier, accountancy is one of a number of professional services that support economic activity throughout the economy. Other such services are law and engineering. Other studies have shown that accountancy tends to be more restrictive than engineering, but less restricted than law (Nguyen-Hong 2000). A single market for these services depends crucially on the free mobility of the individual professionals. This can be facilitated by mutual recognition agreements. But it also

requires the relaxation of nationality and residency requirements, and the lifting of restrictions on the activities of foreign professionals, once they are licensed. The results in this paper have shown that there is a great deal more to be done to facilitate the movement of intra-corporate transferees and individual skilled professionals within ASEAN, even as some ASEAN countries are major demandeur of freer mode 4 trade with the rest of the world.

# Appendix 1 — Questionnaire Form — Accounting Services

## ERIA TRADE IN SERVICES SECTORAL QUESTIONNAIRE – ACCOUNTING SERVICES

### COVERAGE

- 1.A. Professional services  
b. Accounting, auditing, and bookkeeping services 862

Professional services can be delivered via mode 3 (commercial presence) and mode 4 (movement of natural persons - either individual professionals or the employees of foreign located professional service firms).

### INTRODUCTION

- The questionnaire covers: the conditions of *competition* in the sector, notably policy restrictions on entry and ongoing operations; restrictions on *ownership*, private and foreign; *regulation*, including measures to ensure quality of service. The emphasis is on policies affecting competition, international trade and investment in accounting services, rather than more general policies affecting the accounting service sector.

Note (1): Please give information for the current year only.

Note (2): Whenever a question is not applicable, (e.g. because the particular activity or institution is not allowed), please indicate using 'NA', rather than leaving the cell blank, and please explain why the question is not applicable.

Note (3): Where reporting monetary values, please note currency.

Note (4): If insufficient space is provided, please attach additional information on separate sheets.

### SUGGESTED INFORMATION SOURCES

Government department in charge of regulating accounting services.  
Professional bodies representing the accounting profession  
Independent regulatory body overseeing the accounting profession (if one exists)  
A domestic accounting firm (if necessary)  
A foreign-invested accounting firm (if necessary)

I. Policy Section

I.A. Market Access – commercial presence (mode 3) – Professional service firms

1. Are there restrictions on new entry of accounting <i>firms</i> , other than equity restrictions (equity restrictions are covered in the section on ownership)? Examples are restrictions on numbers of new licences. No = no restriction. Yes = some restriction.				
	Restrictions on entry by <i>domestic</i> firms?	If yes, total number of firms allowed	Restrictions on entry by <i>foreign</i> firms	If yes, number of foreign firms allowed
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> No <input type="checkbox"/> Yes	

2. If entry by firms is restricted, what are the reasons provided? (tick all relevant reasons)	
	Accounting
To give incumbent firms time to prepare for competition	<input type="checkbox"/>
To increase government revenue from privatization or licence fees	<input type="checkbox"/>
Exclusive rights believed necessary to attract (strategic) investment	<input type="checkbox"/>
Exclusive rights to allow the provision of universal service	<input type="checkbox"/>
Inadequate regulatory and supervisory capacity	<input type="checkbox"/>
Strategic activity reserved to the state	<input type="checkbox"/>
Entry subject to economic needs test by govt	<input type="checkbox"/>
Entry subject to geographic location	<input type="checkbox"/>
Entry controlled by professional association	<input type="checkbox"/>
Other (specify):	

3. Are accounting services firms <i>prohibited</i> from incorporating (with limited liability)? Are they <i>required</i> to establish in a particular form (eg partnership)?		
	Prohibition on incorporation?	Required form of establishment (please state)
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes	

4. Are foreign accounting services firms <i>prohibited</i> from establishing in a joint venture with local professionals? Are they <i>required</i> to establish in a JV? Are there restrictions on JVs (eg equity limits)			
	JV prohibited?	JV required?	Restrictions on JVs
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Yes	

5. Are foreign accounting services firms <i>prohibited</i> from undertaking certain types of accounting services (eg auditing, taxation). Are they limited to certain types of services (eg consulting). Please describe the nature of the restriction.			
	Some services prohibited?	Only some services can be provided?	Nature of restrictions on services
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Yes	



*I.B. Market Access – Inward movement of natural persons (mode 4) – Individual professionals*

6. Are there policy restrictions on new entry of *individual* accountants (eg numerical limits). Exclude the application of general licensing criteria, which are covered later.  
No = no restriction. Yes = some restriction.

	Restrictions on entry by <i>domestic</i> individual	If yes, total number of professionals allowed	Restrictions on entry by <i>foreign</i> individuals	If yes, number of foreign professionals allowed
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> No <input type="checkbox"/> Yes	

7. If entry by individual accountants is restricted, what are the reasons provided? (tick all relevant reasons)

	Accounting
To give incumbent individuals time to prepare for competition	<input type="checkbox"/>
To increase government revenue from privatization or licence fees	<input type="checkbox"/>
Exclusive rights believed necessary to attract (strategic) investment	<input type="checkbox"/>
Exclusive rights to allow the provision of universal service	<input type="checkbox"/>
Inadequate regulatory and supervisory capacity	<input type="checkbox"/>
Strategic activity reserved to the state	<input type="checkbox"/>
Entry subject to economic needs test by govt	<input type="checkbox"/>
Entry subject to geographic location	<input type="checkbox"/>
Entry controlled by professional association	<input type="checkbox"/>
Other (specify):	

8. Is there a nationality or citizenship requirement for individual accountants to qualify or to practice (whether as a condition of licence, or otherwise)? Please tick one.

	Required to qualify or practice	Required for use of professional title, but practice relatively free	No restrictions
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Is there a residency or local presence requirement for individual accountants to practice (whether as a condition of licence, or otherwise)? Please tick one.

	Permanent residency required (more than 12 months)	12 months or less prior residency required	Domicile required	Other (specify)
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

10. Are foreign *individual* accountants *prohibited* from undertaking certain types of accounting services (eg auditing, taxation). Are they limited to certain types of services (eg consulting). Please describe the nature of the restriction.

	Some services prohibited?	Only some services can be provided?	Nature of restrictions on services
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Yes	

*I.C. Market Access – Outward movement of natural persons (mode 4) – Individual professionals*

11. Are there policy restrictions on outward movement of <i>individual</i> accountants? Please state the type of restriction				
	Exit permit required?	Agency granting exit permit?	Fees/ procedures for exit permit? (please state)	Education or employment bond required after training (specify)?
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes			

12. Are there other restrictions on exit?	
Accounting	

*I.D. Market Access – Inward movement of natural persons (mode 4) – Intra-corporate transferees*

13. Are there <i>minimum requirements</i> to have nationals/residents in the following categories of position in foreign invested accounting firms (specify minimum number or percentage, state which):	
	Accounting
Members of the board of directors	
Executives	
Managers	
Professionals	
Unskilled workers	
Other staff (specify):	

14. Are there <i>prohibitions</i> or <i>maximum restrictions</i> on employing locally trained professionals in foreign invested accounting firms (specify maximum number or percentage, state which):	
	Accounting
Prohibition	
Maximum limit (specify):	
Other restriction (specify):	

15. Identify the categories of foreign intra-corporate transferees whose entry and stay is subject to <i>labour market tests</i> (eg need to establish that there is no qualified local candidate available before can appoint foreign person).	
	Accounting
Members of the board of directors	
Executives	
Managers	
Professionals	
Unskilled workers	
Other staff (specify):	

16. Identify the categories of managerial personnel who must be locally licensed as a professional accountant.	
	Accounting
Members of the board of directors	
Executives	
<b>Managers</b>	

17. Identify the categories of managerial personnel who must be locally domiciled.	
Members of the board of directors	
Executives	
Managers	

*I.E. Ownership*

18. Is <i>private</i> (ie non-government) ownership in accounting service firms allowed?				
	Existing operators	Maximum private equity permitted (%)	New entrants	Maximum private equity permitted (%)
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> No <input type="checkbox"/> Yes	

19. Is <i>foreign</i> ownership in accounting service firms allowed?				
	Existing operators	Maximum foreign equity permitted (%)	New entrants	Maximum foreign equity permitted (%)
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> No <input type="checkbox"/> Yes	

20. Are <i>non-professional</i> investors (ie investors who are not professional accountants) allowed an equity stake in accounting service firms?				
	Existing operators	Maximum non-professional equity permitted (%)	New entrants	Maximum non-professional equity permitted (%)
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> No <input type="checkbox"/> Yes	

*I.F. Regulation – licensing*

21. Which organization(s) are responsible for regulating (via licensing or otherwise) to ensure service quality?				
	Government Ministry(ies)	Professional body	Both	Other (specify):
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

22. Indicate the requirements for licensing and accreditation of <i>local</i> individual accountants (tick all relevant requirements)					
	Compulsory membership of professional organization	Professional examination	Practical experience (give number of years)	Higher education (give number of years)	No licence required to practice
Accounting	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>

23. Are there any other requirements for the licensing and accreditation of <i>local</i> individual accountants (eg geographic location, as a condition of licensing, or proof of professional indemnity insurance)? Please specify:	
Accounting	

24. Indicate the requirements for <i>foreign</i> individual accountants to be licensed to practice locally (tick all relevant requirements)						
	Local retraining required for full licence	Local exam required in all cases	Case-by-case assessment of foreign licence and quals (eg under mutual recognition agreement)	Aptitude test or local practice (state which)	Foreign licence and quals sufficient to practice	No licence required to practice
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

25. Are there any other requirements for the licensing and accreditation of <i>foreign</i> individual accountants (geographical location as a condition of licensing)? Please specify: (NB Citizenship and residency requirements, whether as a condition of licence or not, are covered in Question 9 and 10)	
Accounting	

26. With which other ASEAN countries do you have a mutual recognition agreement to recognize the professional and academic credentials of foreign individual accountants? Were they negotiated by government, a professional body, or both?		
	Which ASEAN countries	Who negotiated them?
Accounting		

*I.G. Regulation – restrictions on operation*

27. Are there activities (eg auditing, tax advice) reserved by law to the profession (ie <i>only</i> qualified accountants can perform these activities)? Please specify what they are:	
Accounting	

28. Are there restrictions on partnership or other type of business association with other professions (eg lawyers)?		
	Prohibition:	Other (please specify)
Accounting	<input type="checkbox"/>	

29. Are there restrictions on advertising, marketing or solicitation?		
	Prohibition:	Other (please specify)
Accounting	<input type="checkbox"/>	

30. Are there restrictions on fee setting?				
	Minimum?	Maximum?	Which activities?	Set by govt. or professional body?
Accounting	<input type="checkbox"/>	<input type="checkbox"/>		

31. Is there a requirement for foreign invested accounting firms to train local staff? NB Please list any other hiring restrictions under Sections 1.B and 1.C on market access via mode 4.			
	Professional staff?	Managerial staff?	Other staff (please specify):
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	

32. Are there restrictions on the participation of foreign accounting professionals or accounting service firms in government contracts? Please specify:	
Accounting	

33. Is there a requirement to have the work of a foreign accounting professional approved by a locally trained/licensed accountant?	
Accounting	<input type="checkbox"/> No <input type="checkbox"/> Yes

34. Which of the following are consulted in advance of regulatory changes (eg licensing requirements)?				
	Service providers	Professional bodies	Users	Other (specify):
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

35. How are laws and regulatory decisions made public?				
	Government website	Professional body's website	Official gazette	Other (specify):
Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

THANK YOU!

## **Appendix 2 — Policy Changes During 2008-10 — Country Reports**

### **1. Brunei**

For the four services sectors submitted in 2008 (medical, health, banking, insurance), there has been no change to any legislation or statutory laws that would have an impact on the responses for 2010. Although there has been a change in Cabinet Ministers in 2010, there have been no new policies issued.

However, with effect from 1 January 2011, the Monetary Authority of Brunei Darussalam (MABD) will be established as a Statutory Body to regulate the banking, finance and insurance sector. This includes Islamic financial institutions and International Offshore companies. The MABD will be totally independent of the Ministry of Finance. Hence the Financial Institution Unit under the Ministry of Finance will cease to exist on that date.

### **2. Cambodia**

#### **2.1. Banking**

In banking, an amendment was made in September 2009 to liberalize interest rate setting. Prakas No-B7-09-213 issued on 9 August 2009 announced that “Banks and Financial Institutions have the right to determine interest rates on deposits and interest rates on loans both in local currency and foreign currencies according to each institution’s ability and interest rate policy.” In addition, minimum capital requirements were increased. According to the National Bank of Cambodia’s Prakas of 19 September 2008 on new capital requirements and the criteria for licensing approval of banks, commercial bank reserves were raised from 50 billion riel (US\$13 million) to 150 billion riel (US\$36.5 million), and specialized bank reserves from 10 billion riel (US\$2.5 million) to 30 billion riel (US\$7.5 million). Banks that obtained their licence or principal letter before this Prakas was issued were required to increase their capital to the new minimum no later than the end of 2010.

## **2.2. Medical Professions**

In the medical professions, a new mutual recognition agreement was signed with ASEAN countries in 2009.

## **3. Indonesia**

### **3.1. Insurance**

The only change in insurance regulation during 2008-2010 concerned prudential measures. The change was made late in 2008 when the impacts of the global financial crisis were thought to be severe. By issuing PP no. 81/2008, the government postponed the timeline for the implementation of minimum capital requirements for insurance companies (IDR 40 billion), sharia insurance (IDR 50 billion) and reinsurance companies (IDR 100 billion) from 2008 to 2010.

### **3.2. Banking**

Similarly, changes to banking industry regulation concerned a few prudential measures. Early in 2011, Bank Indonesia (BI) introduced new regulation to require banks to publish their complete financial records in the media and commercial banks' websites in order to improve banking transparency. Banks must provide customers with sufficient guidelines to choose the most trustworthy bank to manage their funds. The regulation stated that transparency reports would be announced every six months. The report must be comprehensive and realistic at the same time, comprising all financial balance sheets, risks and good corporate governance. Commercial banks must also disclose their method of calculating the capital adequacy ratio (CAR) tier 1 for core capital and tier 2 for supplementary capital.

In addition, Bank Indonesia also pushes commercial banks to announce their prime lending rates,<sup>1</sup> starting from 1 March 2011. According to officials at the Central Bank, the announcement of banks' prime lending rates will enable the central bank to compare one bank to others. Thus, with a supervisory approach, Bank

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<sup>1</sup> The prime lending rate is the base lending rate given to banks' prime customers with zero risk (The Jakarta Post, 10 January 2011).

Indonesia can monitor inefficient banks and encourage them to be more efficient and lower their costs, which in turn will lower their lending rates.

### **3.3. Health**

Lots of laws in the health sector were issued during 2008-09. Law no. 36/2009 on health, article 35 required all foreign healthcare facilities to obtain an operating licence. Law no. 44/2009 on hospitals regulates establishment and management of hospitals in Indonesia. Coupled with PP no. 36/2010 on the negative investment list, healthcare services currently offered for foreign investments are:

- Hospital Services: specialist/subspecialist services (minimum of 200 hospital beds for ASEAN investors and 300 hospital beds for other foreign investors), maximum limit of foreign equity 67%, can be established throughout Indonesia. Establishment and operating licences for foreign-invested and domestic-owned hospitals are issued by the Ministry of Health upon recommendation from the provincial bureau (dinas kesehatan) under local government (pemda). The recommendation is based on spatial planning made by dinkes. Following Law no. 44/2009, the Ministry of Health released Permenkes 147/2010 on hospital licensing as implementing regulation. The latest data on the number of hospitals throughout Indonesia showed there was an increase from 1,312 hospitals (673 privately-owned) at the end of 2008 to 1,523 hospitals (768 privately-owned) in December 2009.
- Other hospital services: mental rehabilitation clinic (maximum limit of foreign equity 67% throughout Indonesia), Clinic Specialized Medical Services (maximum limit of foreign equity 67% throughout Indonesia), Clinic Specialized Dental Services (maximum limit of foreign equity 67% throughout Indonesia)
- Nursing Service (CPC 93191): maximum equity limit for foreign investment is 49% throughout all Indonesia. However, services established in Medan and Surabaya are allowed foreign equity of up to 51% maximum limit.
- Healthcare supporting services: rental service of medical device is allowed to have 49% foreign investment, throughout Indonesia.

- Other healthcare supporting service: medical labs, check-up clinic are open for up to 67% foreign equity throughout Indonesia.

Law no. 44/2009 requires hospital to undergo a routine accreditation program once every three years. Prior to 2009, there were no sanctions on hospitals that did not join an accreditation program, although a program was already regulated by Permenkes no. 436 issued in 1993 (hospital and medical service standards) along with implementing regulation Decree of Directorate Yanmedik no YM.02.03.3.5.2626 on hospital and other health facilities' accreditation committee.

The method of funding universal service obligations has also changed recently. The previous method was via a subsidized insurance scheme. In 2008 the government opted for a direct assistance scheme where funds were disbursed directly to participating Jamkesmas hospitals. Law no. 36/2009 and Law no. 44/2010 now specify that hospitals must have social functions — providing health services to poor patients, emergency cases and natural disasters. Law no. 36/2009 similarly defines the universal services obligations for medical laboratory and ambulance services

There is a 'World-class hospital' initiative and a medical tourism initiative. The World class hospital initiative was issued in 2009 (Permenkes no. 659/MENKES/PER/VIII/2009).

### **3.4. Medical Professions**

As in healthcare services, many regulations on medical professionals were issued during 2008-10. Section 5 Law no. 44/2009 covers medical professionals for hospitals. In article 14, it was stated that a hospital could employ foreign medical professionals. However, the employment must be intended for the purpose of knowledge and technology transfers. It must also consider availability of local medical professionals. Since 2007, foreign medical professionals must register and obtain a licence to practice. They must also take a retraining (sometimes called adaptation) process and pass an Indonesian language test.

Following Law no. 44/2009, the Ministry of Health issued a number of Permenkes (Peraturan Menteri Kesehatan/Ministry of Health Regulations) as implementing regulations to the Law. They are:



- Permenkes no. 1438/2010 on medical service standards;
- Permenkes 317/2010 on employment of foreign health professionals in Indonesia;
- Permenkes 161/2010 on registration of health professionals;
- Permenkes 148/2010 on operating licensing and administration of nurse's practice;
- Decree of Indonesian Medical Council no. 17/2008: directive guidelines of temporary registration and conditional registration of foreign medical doctors and foreign dentists; and
- Decree of Indonesian Medical Council no. 157/2009 on registration of ASEAN medical doctors and dentists to conduct medical practice in Indonesia.

According to a new regulation, Permenkes no. 028 issued on 4 January 2011, clinics (defined as healthcare facilities performing individual healthcare service and providing basic medical and/or specialized services, conducted by more than one type of healthcare professional and led by medical professionals) cannot hire foreign healthcare workers.

Law no. 36/2009 states that organ transplants, the implant of medical devices into the human body, plastic surgery and reconstruction, and the prescription of narcotic and psychotropic drugs are reserved to qualified medical professionals.

## **4. Lao PDR**

### **4.1. Insurance**

The Insurance Law of Lao PDR was approved in 1990. It has the function of promoting and preserving the socio-economic basis of the Lao People's Democratic Republic, regulating insurance relationships, ensuring the exercise of rights and the performance of duties between enterprises conducting insurance business and insured individuals or legal entities, enhancing the responsibilities of enterprises conducting

insurance business in implementing the laws of the State, and ensuring State inspections of insurance business undertakings. According to the 1990 insurance law (1990), only joint ventures and foreign branches were allowed. Thus 100% foreign ownership was not allowed.

There is no permanent policy restriction on the entry of domestic or foreign insurance providers and intermediaries (i.e. brokers) as insurance companies. But according to the insurance law (Article 27), “individuals who will undertake the practice of the profession of insurance intermediaries must be a Lao national”. This is to make sure that the individual intermediaries understand the Lao situation and can better contact Lao customers and the Lao Government. In addition, the Prime Minister’s Decree on Guidelines for Implementation of the Law on Insurance issued in 1992 stipulates that “In case of necessity due to the situation of the insurance market, the Minister of Economy, Planning and Finance (now Ministry of Finance) has the right to restrict or suspend the issuance of further insurance business permits in one, several or all branches.” As of 2007, there were 6 insurance companies, of which 4 were joint-venture companies between the Lao Government and foreign investors, and 2 were foreign branches. However, according to the Ministry of Planning and Investment, the Government now wants to suspend new entry in this business as there are already 6 insurance providers in Laos and the market is small.

Currently, the insurance law is expected to be amended to be more appropriate to the current situation of an economy more liberalized and open to the world and integrated with the region. In the meantime, the amendment of this law is on the way. The National Insurance Office was set up in 2009 but it is yet to produce any policy papers until the new Law on Insurance is promulgated.

Insurance activities are also regulated by the relevant laws on foreign investment. According to the old Law on the Promotion of Foreign Investment (2004), there had to be at least 30% foreign ownership in a joint venture establishment (Article 7). The new 2009 Law on Investment Promotion has reformed the 2004 law in the following respects:

- the 2004 law on FDI promotion was separated from the law on domestic promotion, whereas now there is only one law on investment promotion which is equal for foreign and domestic investors;
- the minimum share of foreign investment in joint ventures has been lowered to 10%, replacing the 30% under the 2004 law;
- according to the 2009 Law on Investment Promotion, insurance business is classified under the concession criteria. It states that the investment term of any concession depends on sector regulation, but with the maximum period of 99 years. According to the old 2004 Law on Investment Promotion, the investment term of a foreign enterprise would not exceed 50 years and could be extended with the approval of the Government, up to a maximum of 75 years ( Article 11).
- according to the general forms of investment determined by the new law, it can be 100% foreign owned.

In the institutional framework, there are two key agencies in Lao PDR responsible for supervising financial services — the Ministry of Finance and the Bank of the Lao PDR. The Ministry of Finance is the main agency for insurance supervision. In the banking sector, Bank of the Lao PDR is the agency responsible for banking supervision.

Beside insurance services, the government has established two social security systems to guarantee the wellbeing of employees in both the public and private sectors. The social security system for the public sector is compulsory for all public employees nationwide, whereas the social security system for the private sector is a statutory scheme for enterprises employing 10 or more workers. Those companies with less than 10 employees can also join this system on a voluntary basis. However, in the coming years, this compulsory coverage will be extended to all employers with one or more employees. It is significant to note that targeted companies must comply with social security regulations. This means that having workers insured only with insurance firms is not sufficient for the employers and employees to escape their obligations in joining the social security system. Moreover, insurance companies that

are themselves in the group targeted by the social security system have to join the social security scheme for private sector employees.

## **4.2. Banking**

As of December 2009, the banking system consisted of four state-owned commercial banks, two joint venture banks, seven domestic and foreign private banks, and 10 branches of foreign banks. Other financial institutions under the supervision of the Bank of Lao PDR consist of one Lao postal saving institution, 22 pawnshops, five deposit taking micro institutions, eight non-deposit taking institutions, 13 credit cooperatives and saving deposit institutions and two saving funds, all of which are registered at the Bank of Lao PDR. Besides that there are village development funds and a poverty reduction fund, established by mass organizations and local society organizations, with the participation of villagers and financial assistance provided by the non-government organizations. These are not directly under the supervision of the Bank of Lao PDR.

The financial system has steadily expanded, with the total assets of the banking system (excluding Nayoby Bank) rising to 3,595.6 billion Kip or up by 25.98 per cent as compared to 2008, the capital adequacy ratio achieving 13.44 per cent on average, non-performing loans being only 2.99 per cent of total net credit and financial liquidity being maintained in line with the standards set.

Bank of Lao PDR has continued to create and improve the regulatory framework for the supervision of banks and financial institutions to ensure that those operating in Laos are financially sound, viable and move towards international standards. Some key supportive legislation and progress on the development of banking services are summarized as follows.

- Bank of the Lao PDR Law, dated 14 October 1995, determines the characteristics, role, scope of rights and duties, organization and operations of the Bank of the Lao PDR in carrying out its monetary policy, maintaining stability of the value of Kip and contributing to the growth and efficiency of the socio-economic development of the Lao PDR.

- Law on Commercial Bank, dated 26 December 2006, sets the requirements for supervision of Commercial Banks.
- Prudential Regulations provide instruction and monitor Commercial Banks' activities. They include:
  - Regulation on the commercial Banks' Capital Adequacy (No. 01/BOL 28/08/2001);
  - Regulation on Use of Registered Capital (No, 129/BOL 16 May 2001);
  - Regulation on Lending to Large Customers of Commercial Banks and Financial Institutions which are under the supervision of the Bank of the Lao PDR (No 03/BOL, dated 15/01/1996);
  - Regulation on Protecting Soundness Practices among the Commercial Banks and Financial Institutions which are under the supervision of the Bank of the Lao PDR (No 04/BOL 15/01/1996);
  - Regulation on the Credit Policy of the Commercial Banks and Financial Institutions to the Executive Officer and Credit Related People (No 05/BOL, dated 15/01/1996);
  - Regulation on the Treatment of Failed Banks (No 06/BOL, dated 15/01/1996);
  - Regulation on Foreign Currency Exposure (No 05/BOL, dated 10/09/2003);
  - Proposed Revisions to the Implementation of the Regulation on Foreign Currency Exposure (No.02/BFSD, Vientiane, 25 January 2002);
  - Regulation on Loan Classification Requirements for Commercial Banks which are under the supervision of the Bank of the Lao PDR (No 06/BOL, dated 11/05/2004);
  - Decree on the Accounting of the Bank of the Lao PDR and Financial Institutions under the authorization of the Bank of the Lao PDR (No.03/PM January 8, 1996);
  - Business Law (No.42/CPR, August 13, 1994);

- Final Draft of the Microfinance Regulation for the Lao PDR; and
- Decree on Anti-Money Laundering (No.55/PM, City of Vientiane, 27/03/2006).

### **4.3. Health and Medical Services**

The Lao Government has formulated a long term health care development strategy as follows.

#### *Health Strategy by 2020*

- full health care service coverage and health care service equity;
- development of early integrated health care services;
- demand-based health care services; and
- self-reliant or financially autonomous health services.

#### *Health Development Plan 2006-2010*

- strengthen health providers' ability;
- improve community-based health promotion and health prevention;
- improve and expand hospitals at all levels;
- promote and strengthen the use of traditional medicine and integrate it with modern care;
- promote operational health research;
- ensure effective administration and management, and financial self-sufficiency;
- establish a health insurance fund.

According to the Law on Domestic and Foreign Investment of Lao PDR, there is no policy restriction on the entry and operation of foreign and domestic private-owned operators in health services and medical professionals.

Despite no restriction to foreign health services and medical professionals, there are so far only a few foreign investors coming to invest in these sectors, in particular a small share of laboratory services from Thailand and Vietnam — Untrasonography, X-Ray, and a CT Scanner from Vietnam.

The reason for this small market share of foreigners is not because of policy restrictions, but because of the small market demand in the country. In addition, relatively rich Lao patients prefer to seek health care in neighbouring countries, in particular Thailand and Vietnam. However, domestic private investment in this sector has developed relatively well. Currently, there are 254 private clinics, of which only two are foreign (a Chinese and a Vietnamese), and 1,945 private pharmacies, of which only one is foreign (a Chinese).

## **5. Malaysia**

### **5.1. Banking and Insurance**

In general, the rules and regulations governing both banking and insurance remained relatively unchanged since 2008.

In November 2010, the central bank announced several measures to curb property speculation as well as to address the rising household debt problem.<sup>2</sup> These policy changes came after various research houses voiced their concerns to the policymakers.<sup>3</sup>

Specifically, the monetary regulator imposed a maximum loan-to-value (LTV) ratio of 70%, which will be applicable to the third house financing facility taken out by a borrower.<sup>4</sup> Financing facilities for purchase of the first and second homes are not

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<sup>2</sup> Household debt to GDP rose from 66.7% in 2004 to 77.6% in 1H2010. This can be attributed to increasing diversification by banks away from risky business loans to less risky household loans, and accommodative monetary policies.

<sup>3</sup> It is worthwhile to note that the recent Budget 2011 did not contain any measures to address the rising household debt issue. This is probably due to the upcoming election, as measures to curtail household debt would be detrimental to the ruling party.

<sup>4</sup> The impact of this measure is expected to be reasonably small since individuals who purchase third and subsequent houses are small. As a result, a lower LTV should not serve the purpose of addressing rising household debt. Market participants expect more measures will be announced

affected and borrowers will continue to be able to obtain financing for these purchases at the present prevailing LTV level applied by individual banks based on their internal credit policies. The measure aims to support a stable and sustainable property market, and promote the continued affordability of homes for the general public.

At the national level, residential property prices have increased steadily in tandem with economic development and the rise in income levels. This aggregate growth trend remains largely manageable and has not deviated from the long term trend in residential property prices. In the more recent period, however, specific locations, particularly in and around urban centres, have experienced faster growth, both in the number of transactions and in house prices. This is further supported by an increase in financing provided for multiple unit purchases by a single borrower, suggesting increasing investment activity that is of a speculative nature.

The targeted implementation of the LTV ratio is expected to moderate the excessive investment and speculative activity in the residential property market, which has resulted in higher than average price increases in such locations. This has also led to increases in house prices in surrounding locations, thus contributing to the declining overall affordability of homes for genuine house buyers. This measure therefore remains supportive of the objective of encouraging home ownership among Malaysians which continues to be an important national agenda.

As part of the continuous efforts to raise the level of financial literacy and to promote sound financial and debt management by Malaysians, the regulator also announced the introduction of the Financial Capability Programme.<sup>5</sup> This Programme will be offered by Agensi Kaunseling dan Pengurusan Kredit (AKPK) through its establishments nationwide and will commence from January 2011. The Programme is aimed at equipping individuals with important knowledge for responsible financial decisions by gaining practical understanding and skills in money and debt management. This in turn will contribute towards preserving the sound financial positions of households and ensure that debt accumulation is commensurate with household affordability, including their ability to absorb interest rate adjustments and

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only after the general election.

<sup>5</sup> Anecdotal findings show that individuals with financial difficulties are young Bumiputra. This is controversial due to the fact that Bumiputra is the ruling party in Malaysia.



potential volatility to income and expense levels. Individuals, particularly new prospective borrowers and young adults, are strongly encouraged to participate in this specially designed programme.

The Central Bank of Malaysia is currently preparing for a ‘new’ Financial Sector Masterplan, which would further liberalize the banking and securities markets.

## **5.2. Medical and Health Services**

Healthcare in Malaysia is under the responsibility of the federal government’s Ministry of Health. Malaysia generally has an efficient and widespread distribution of health care. It implements a universal healthcare system, which co-exists with a private healthcare system. The infant mortality rate — a standard in determining the overall efficiency of healthcare — in 2006 was 6.6 per 1 000 live births, comparing favourably with that of the United States and Western Europe. Life expectancy at birth in 2006 was 71.8 years for males and 76.3 years for females.

Even though healthcare in Malaysia is provided by both public and private providers, the government is still the main provider as healthcare in the country is still heavily subsidized. Private healthcare costs are fully borne by patients themselves or through their insurers, or they may be financed through charity organizations. Although the government does not finance the private sector, it is still very supportive, as the private sector supplements the public sector in meeting the demand for health services. Doctors are required to perform three years of service with public hospitals throughout the nation, ensuring adequate coverage of medical needs for the general population. Foreign doctors are encouraged to apply for employment in Malaysia, especially if they are qualified to a higher level. The public sector is the main provider, accounting for approximately 60% of the total health care expenditures. However, during the last two decades the private sector has developed significantly. The government wants gradually to shift from its role of a provider to that of a regulator, which sets norms and standards for both the public and private healthcare.

The 9th Malaysian Plan (9MP) outlines the government strategies and focus for the healthcare industry for the current five-year period (2006-2010). Under 9MP, the thrust towards achieving greater health will be through various goals, including preventing and reducing disease and enhancing healthcare delivery.

Will this mean that within this period the Malaysian National Healthcare Financing Scheme (similar to Australia's Medicare system) will finally be implemented? According to industry feedback, the government will have to do so very soon as the escalating healthcare costs is creating a burden too great for them to bear.

The latest government initiative to improve public healthcare coverage is the '1Malaysia' clinics program, launched in early 2010. Currently, there are around 50 such centers in Malaysia.

In 2010-14, the government will give some prominence to its efforts to maximize the use of information technology in medical care, medical education and health services management. The government is keen to push 'telemedicine', which allows for the transmission of medical images, virtual consulting and virtual medical training. In recent years the government has also been promoting 'medical tourism', and aims to attract more patients from Asia, the Middle East and the West for treatment.

There has been rapid growth in number of private hospitals in the last two decades. The majority are located in urban areas and unlike many of the public hospitals they are equipped with the latest diagnostic and imaging facilities. This is possible because they provide services for the rich segment of the population and are not financed by the government and thus have no restrictions when it comes to procurement of equipment. The fact that the private hospitals do not have restrictions when it comes to remuneration also means that the doctors at the private hospitals are paid much more than at the public hospitals. The growth of private hospitals has contributed to the shortage faced by the public sector. Almost 40 per cent of practising doctors serve in the private sector. The larger private health groups in Malaysia are the Johor Healthcare Group and the Pantai Group of Hospitals.

The current ratio of doctors per population is 1:1200, which is still far from the national target of 1:600 by 2020 and similarly ambitious targets for nurses (current ratio 1:560) and other medical personnel. To achieve this, a number of expansion strategies are being pursued. This includes:

- the recruitment of foreign doctors and specialists;

- acknowledging foreign medical degrees formerly not recognized (with conditions attached);
- increasing the number of scholarships for local and foreign training of Malaysian doctors;
- the establishment of new medical colleges and twinning programs (the tie-up of Australian universities offering health and medical-related courses in Malaysia is an excellent example).

There are 200 plus private medical laboratories in the country. Aspects of the quality of tests, equipment and healthcare professionals in the labs are regulated, and there are controls on advertisements too. Among the major players include names like BP Labs Healthcare, BSS Medical Lab, Clinipath, Gribbles Malaysia, LabLink, Medi-Vance Healthcare and Pathlab.

Private ambulance service providers do exist and they fall under the purview of the Private Healthcare Facilities and Services Act 1998. However, what the public fear is that the impending privatization of this service means replacing one monopoly with another. They hope it is not the case of the transfer of government monopoly to a private monopoly.

Over the past few years, the trend of Australian health/medical offerings has shifted towards provision of services. The tie-up of Australian universities offering health-related courses in Malaysia is one of the best examples. Other notable examples include allied health skilled training, ambulance service operations and retirement village planners.

### ***5.2.1. Market Trends***

There are two new areas of interest to the Malaysian government in the health care sector. The two areas are the Telehealth project under the Multimedia Super Corridor and health tourism.

The essence of telemedicine is the exchange of information at a distance, whether the information is voice, an image, elements of a medical record, or commands to a surgical robot. The Malaysian Telehealth project or integrated Telemedicine is one of

the seven flagships of the Multimedia Super Corridor (MSC), which is a geographical area set aside for information and communication technology and multimedia development in Malaysia. The telemedicine project, which started in October 2000, aims at transforming Malaysian health care from a physical and facility-based environment to a virtual environment. If the project is successful it should be able to reduce health care spending by up to 20%.

There are currently about 40 private hospitals involved in health tourism. The number of foreign tourists seeking treatment in Malaysian private hospitals increased almost tenfold from 39,000 in 1998 to 341,288 in 2007. Revenue generated by health tourism rose substantially from US\$ 2.5 million in 1998 to US\$ 39 million in 2002. Healthcare services for foreign tourists accounted for 3% (US\$ 66 million) in 2006 and the government targets to generate revenue of US\$ 188 million the next 5 years.

Health tourism promotions are targeted at less-developed countries like Indonesia, Bangladesh, Vietnam, and countries in the Middle East. Nevertheless recently, there has also been an increase in arrival of health tourists from developed countries such as the United Kingdom and the United States. Common treatments are in cardiology, cardio thoracic surgery, radiotherapy, and radiology. The private sector is allowed to advertise their services to the public.

The Malaysian government is actively promoting medical tourism in Malaysia for private health and medical requirements. Many hospitals in Malaysia have set up international departments to cater especially to the international patients. As a result the number of private hospitals providing quality healthcare to international patients has increased over the years. The association of private hospitals estimated that the medical tourism grew by about 25% in 2009 to about 625,000 medical tourists, compared to 501,000 in 2008.

The Malaysia Healthcare Travel Council (MHTC) was established under the Ministry of Health Malaysia (MOH) on 3rd July 2009 upon the approval of the Malaysian Cabinet. MHTC has been set up as the primary agency to develop and promote the healthcare travel industry and to position Malaysia as the healthcare destination of choice in the region. Members of the Committee are appointed from representatives of the government and the private sector involved in healthcare travel.

The Committee is responsible for advising on policy issues and setting directions for the healthcare travel industry. With the establishment of MHTC, promotional efforts will be more focused, and issues impacting industry growth will be addressed in a concerted manner.

## **6. Myanmar**

### **6.1. Insurance**

Myanma Insurance is an organization that exercises its monopoly in insurance business and the only organization financially backed up by the government by law. Although foreign companies have been allowed to open their representative offices to look after the interest of companies of their respective nationality, they have not been allowed to fully operate their insurance business. Japanese firms such as Mitsui Sumitomo and Sompo have operated in this category.

Although reinsurance had been in practice since 1937, it had never achieved its aim for high bracket policy amounts. Reinsurance was bought mostly from New India Insurance Company and some from Lloyds. There were other insurance companies based in Myanmar who took the reinsurance commitments from Myanmar insurance firms. They were American Underwriter Insurance, Rube Federal Insurance, New Zealand Insurance and Indo-Burma Insurance. At the time, Myanmar companies were acting only as commissioned agents of these insurance firms but later on they took the responsibility for proportional insurance up to Kyat 500,000. Fire excess loss was taken by F.G. Watts brokers backed by Lloyds mostly. Engineering reinsurance was carried out under a contract signed with Munich Re in 1958. It was renewed every year and has stayed in the hands of Munich Re since the execution of the first contract.

The present practice is for the Management Committee of Myanma Insurance headed by the Managing Director of the same organization to invite quotations on a tender basis from broking firms including but not limited to Aon, Jardine, Willis and TRS. The quotations are assessed by the management committee which gives a share quota to each broking firm under excess loss treaties. Assessment is done with a view

to getting the widest cover at the lowest premium rates. The premium is paid to the broking firms by Myanmar Insurance in US\$ at the official rate and the same exchange rate is used to pay claims if there are any. This payment system is an attempt to bypass any problem that might arise due to the parity between official and market rates. The claims have been mostly in the retention region of Myanmar Insurance and very seldom came into the reinsurance layers. Myanmar Insurance also has a retention contract signed with a foreign firm for amounts over its retention. In accordance with the Foreign Investment Law, foreign companies that come into Myanmar have to buy insurance cover from Myanmar Insurance only. Foreign insurance companies who want to sell policies to such companies have to pay what is known as fronting commission to Myanmar Insurance. This commission would be as high as 15 per cent of the premium they would get.

To look after all these processes, a supervisory board known as Insurance Business Supervisory Board has been formed with the Managing Director of Myanmar Insurance as its chairman and the General Manager as its secretary. Since all the administrative requirements of the board would be financed and provided by Myanmar Insurance, the industry naturally has to be in the hands of Myanmar Insurance. When the right time comes, the Insurance Business Supervisory Board and Myanmar Insurance would become two separate entities with the Board having its own budget and other necessities; when that time comes, the privatization process would certainly begin.

Another insurance organization operating under a defence decree had been Myanmar International Insurance Corporation (MIIC). It had a broking arm under the name of Myanmar International Insurance Services Corporation. They worked under Myanmar Economic Corporation. Both were ordered to stop renewing any policies written, but were responsible for policies issued until their expiry. This took place due to the fact that there was some financial problem with these companies.

### ***Recent changes and future vision***

Although privatization has not been seen up to now, there has been an introduction of new types of insurance recently. The most coveted form of cover is that arranged for seamen on vessels both foreign going and domestic. Seamen are

always at risk of losing their lives, especially at a time like this when storms of various levels are rampant all over the world. This cover is arranged for those seamen from sixteen to sixty years of age. The maximum insured amount is five million Kyats and the fixed premium is Kyat 25,000 for an insured period of one year. Myanmar Insurance can also supply insurance services including quasi-medical insurance for expatriates going abroad. In 2008 quasi-medical insurance did not exist.

Myanmar Insurance up to now has been the sole authority and the only organization through which insurance cover has to be placed by foreign investors in Myanmar. The new economic situation will demand choice of insurance companies for this requirement. The current situation of having only one government-owned agency would not satisfy the need of future business people. Although there was once an invitation for applications to form insurance companies, the permission never came about. The reason given was that the capital required did not fully belong to Myanmar nationals due to the fact that foreign companies wanted to have some foothold in this industry. This process should be reactivated for the benefit of everyone concerned — the policy holders as well as the insurance cover providers. Of course, the applicants would be given special training for handling the requirements of the situation. Privatization of the industry has to be definitely implemented under the new government after the election. Requirements previously imposed for a new company may be updated by raising the capital amount needed by a private company.

Present regulatory measures could also be toned down so that the newly formed companies would have a freer hand in their operations. However, the capital requirement of a company might be increased so that the companies would be always ready to pay the claims if they occur. Licence fees and other requirements might also be raised to adjust to the prevailing monetary status.

The composition of the Insurance Business Supervisory Board might have to be changed. The members except the board's secretary should be people from other relevant corporations so that whatever the board decides would be fair and balanced.

The promulgation of The Insurance Business Law, a new law that would help the process of liberalizing the industry to be carried out smoothly and quickly, brings out

a different picture. The usual procedure followed by the organizations under the Ministry of Finance and Revenue is to start with representative offices of the foreign finance-related firms here. It would then be followed by permission to form joint ventures between foreign firms and Myanmar organizations — both from public and private sectors. The ultimate stage would be for the foreign companies to get involved in direct underwriting business themselves.

## **6.2. Banking**

In order to facilitate the conduct of a market-oriented economic system, the banking and financial system in Myanmar has been restructured by new bank laws, namely, the Central Bank of Myanmar Law, the Financial Institution of Myanmar Law, the Myanmar Agricultural and Rural Development Law since 1989-1990. The Union of Myanmar Foreign Investment Law, enacted on 30 November 1988, is indeed a very significant change in the Myanmar economic history and is considered to be liberal in economic resource mobilization, including international financial resources. According to the Directorate of Investment and Company Administration, all permitted enterprises under the Union of Myanmar Foreign Investment Law (FI Law) are allowed to bring in cash/in kind contributions. However, there are no provisions for capital outflows under the FI Law. Some observers have said there are flaws in that in some cases the provisions of the Law on paper can be different from the practical application of the Law.

The Central Bank of Myanmar is implementing a banking sector development strategy with three phases as follows:

Phase 1: promoting the institutional development; promoting the skills and efficiency among the domestic banks within the medium term, while foreign banks are allowed to open their representative offices in Myanmar; initially foreign banks are allowed to open their representative offices which may work only as liaison offices of their headquarters.

Phase 2: permitting selected domestic banks to run joint ventures with foreign banks;

Phase 3: permitting foreign banks to open branches and operate banking activities in Myanmar.



At present, there are four state-owned banks, 12 representative offices and 19 private and/or semi-government banks. There are no foreign invested banks in Myanmar. The development of the banking sector has stagnated at the phase 1 for a couple of years. There are restrictions not only on entry by foreign-invested banks but also on entry by domestic banks. The reason given for the restriction on entry by foreign-invested banks is that state-owned or national banks require time to prepare for competition. The reason for the domestic banks is that excessive entry is believed to threaten financial stability. Another possible reason is that some restrictions are related to the country's political and economic condition.

### **6.3. Health Services**

The health care sector is a rapidly growing sector in the world economy. New kinds of health care organizations over the past decade have emerged with the globalization of health services. There has been a significant development in the forms of trade and foreign direct investment (FDI) in health services in recent years. The Law Relating to Private Health Care Services in Myanmar was enacted in April 2007. One of the aims is to develop private health care services in accordance with the national health policy. Private health care services include private clinic and hospital services and private general health care service among others.

In the private sector, 36 hospitals, 52 medical laboratories and 70 ambulances are already allowed to operate in the Yangon area. Health service firms are required to establish as non-profit organizations to assist the high health care cost.

In principle, commercial presence is allowed according to the Union of Myanmar Foreign Investment Law (FI Law) 1988. According to FI Law, 51 % foreign equity participation for foreign health services firms is allowed. According to the FDI rule and the rule of the Ministry of Health, mode 1, 2 and 3 in healthcare services are allowed in the following sub-sectors: general and medical services, specialized medical services, dental services, hospital services, deliveries and related services, nursing services, physiotherapists and para-medical personnel, ambulance services, and residential health facilities services other than hospital services and other human health services. Liberalization of Mode 4 is now under discussion in the ASEAN Coordinating Committee on Services (CCS).

In practice, recognized foreign-invested firms do not yet operate. However, there are a few foreign health service organizations such as NGOs and volunteer organizations.

Nevertheless, there have been some recent developments since 2008. Pan Hlaing Hospital in Hlaing Tha Ya township is really a joint venture hospital, composed of stakeholders from a foreign country as well as of Myanmar nationality.

Another development is more access to health clinics in Bangkok, Singapore, India (via Mode 1). Those clinics are already linked or in joint venture with Myanmar National Services providers (agents). Some procedures such as renal transplants, cardiac operations, and treatments for breast cancer, brain tumours and strokes have been investigated in foreign countries through Myanmar agents. Some patients have received treatment from there.

#### **6.4. Medical Professionals**

One third of medical practitioners in Myanmar are employed in public hospitals and the other two thirds are professionals employed in their own clinics, in private hospitals or by international NGOs. The proportions for dental surgeons and laboratory technicians are similar to those for medical practitioners.

Systematic private medical services are said to be not well developed in Myanmar. Most General Practitioners (GPs), whether medical or dental, practice on their individual own account, without elaborated clinic facilities, just following the principles of private clinic manuals and guidelines and local authority's instructions.

Although foreign ownership in medical professional service firms is allowed in accordance with the FDI rule and the rule of the Ministry of Health, recently there are no existing foreign medical professional service firms in Myanmar.

Since 2008 Myanmar has signed two new Mutual Recognition agreements with Malaysia and Bhutan.

## **7. Philippines**

### **7.1. Banking and Insurance**

While services in the Doha Round are still at the negotiation stage, the commitments of the Philippine finance industry, both banking and insurance sectors, remain the same, with no new commitments being considered. All commitments of the Philippines are within allowable limits provided for by the law and its implementing rules and regulations.

The Philippine finance sector is not expected to enter into new commitments, particularly those that would require legislation. Unless there is a compelling reason driven by the banks and the insurance companies, such as very strong demand from majority of the players from these sectors to have greater access to other markets, the Philippine commitments will be within the bounds of existing laws, its implementing guidelines, rules and regulations.

### **7.2. Health Services**

#### ***7.2.1 On New Entry of Hospitals***

A major policy change in the trade in health services is the suspension for one year of the need to obtain a Certificate of Need (CON), the only restriction on new entry of private hospitals. The suspension was due to appeals made by various stakeholders to reconsider the criteria for CON. The Department of Health (DOH) through the Bureau of Health Facilities and Services (BHFS) is currently evaluating the guidelines for CON to address healthcare needs in a community, decrease healthcare costs and control duplication of services.

Some government officials also believe that entry of private hospitals must not be restricted since private enterprises must be entitled to free market access as long as standards for quality of facilities and services are met. Moreover, they believe that removing restrictions on entry will allow the government to maximize its resources and target providing public health services in areas with limited access to healthcare.

Since the suspension of the need to obtain CON in May 2010, the BHFS has observed an increase in the number of applicants for the establishment of new

hospitals. If these applicants will be able to fulfil the basic requirements for the licensing of new entrants, it can be expected that there will be an increase in the number of healthcare providers in areas that are profitable for such ventures. Increased competition will likewise encourage private hospitals to provide better facilities and services at more competitive prices.

### ***7.2.2 On New Entry of Laboratories***

The DOH Administrative Order No. 2007-0027 created the improved quality assurance and monitoring program for clinical laboratories in the Philippines and rendered the DOH-BHFS Circular No. 3 Series of 2003, which suspends issuance of permit to new entry of laboratories, obsolete. The devolution of some regulatory functions of the BHFS to the Centre for Health Development (CHD) facilitated the implementation of an improved quality assurance and monitoring system for laboratories.

The new system enhanced the monitoring capacity of the DOH and improved the quality of services of laboratories nationwide.

### ***7.2.3 On Issuance of Alien Employment Permits***

The process for the issuance of employment permits to foreign nationals has been extended from 1 to 3 working days due to inclusion of 2 working days for publication of all applications for new Alien Employment Permit (AEP), change or additional position. The publication period is used to determine the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform services for which the alien is desired. This is to comply with Article 40 of the Labour Code of the Philippines. The reference is the Department of Labour and Employment Department Order No. 97-09 Series of 2009.

Other than lengthening the application for employment permits of foreign nationals, the extension of the processing period for the issuance of AEPs has no significant impact on the sector.

#### ***7.2.4 On Medical Tourism***

In 2009, the Health and Wellness Alliance of the Philippines (HEAL Philippines) was established to organize the industry stakeholders along with partner government agencies involved with global healthcare and wellness services, tourism and retirement. By virtue of the DOH Administrative Order No. 2009-0015, interim policies and guidelines for endorsement of applications for registration of medical tourism projects under the Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA) were also put in place.

It is estimated that the Philippines received more than 300,000 foreign patients since 2006, which generated an estimated revenue of USD350 million to USD500 million. The HEAL Philippines targets to reach 1 million tourists for the period 2006 to 2012, which is equivalent to cumulatively USD1 billion in revenue.

However, aside from the above-mentioned progress, the development of the medical tourism industry in the Philippines has been sluggish for the past years. The lack of progress may be attributed to the absence of a national policy for the Philippine medical tourism and a law that will institutionalize the Philippine Medical Tourism Program (PMTP). The development of the industry has not been the priority of the past administration. Although the 2011-2016 DOH National Objectives for Health that was drafted in 2009 includes a section on general plans for the development of medical tourism, the new administration has no concrete plans on it yet. There have also been problems with data gathering as private companies involved in the industry are not very cooperative in divulging critical information.

#### ***7.2.5 Other Issues***

There are emerging demands for the amendment of the Republic Act 4226 or the Hospital Licensure Act to expand the coverage of the law to include health facilities other than hospitals.

The DOH is currently encountering problems with monitoring the secondary and tertiary hospitals. Hence, there are plans of re-centralizing the regulatory functions of the CHD with respect to secondary and tertiary hospitals back to BHFS.

### **7.3. Medical Services**

#### ***7.3.1 On Issuance of Alien Employment Permits***

As noted above, the process for the issuance of employment permits to foreign nationals has been extended from 1 to 3 working days due to inclusion of 2 working days for publication of all applications for new Alien Employment Permit (AEP), change or additional position. Other than lengthening the application for employment permits of foreign nationals, the extension of the processing period for the issuance of AEPs had no significant impact on the sector.

#### ***7.3.2 On the AFAS Mutual Recognition Arrangement***

Except for negotiations and signed Mutual Recognition Arrangements (MRA) on medical and dental practitioners that have been completed in February 2009, there have been no major developments in the easing of restrictions to entry of foreign practitioners in the country. Based from the horizontal commitments of the Philippines in the AFAS, non-resident aliens may only be admitted to the Philippines for the supply of a service after determining the non-availability of a Filipino who is competent, able and willing, at the time of application, to perform services for which the alien is desired. The barrier to entry of foreign individuals originates from the constitutional provision that the practice of all professions in the Philippines shall be limited to Filipino citizens. Hence, unless constitutional amendments are made, entry of foreign practitioners in the country will remain limited.

Completion of the assessment statements for the medical and dental practitioners and nurses has also been sluggish due to constitutional barriers and cultural, political and religious disparities among the ASEAN member countries. Moreover, the absence of established licensing systems in some of the member countries also contributes to the delay of the completion of the statements. The target is to finish the assessment statements by 2015.

#### ***7.3.3 On the Japan-Philippines Economic Partnership Agreement***

The Japan-Philippines Economic Partnership Agreement has been progressing since 2009. The Philippines was able to deploy a total of 283 nurses and caregivers in 2009,

the first year of deployment, and 118 nurses and caregivers in 2010, the second year of deployment. The decline in deployment of nurses and caregivers is due to the reduction in the number of vacancies for nurses and caregivers in 2010.

The number of deployed health personnel is significantly less than the number of matched Filipino candidates to vacancies in Japan. The discrepancies in the number of matched and visas issued were due to the following reasons: application withdrawal of candidates, candidates disagreeing with the matching, some were not accepted by institutions, were medically unfit or did not complete their visa requirements.

#### ***7.3.4 On Lack of Progress in the Liberalization of the Sector***

The Philippine Regulatory Commission (PRC) notes that the lack of progress in the liberalization of the sector stems from the constitutional provision that the practice of all professions in the Philippines shall be limited to Filipino citizens. Despite significant pressures to liberalize the sector from the international community, the constitution almost always supersedes policies and trade agreements that aim to free up trade in services of medical professionals.

## **8. Singapore**

### **8.1. Banking**

Since 1997, the Monetary Authority of Singapore (MAS), Singapore's central banks, has been gradually liberalizing the banking sector. This has encouraged more competition from foreign banks.

Financial institutions are typically not categorized into domestic and foreign-invested but into the types of banking licences they received.

Commercial banks in Singapore operate as full banks, wholesale banks or offshore banks. Full banks may provide the whole range of banking business approved under the Banking Act. There are currently 121 commercial banks in Singapore where 30 of them are full banks. Out of the 30, six of them are locally-

incorporated entities under the three local banking groups, and one is a locally-incorporated subsidiary of a foreign bank. The remaining 23 banks are branches of foreign-incorporated banks.

Seven of the foreign banks operating in Singapore have been awarded Qualifying Full Bank (QFB) privileges. As such, they may operate a total of 25 locations. They may also share ATMs among themselves, and relocate their sub-branches freely. QFBs are allowed to negotiate with the local banks on a commercial basis to let their credit card holders obtain cash advances through the local bank's ATM networks. QFBs may provide debit services through an EFTPOS network, offer Supplementary Retirement Scheme and Central Provident Fund Investment Scheme accounts, and accept fixed deposits under the Central Provident Fund Investment Scheme and Minimum Sum Scheme.

Wholesale banks may engage in the same range of banking business as full banks. The only difference is that they do not carry out Singapore Dollar retail banking activities. All wholesale banks in Singapore operate as branches of foreign banks. There are currently 50 wholesale banks in Singapore.

Offshore banks can engage in the same activities as full and wholesale banks for businesses transacted through their Asian Currency Units (ACUs). However the scope of business for offshore banks has slightly more restrictions on dealings with residents as compared to wholesale banks. Under the banking liberalization programme, offshore banks were given greater flexibility in Singapore dollar wholesale business. Offshore banks had their Singapore dollar lending limit raised to S\$500 million. They are now allowed to engage in Singapore dollar swaps in respect of proceeds arising from the issue of Singapore dollar bonds managed or arranged by them. All offshore banks in Singapore operate as branches of foreign banks and there are 38 of them here.

The industry is regulated by the Monetary Authority of Singapore (MAS), which acts as the central bank of Singapore. Like most central banks, MAS is independent from the government, though it does work with various ministries when it comes to macroeconomic policies. The functions of MAS include the conduct of monetary



policy, the issuance of currency, the oversight of payment systems and serving as banking to and financial agent of the Government.

Foreign-invested banks are subjected to the same licensing requirements as domestic banks. Therefore they will pay the same licence fees as based on the type of licence held. MAS will also take into consideration other factors such as financial soundness, rating, track record and risk management processes of the bank applicant before granting a banking licence to a new entrant. The differing point between domestic and foreign-invested banks for new entrants is the minimum amount of capital required. Domestic banks required a paid-up capital of S\$1.5 billion while foreign-invested banks just need S\$200 million in capital funds at their head office.

Currently, there is no issuance of new licences for full or wholesale banks. Thus foreign banks that may meet the prudential requirements will still not be able to enter Singapore due to the cessation of new full or wholesale banking licence. This has been the case since 1999. But they may still be allowed to enter the market via the offshore banking licence, after meeting the prudential requirements.

## **8.2. Insurance**

Insurers may conduct insurance activities in Singapore as registered insurers, authorized re-insurers or foreign insurers.

Registered insurers are approved under Section 8 of the Insurance Act to conduct life and/or general insurance business in Singapore. In addition to the registered insurers, re-insurers without an operating presence in Singapore can conduct re-insurance business in Singapore as authorized re-insurers under Section 8A of the Act. Such re-insurers may be authorized as general insurers and/or life re-insurers. Foreign insurers are approved under the law of another country or territory to carry on insurance business in that country or territory. These insurers operate in Singapore under a foreign insurer scheme established under Part IIA of the Act. Currently the Lloyd's Asia scheme is the only foreign insurer scheme in Singapore.

There are currently 150 registered insurers, 6 authorized re-insurers and 21 foreign insurers under Lloyd's Asia Scheme.

Similar to banking services, MAS is regulator for insurance services in Singapore. Insurance companies must be registered and authorized by MAS before they can provide insurance services in Singapore. There are no restrictions on entry by domestic or foreign-invested insurers as long as they are able to meet the admission criteria.

There is no law preventing the freedom of choice of domestic residents when it comes to choosing insurance products. However, domestic residents are required to purchase motor insurance and work injury compensation insurance only from Singapore-registered insurers. Other than that, they are free to purchase any insurance policies from a foreign insurer in Singapore or based abroad.

### **8.3. Health and Medical Services**

Healthcare in Singapore is mainly under the responsibility of Singapore's Ministry of Health (MOH). The universal healthcare system comprises a dual system of healthcare delivery supported by both public and private sector players.

There are currently six public hospitals, with one more public hospital scheduled to open in 2015, and 13 private hospitals in Singapore. According to total admissions data for 2008, government hospitals account for 76% of the total. The remaining 24% is accounted by private hospitals. In addition to hospital facilities, primary health care is provided through an island network of 18 outpatient polyclinics and some 2000 private medical clinics.

The Ministry of Health and its statutory boards (e.g. Health Science Authority) regulate all health services providers to ensure adequate standards and patient safety. Private health service providers must apply for a practice licence in order to provide such services in Singapore.

The procedure to set up a medical hospital or clinic is rigorous. Health service providers are not restricted in the legal entity to be registered under. They may register as a business entity, a partnership or a non-profit. Foreign firms are subjected to the same licensing requirement as the domestic firms. Both domestic and foreign firms have performance and quality assurance obligations to adhere to when providing health services.

Emergency ambulance service (EAS) is under the purview of the Singapore Civil Defence Force (SCDF), Ministry of Home Affairs (MHA). SCDF manages the private ambulance providers in order to augment its own emergency ambulance service.

All doctors and nurses are required to be registered with the respective professional bodies where they will be accredited. Foreign healthcare professionals are also subjected to the same requirements.

## **9. Thailand**

### **9.1. Horizontal Measures — the New Working of Alien Act**

All of the services sectors under study remain relatively restricted to foreigners under related rules and regulations. Most of rules and regulations have not been changed in the past two years. Nevertheless, one distinctive change is the replacement of the Working of Alien Act 1978 by the new act, Working of Alien Act 2008. The act governs the employment of foreign nationals in Thailand. All foreign employees require a work permit under the act except the work permit under the investment promotion law or other specified law. Under this new act, there is an establishment of the Alien out-of-kingdom repatriation fund as a guarantee to cover the expenses in repatriating a worker out of the Kingdom. All workers receiving a work permit under this act must send in the money as contributions to the fund. Employers have the duty to deduct such money from wages to the fund. There is also an expansion in validity period of the work permit from not exceeding one year to not exceeding two years. A period for a renewal of the work permit is also expanded from not exceeding one year to not exceeding two years. With the new act, an alien from neighbour countries may be permitted to do some certain work in the certain area.

Under the Working of Alien Act 1978, there is mention of *prohibited* occupations and professions, which are listed in the royal decree stipulating work in occupations and professions prohibited to alien under the act. Under this act, an alien who desires to work in occupations and professions that are not in the prohibited occupations and

professions is required to obtain the licence from the Director-General of the Department of Labour Protection and Welfare. In contrast, under the Working of Alien Act 2008, there is only mention of occupations and professions *allowed* to the foreigners and not the prohibited occupations. The list of allowed occupations and professions will be included in the ministerial regulations. The announcement of ministerial regulation is supposed to be issued within two years from the date on which this new act has been put in force, yet there are no such announcements as of now. Nevertheless, the transitory provisions under the new act mention that during the absence of ministerial regulations, the registrar can permit aliens to do any work except the work prescribed by the royal decree under the Working of Alien Act 1978. This permits the law to replace the prohibited list of occupations in the future with an allowed list of occupations, which can more easily be included in any trade commitments.

## **9.2. Banking**

After the Thailand's financial crisis in 1997, the financial sector has been restructured. While many finance companies were closed down or merged with others and the number of those companies has decreased significantly from 91 to 7, the number of the commercial banks did not change much (Menkhoff and Suwanaport, 2007). Thailand's banking system currently consists of 14 Thai commercial banks, 15 foreign banks branches and 1 foreign subsidiary. According to the Bank of Thailand, the overall banking system in 2010 is resilient. The banking system's loan expanded 11.3 per cent in 2010 from the previous year, while corporate loans, constituting 71.3 per cent of total loans, rose 9 per cent.

In 2003, Bank of Thailand introduced the Financial Sector Master Plan (FSMP) in order to enhance the efficiency, strength and access of the financial institutions. Authorities agreed that the FSMP should be done in three phases to ensure prudent implementation and allow for the future review on the results of implementation. The Financial Sector Master Plan Phase I (FSMP I) was implemented from 2004 to 2008. The key measures under the FSMP Phase I included upgrading of financial institutions through voluntary mergers and broadening of commercial bank business scope to 'Universal Banking', which allows them to serve all groups of customers and to carry out almost all types of financial transactions. In addition, new licences were

also granted, including a new subsidiary licence for a foreign commercial bank and a new retail banking licence. A ‘one presence’ policy was also introduced to reduce unnecessary duplication and to increase economies of scale within the financial institutions system.

The Financial Sector Master Plan Phase II, which implements from 2010 to 2014, consists of measures to reduce system-wide operating costs, promote competition and financial access, and strengthen financial infrastructure. It is expected that this will produce an efficient financial system that has good risk management and corporate governance and is not burdensome for the country. It is also expected that this will reduce the cost of services and provide greater access to diversified financial services appropriate to the demand. Lastly, it is also expected that the legal framework will allow greater opportunity for qualified individual debtors and small business debtors to apply for a business restructuring process.

Banking services are regulated by the Bank of Thailand, which is independent from the Ministry of Finance.

Only financial institutions, domestic and foreign, that obtain licences from the Ministry of Finance can operate in Thailand. However, licences are granted periodically, depending on economic needs and the financial conditions in Thailand. According to the Financial Institution Business Act 2008, the operation in commercial bank business is only allowed for a public limited company that is granted a licence from a Ministry of Finance with the advice of the Bank of Thailand. Likewise, a foreign commercial bank is eligible to establish a branch operating in commercial bank business when it is granted a licence from a Ministry of Finance with the advice of the Bank of Thailand. A commercial bank must have Thai-national shareholders holding not less than 75% of the total shares and have Thai-national directors not less than three-fourths of the total number of directors. However, the Bank of Thailand may allow non-Thai nationals to hold 49% of the total shares and the number of non-Thais directors to be more than one-fourths but less than one-half of the total directors, where the Bank of Thailand deems it appropriate.

In the royal decree under the Working of Alien Act 1978, banking personnel are not in the occupations restricted for foreigners. Thus to be employed as banking

personnel, an alien can obtain a work permit from the Director-General of the Department of Labour Protection and Welfare. To be eligible to apply for a permit, an alien must also have a residence in Thailand or must be authorized to enter the Kingdom of Thailand temporarily in accordance with the law governing the immigrant. The permission for a non-immigrant visa will be granted for a period of not more than one year at a time, but the work permit issued under the Working of Alien Act 2008 is valid for a period not exceeding two years at a time.

Among the services covered here, banking services seem to have made the most progress towards liberalization. Recent changes in policy in banking services are that the Bank of Thailand has permitted commercial banks to employ personnel of ASEAN nationality with unlimited numbers in any positions<sup>6</sup> but foreign institutions must propose an employment plan and necessity to the Bank of Thailand, which it will consider on a case-by-case basis. This policy change follows the protocol to implement the 3rd package of commitments on financial services under the ASEAN Framework Agreement on Services (AFAS) to remove the quantitative quota on the number of foreign personnel allowed in the banking sector.

Furthermore, a foreign bank that is already eligible to establish a branch in Thailand under the Financial Institution Business Act 2008 and has established branches in Thailand is allowed to establish up to 2 additional branches by the approval of the Bank of Thailand.<sup>7</sup> This follows Thailand's commitments under the General Agreement on Trade in Services (GATS) that existing foreign banks which already had the first branch office in Thailand prior to July 1995 will each be permitted to open no more than two additional branches.

Note that domestic banks also face restrictions on the expansion of bank branches. According to notifications from the Bank of Thailand for the rules on bank outlets, only a 'qualified bank' is able to open bank outlets freely and to be qualified bank, it must maintain a certain standard and get approved by the Bank of Thailand. Other domestic banks desiring to open new outlets must get approval from the Bank of Thailand on a case-by-case basis.

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<sup>6</sup> This is according to the notification from the Bank of Thailand No. BOT. 1556/2552. The positions are except for executives or members of the Board of Directors, which still have to be Thai nationals not less than three-fourth of the total number of directors.

<sup>7</sup> This is according to the notification from the Bank of Thailand No. FPG. 1/2553.

### 9.3. Insurance

Insurance services are divided into life insurance business and non-life insurance business. All insurance services are regulated by the Office of Insurance Commission. The Life Insurance Act 1992 (as amended by No.2, 2008) and the Non-life Insurance Act 1992 (as amended by No.2, 2008) regulates any insurance business in Thailand. The life and non-life insurance business may be undertaken only by a public limited company under the Law on Public Limited Company. A foreign life (non-life) insurance company is allowed to establish a branch office to conduct the life (non-life) insurance business by acquiring the licence from the Minister with the approval from the Cabinet. The Life (Non-life) Insurance Act limits the foreign equity participation up to 24% and not less than three-fourth of the directors of the company must be Thai nationals; however, the foreign equity participation may be relaxed up to 49% and may permit persons with non-Thai nationality to serve as directors more than one-fourth but less than one-half of the total number of directors. The foreign insurance company is required, under the ministerial regulations, to have at least three-year operating history and to place securities with the Office of Insurance Commission (OIC) as a security deposit in the value not less than 20 million baht for the life insurance business and not less than 3.5 million baht for each category<sup>8</sup> of non-life insurance business, respectively.

A person desiring to be an insurance agent or broker for life or non-life insurance must acquire a licence from OIC. A person applying for a licence for an insurance agent must be, among other qualifications, locally domiciled and have studied the life/non-life insurance business at the institute prescribed by OIC or pass the examination by the OIC. Brokerage and agency work (excluding brokerage and agency work in international trade business) is one of the 39 occupations restricted for foreigners, according to the royal decree under the Working of Alien Act 1978.

There is no recent update in policies or regulations with regard to services trade barriers in insurance services over the past two years.

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<sup>8</sup> The Ministerial regulation has classified non-life insurance business into four categories — fire insurance, marine cargo insurance, car insurance, and other insurance (excluding the first three categories).

#### **9.4. Health Services**

Health services in Thailand are provided by government healthcare providers (government hospitals, medical schools, health centres) and private healthcare providers (private hospitals, clinics). Government healthcare providers have major role to serve Thai nationals.

Since 2004, the government has launched a five-year strategic plan to develop Thailand as ‘Centre of Excellent Health Care of Asia’. The plan has focused on three key areas — medical services, health promotion services, and Thai herbal products. This strategic plan has led to an increase in foreign visitors availing themselves of medical services in Thailand in past years. In 2007, there were about 1.37 million foreign visitors, which were mostly Japanese, following by Americans and English. According to the TDRI (2009) study, the number of patients from ASEAN obtaining medical services in private hospitals in Thailand has increased from 36,708 in 2003 to 115,561 in 2007. It is expected that the patients from ASEAN countries will be higher, especially when the ASEAN Economic Community (AEC) come into force in 2015.

Following from the first plan, the government has continued with another five-year strategic plan to develop Thailand as a World Class Health Care. The plan has continued to focus on the original three key business areas, but has added Thai Traditional Medicine and Complementary and Alternative Medicine.

In the Draft 11<sup>th</sup> National Economic and Social Development Plan (2012-2016), the health services are included in the fifth strategy, a strategy of strengthening economic and security cooperation in the region. The aim is to upgrade health services, both personnel and service standards, to be a medical hub centre of the region.

In addition, Thailand’s Board of Investment (BOI) has approved tax incentives to investors in the medical sector, including:

- exemption from import duties on machinery throughout the period of promotion, regardless of zone;



- priority activities such as the manufacture of medical supplies, medical equipment, and scientific equipment to receive the maximum corporate income tax exemption for 8 years, regardless of zone and with an unspecified ratio of corporate income tax.

Moreover, the BOI provides non-tax incentives such as land ownership rights for foreign investors, permission to bring in foreign experts and technicians, and work permit and visa facilitation for expatriate employees.

Health services are listed in the List 3 under the Foreign Business Act 1999 which is prohibited to aliens unless receiving permission from the Director-General of the Commercial Registration Department (CRD). In case of a limited company with a majority of the Thais shareholders, it is regarded as a Thai company and therefore not subject to the Foreign Business Act 1999. This implies that aliens are generally allowed to join up to 49% in an accounting company but need approval if higher than that. Aside from that, a person engaging in a sanatorium business in Thailand must obtain a licence from the Ministry of Public Health, according to the Sanatorium Act 1998. To be eligible to apply for a licence, a person must be, among other qualifications, locally domiciled. Upon the application for the licence, the applicant must submit an action plan for the establishment of the sanatorium, including the sanatorium type, instrument, medical supplies and number of practitioners as prescribed by the ministerial regulations. After acquired the licence, the licensee must arrange a manager to supervise and be responsible to the management of the sanatorium. The manager is required to obtain a licence from the Ministry of Public Health and must be practitioner (medical, medicine, dentistry, midwifery, or nursery).

There is no recent update in policy or regulations in health services over the past two years.

## **9.5. Medical Professionals**

Medical professional services include medical, dental and services provided by midwives, nurses, physiotherapists and para-medical personnel outside of a hospital environment. But in Thailand, a clinic or the premises of the individual professional are listed in the same category as hospital, thus they are subject to the Sanatorium Act 1998. In addition, each professional service is subject to its own law. Medical

practitioners are subject to the Medical Council under the Medical Profession Act 1982. Dentistry practitioners are subject to the Dental Council under the Dental Profession Act 1994. Para-medicals such as midwives, nurses are subject to the Nursing and Midwifery Council under the Professional Nursing and Midwifery Act 1985. Each act prohibits anyone to practice related medical profession activities unless the person is registered and has obtained the licence from the associated regulator. There is no requirement of Thai nationality to practice medical professions in Thailand. The licence to practice medical professions in Thailand are granted to anyone that (i) is a member of associated council, (ii) has a degree or certificate from a reputable institution recognized by the associated council and, in case of an alien, has also a licence to practice medical profession in the country he/she has completed the course of medical education, and (iii) has successfully passed the examination required by the associated council. The examination is conducted in Thai.

Nonetheless, foreign individual medical professionals desiring to do work in Thailand are still subject to the Working of Alien Act 2008 and Immigration Act 1979. In the royal decree under the Working of Alien Act 1978, medical professions are not in the occupations restricted for foreigners. Thus, an alien desiring to practice in a medical profession must obtain a work permit from the Director-General of the Department of Labour Protection and Welfare. To be eligible to apply for a permit, an alien must also have a residence in Thailand or must be authorized to enter the Kingdom of Thailand temporarily in accordance with the law governing the immigrant. The permission for a non-immigrant visa will be granted for a period of not more than one year at a time, but the work permit issued under the Working of Alien Act 2008 is valid for a period not exceeding two years at a time.

There is no recent update in policy or regulations in Medical Professionals over the past two years.

## **10. Vietnam**

### **10.1. Insurance**

#### ***10.1.1. The Health Insurance Law***

The Health Insurance Law was passed by the National Assembly on 14 November 2008 and took effect on 1 July 2009. It aims to ease the load on provincial and central hospitals, and to expand policyholder categories to include drug addicts and people with congenital defects who were previously excluded. Every Vietnamese child under six years old will be totally covered under the new health insurance law, instead of being granted free health examination cards.

Under the decree 62/2009/ND-CP on the details and guidance for the new Health Insurance Law, the health insurance fee increases from 3 per cent to 4.5 per cent of employees' basic monthly salary.

#### ***10.1.2 The Draft Amendment and Supplement to the Law on Insurance Business***

The draft amendment and supplement to the Law on Insurance Business is proposed with some following changes.

##### *Cross-border provision of insurance service*

In accordance with Vietnam's WTO commitments to recognize the cross-border provision of insurance services by foreign insurance organizations and individuals, the amendment and supplement to the Law on Insurance Business proposes that foreign insurance organizations and individuals selling insurance services from outside Vietnam through its border shall be responsible for all risks arising out of and relating to such cross-border insurance policies. Disputes arising from such insurance policies shall be settled in accordance with provisions of the Civil Code 2005 on civil relations with foreign elements and the laws of the concerned foreign country. Since this is a sensitive matter, the amendment and supplement to the Law on Insurance Business merely proposed the basic principles. The Government shall then set out detailed guidelines for its implementation based on prudential management rules permitted by the WTO, such as conditions applicable to foreign insurance enterprises, deposit requirements in Vietnam equivalent to their insurance liability in Vietnam and other

related matters in order to protect the legitimate rights and interests of individuals and organizations purchasing overseas insurance.

#### *Branch of foreign non-life insurance enterprise*

In accordance with Vietnam's WTO commitments to recognize the right to set up branches of foreign non-life insurance enterprises in Vietnam after five years from the date of its WTO accession, the amendment and supplement to the Law on Insurance Business proposes to include an additional regulation that foreign non-life insurance enterprises having their head offices located in one of the WTO Member countries shall be permitted to operate in Vietnam, amongst other permissible forms, in the form of a branch. The issuance of the permit for establishment and operation of such a branch shall be under the authority of the Ministry of Finance.

#### *Reinsurance*

According to the Law on Insurance Business in 2000, insurance enterprises wanting to reinsure overseas must also reinsure part of the liability for which insurance has been accepted with a domestic reinsurance enterprise in accordance with the regulations of the Government. However, under the WTO commitments of Vietnam, the mandatory reinsurance with a domestic reinsurance enterprise is no longer valid. Therefore the amendment and supplement to the Law on Insurance Business proposes to remove this provision on mandatory reinsurance with a domestic reinsurance enterprise. Accordingly, insurance enterprises may cede to and take over reinsurance from other insurance enterprises, including insurance enterprises inside and outside Vietnam.

#### *Types of insurance products*

The Law on Insurance Business in 2000 stipulates two types of insurance products including life insurance products (with five basic products) and non-life insurance products (with eleven basic products), although many other insurance products have evolved after the issuance of the Law and are being marketed, but are not yet stipulated in this Law (e.g. investment-related insurance, guarantee insurance). Thus, in order to be consistent with international practices, the amendment and supplement to the Law on Insurance Business proposes a broader range of insurance

products, including various forms of life insurance and retirement insurance, non-life insurance, and (voluntary) health care insurance.

#### *Forms of insurance enterprises*

Based on the old laws on enterprises in general, and state-owned and foreign-invested enterprises in particular, the Law on Insurance Business in 2000 provides for five forms of insurance enterprises, including state-owned insurance enterprises, shareholding insurance companies, mutual insurance organizations, joint venture insurance enterprises, and 100% foreign owned insurance enterprises. However, to make the Law fully consistent with the new Law on Enterprises (which superseded all provisions of the old laws on enterprises, state-owned enterprises and foreign investment in Vietnam), the amendment and supplement to the Law on Insurance Business proposes to recognize five forms of insurance enterprise, including shareholding insurance companies, mutual insurance organizations, limited liability companies with one member (the investor is an insurance enterprise), limited liability companies with two members and more (a 100% foreign capital insurance enterprise or a joint venture company between foreign insurance enterprise and one or more Vietnamese legal entity(ies)), and branches of foreign insurance enterprise.

#### *Condition for issuance of licences for establishment and operation*

Apart from the current conditions as provided by the Law on Insurance Business in 2000 (such as that the amount of paid-up charter capital is not less than the level of legal capital prescribed by the Government, the form of the enterprise and its charter must comply with the provisions of laws, and the management personnel must have management skills, expertise and professional qualifications in insurance, etc.), the amendment and supplement to the Law on Insurance Business proposes to include a provision that the organizations and individuals participating in the contribution of capital to set up an insurance enterprise or insurance broker must have suitable financial capacity, and the organizations must have experience in insurance business. It may be seen that the additional conditions have been stipulated in some legal instruments under the Law. However, the amendment and supplement to the Law on Insurance Business proposes to further include this issue into the Law to ensure its stronger legal validity.

## **10.2. Banking**

### ***10.2.1. The Amended Law on Credit Institutions***

The 7th session of the 12th National Assembly approved the amended Law on Credit Institutions on 16 June 2010, which will then take effect on 1 January 2011. The law includes a number of new provisions relating to the operations, organization and management of credit institutions that aim to guarantee the security of the banking system.

The most remarkable change from the 1997 law is the abolition of the prime interest rate structure. Under the new law, the State Bank of Viet Nam (SBV) will announce interbank and other rates to manage monetary policy. The prime rate was eliminated as unreflective of the supply-demand relationship on the market and was viewed as interventionist by financial markets.

The law no longer requires commercial banks to maintain a compulsory reserve ratio of 20 per cent of total deposits. Instead, the SBV is granted the power to set the compulsory reserve rate.

Another new point is that, from now on, the SBV will have the right to invest and buy shares in other credit institutions and serve as the representative of State capital in credit institutions. It also gains the right to use its legal capital for the establishment of enterprises to carry out the functions and obligations of the State Bank as assigned in the Decision of the Prime Minister.

In addition to that, the amended Law on Credit Institutions promulgates provisions on management and administration applicable to credit institutions being micro-finance institutions.

### ***10.2.2. Circular 13 of the State Bank of Vietnam on Prudential Ratios***

Circular 13/2010/TT-NHNN of the SBV dated 20 May 2010 regulating prudential ratios in the operations of credit institutions replaces a number of decisions and circulars of the SBV on prudential ratios. Certain higher requirements on prudential ratios are set out in Circular 13. The minimum capital adequacy ratio (CAR) applicable to credit institutions, excluding foreign banks' branches, is increased to 9%

from 8%. However, foreign bank branches are not going to be excluded from such a CAR when the New Law on Credit Institutions takes effect. Credit institutions are also required to maintain the capital adequacy ratio of at least 9% between the consolidated capital and credit assets of the parent company and their subsidiaries. According to the SBV, such a new requirement is to cope with the current practice in the banking sector where more commercial banks are operating under the model of parent/subsidiary bank. This is also to comply better with the 25 standard inspection rules of the Basel Committee. New insolvency ratios and ratios of lending over raised capital are included in Circular 13.

### ***10.2.3. Circular 09 of the State Bank of Vietnam on Licensing***

Circular 09/2010/TT-NHNN of the State Bank of Vietnam issued on 26 March 2010 regulates issuance of licences for establishment and operation of commercial banks and takes effect from 10 May 2010, replacing Decision 24/2007/QD-NHNN dated 07 June 2007. Circular 09 sets out stricter requirements for shareholders, especially founding shareholders, who wish to establish a joint stock commercial bank, and new longer timeframes of the application process for a licence.

## **10.3. Health Services**

Health is one of the sectors where the Vietnamese Government encourages the participation of foreign partners (Decree 108/ND-CP, 2006). There have been no policy changes between 2008 and 2010.

## **10.4. Medical Professionals**

There have been no policy changes between 2008 and 2010.

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## CHAPTER 3

### Study of the Investment Climate of ASEAN Member Countries

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*This paper analyzes the FDI climates of the ASEAN countries faced by Japanese and non-Japanese foreign firms conducting operations in ASEAN, with a view of identifying impediments to FDI not only in the policies but also in their implementation and enforcement and providing useful information to policy makers interested in attracting FDI. Although we found wide variations among countries, ASEAN countries as a whole tend to have relatively improved the explicit investment climate so far as FDI liberalization is concerned. Direct barriers to FDI, however, still remain, and further efforts to reduce them by ASEAN countries are necessary. At the same time, the reduction of indirect barriers to FDI or the promotion of FDI facilitation is also indispensable. Particularly important areas for improvement include institutional problems, complicated and delayed procedures, underdeveloped infrastructure, inflexible labor market conditions, and problems involving taxation regulations. Our findings indicate the need for further liberalization of FDI policies and promotion of facilitation measures for ASEAN countries in order to successfully attract FDI. In order to achieve these goals, we would like to make several policy recommendations. First, in order to promote FDI policy liberalization, the ASEAN countries should use various existing frameworks, such as WTO/GATT's Trade Related Investment Measures (TRIMs) agreement, bilateral investment treaties (BITs), free trade agreements (FTAs), and other legal frameworks. In particular, ASEAN should use the ASEAN Comprehensive Investment Agreement (ACIA). Second, to overcome obstacles concerning FDI facilitation, the ASEAN countries should actively draw on various cooperation programs with developed countries to improve human resources engaged in the implementation and enforcement of FDI policies. Possible multilateral and regional sources of technical assistance in this area may be UNCTAD, the OECD, and ERIA. Third, monitoring of the achievement of FDI liberalization and facilitation has to be emphasized, in order to achieve a freer FDI environment. In this regard, a monitoring mechanism should be established in ASEAN, if it has not been established yet, or in ERIA.*

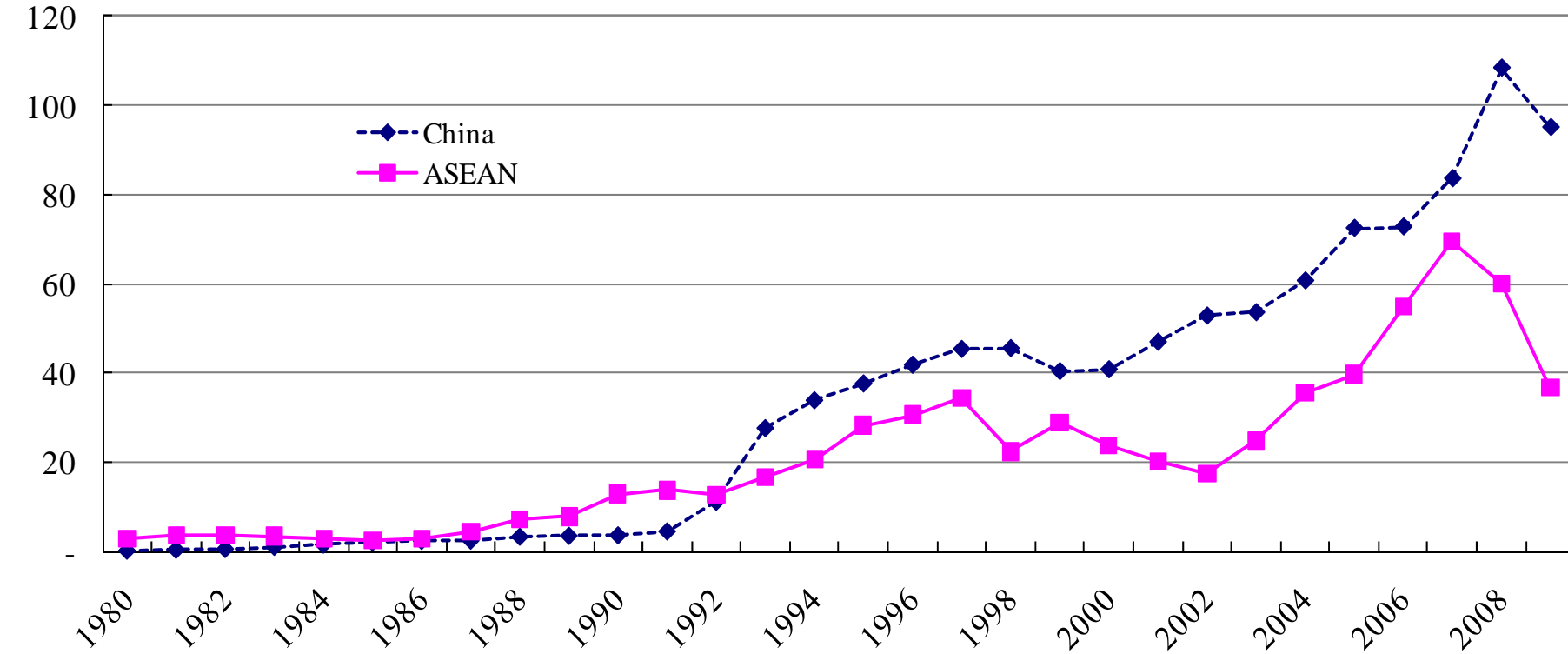
## 1. Introduction

Many countries are eager to attract foreign direct investment (FDI), as FDI can contribute to economic development and growth in the FDI recipient countries. FDI has been proven to contribute to economic growth through various channels. FDI can bring not only financial resources for fixed investment but also technologies and managerial know-how, which play crucial roles in promoting economic growth in the recipient countries. Moreover, FDI enables the recipient countries to be engaged in various networks, such as the production, sales, procurement, and information networks of foreign multinational corporations (MNCs), major suppliers of FDI, resulting in an improvement of efficiency in production and marketing. Indeed, in East Asia FDI has helped enable East Asian countries to achieve high economic growth through these factors.

The members of the Association of Southeast Asian Nations (ASEAN) have been quite successful in attracting FDI in recent years (Figure 1.1). After reaching a trough in 2002, FDI inflows to ASEAN continued rising noticeably until 2007. In the five years from 2002 to 2007 FDI inflows to ASEAN more than quadrupled from \$17 billion to \$69 billion (Table 1.1). In 2008 ASEAN as a whole, however, experienced a substantial decline in FDI inflow by approximately \$10 billion or 13.8 percent from 2007. There are wide variations in the changes in FDI inflows in 2008 among the ASEAN members, all of which recorded a more or less steady increase prior to 2008. Indonesia achieved a notable increase while Singapore, the Philippines and many other countries saw a decline. In 2009, ASEAN countries witnessed an additional decline of FDI, reflecting the global financial crisis that started in the fall of 2008; Indonesia, Malaysia, Thailand, and Vietnam, in particular, experienced significantly reduced FDI inflows. As a result, FDI flows into ASEAN as a whole reached back to mid-2000s levels.

Figure 1.1 FDI Inflows to ASEAN and China: 1980-2009

\$ billions



Source: UNCTAD Foreign Direct Investment Database

Table 1.1 Foreign Direct Investment Inflows to ASEAN and China by Country (\$million)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	1990-2009
Brunei	7	6	7	8	6	583	654	702	573	748	549	526	1,035	3,375	334	289	434	260	239	311	10,645
Cambodia	0	0	33	54	69	151	294	168	243	232	149	149	145	84	131	381	483	867	815	533	4,981
Indonesia	1,092	1,482	1,799	2,003	2,191	4,419	6,245	4,729	-207	-1,838	-4,495	-2,926	232	-507	1,896	8,336	4,914	6,928	7,919	4,877	49,089
Lao PDR	6	7	8	36	59	88	128	86	45	52	34	24	25	19	17	28	187	324	228	157	1,558
Malaysia	2,611	4,043	5,138	5,741	4,581	5,815	7,297	6,323	2,714	3,895	3,788	554	3,203	2,473	4,624	4,064	6,060	8,401	8,053	1,381	90,759
Myanmar	225	235	149	92	135	318	581	879	684	304	208	192	191	291	251	236	428	258	283	323	6,262
Philippines	550	556	776	1,238	1,591	1,459	1,520	1,249	1,752	1,247	2,240	195	1,542	491	688	1,854	2,921	2,916	1,520	1,948	28,253
Singapore	5,575	4,887	2,204	4,686	8,550	11,535	9,682	13,753	7,314	16,578	16,484	15,093	6,381	11,800	20,054	14,374	27,680	31,550	22,725	16,809	267,715
Thailand	2,575	2,049	2,151	1,807	1,369	2,070	2,338	3,882	7,492	6,091	3,349	5,061	3,335	5,235	5,862	8,048	9,460	11,238	10,091	5,949	99,451
Viet Nam	180	375	474	926	1,945	1,780	1,803	2,587	1,700	1,484	1,289	1,300	1,200	1,450	1,610	2,021	2,400	6,739	8,050	4,500	43,814
ASEAN10	12,821	13,640	12,739	16,591	20,496	28,218	30,541	34,358	22,310	28,793	23,595	20,169	17,291	24,712	35,468	39,630	54,967	69,481	59,922	36,787	602,529
China	3,487	4,366	11,008	27,515	33,767	37,521	41,726	45,257	45,463	40,319	40,715	46,878	52,743	53,505	60,630	72,406	72,715	83,521	108,312	95,000	976,851

Source: UNCTAD, Foreign Direct Investment Database.

Although ASEAN members have been experiencing favorable performance in attracting FDI in recent years, their performance has been overshadowed by China. After being surpassed by China in the early 1990s in terms of FDI inflows, ASEAN has not been able to regain the commanding position it had in the 1980s. Although China continued attracting FDI successfully in 2008 when FDI inflows to ASEAN declined, it experienced a decrease in FDI inflows in 2009 as well.

Various factors influence the attractiveness of the host country for FDI inflows<sup>1</sup>. Political and economic stability is found to play an important role in attracting FDI. Political and economic instability discourages MNCs from undertaking FDI as it increases the risk of losing invested assets. Large market size, favorable future economic prospects, availability of educated, well-disciplined, low-wage labor, well-developed soft and hard infrastructure are also attractive features of the host country for attracting FDI. Having discussed important elements in attracting FDI, one of the most important factors is a country's FDI policy regime. A country with many attractive features such as large market size cannot attract FDI if the country imposes restrictions on FDI inflows. Even if the FDI regime is open, a country has difficulty in attracting FDI if the FDI regime of the country lacks transparency or stability. These observations indicate the importance of the FDI policy regime as well as the FDI policy environment in determining the attractiveness of a country for FDI inflows.

In light of the observation that the FDI policy regime and FDI policy environment play important roles in determining FDI inflows, this study sheds light on the FDI policy environment and evaluates it for ASEAN countries. We adopt two approaches to achieve our objective. First, we use the information on barriers to FDI available from the survey compiled by the Japan Machinery Center for Trade and Investment (JMC), (JMC survey hereinafter) and attempt to identify the issues preventing FDI liberalization and facilitation raised by Japanese firms, based on 10 categories of FDI impediments.<sup>2</sup> Use of the information provided by the companies would reveal the true impediments to FDI. Second, we conduct an original survey on the investment climate for (domestic and) foreign firms in ASEAN10, following the same categories used in the 1<sup>st</sup> approach, and try to capture the features of investment climate from the perspective of non-Japanese firms operating in ASEAN10. By combining the results

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<sup>1</sup> For an example, see Urata (2006) for the determinants of FDI inflows in East Asian countries.

<sup>2</sup> See section 2 for a detailed explanation of the JMC survey.

using the above-mentioned two surveys, we should be able to discern the policy-related impediments to FDI in ASEAN countries.

It is hoped that our study will contribute to a deeper understanding of the FDI policy environment of ASEAN countries and to help them formulate FDI policy. In particular, the results of this study may provide useful information to the ASEAN country governments which have committed to creating an ASEAN economic community by 2015, where free flow of FDI would be realized.

The structure of the study is as follows. Section 2 examines FDI policy environments by assessing the information collected from Japanese companies. Section 3 uses our original survey on investment climate, which is conducted for domestic and foreign firms in ASEAN10, and evaluates FDI policy environments. Section 4 concludes the study by presenting policy recommendations.

## **2. Assessment of FDI Environments based on a Survey of Japanese Firms**

This section analyzes the FDI environments of ASEAN countries by using the information obtained from a survey conducted on Japanese firms. Before we undertake the analysis, we discuss our methodology used for the analysis.

### **2.1. The Methodology and the Data used for the Analysis**

We classify the problems and obstacles faced by Japanese firms operating in ASEAN countries into ten categories (Table 2.1). The ten categories are divided into two groups, one consisting of four categories of problems related to FDI liberalization and six categories of problems related to FDI facilitation. This classification, which has been proposed by Urata, Ando, and Ito (2007), is based on a literature survey and discussions among the members of a committee including representatives of APEC Business Advisory Council (ABAC) Japan, the Japan Machinery Center for Trade and Investment (JMC), the Ministry of Trade, Investment, and Industry (METI) Japan, and university professors (APEC Study Committee with JMC as

the secretariat in 2007).

Table 2.1 10 Major Categories of Issues to be Solved for FDI Liberalization and Facilitation

<u>FDI liberalization</u>	
i	Restrictions on foreign entry
ii	Performance requirements
iii	Restrictions on overseas remittances and controls on foreign currency transactions
iv	Restrictions on the movement of people and employment requirements
<u>FDI facilitation</u>	
v	Lack of transparency in policies and regulations concerning investment (institutional problems)
vi	Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)
vii	Insufficient protection of intellectual property rights
viii	Labor regulations and related practices excessively favorable to workers
ix	Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives
x	Restricted competition and price controls

Source: Urata, Ando, and Ito (2007).

The four categories of impediments concerning FDI liberalization are i) restrictions on foreign entry, ii) performance requirements, iii) restrictions on overseas remittances and controls on foreign exchange, and iv) restrictions on the movement of people and employment requirements.<sup>3</sup>

Category i) “restrictions on foreign entry”, for instance, includes prohibited or restricted foreign entry into specific sectors, regulations on maximum foreign ownership ratios (foreign equity participation), joint venture requirements, minimum capital requirements, restricted forms of commercial presence (regulations on the forms of establishments), and restrictions on land ownership by foreign-owned firms. Category ii) “performance requirements” includes local content requirements and export requirements or technology transfer requirements linked with various FDI incentives. Category iii) “restrictions on overseas remittances and controls on foreign currency transactions” includes restrictions on, or difficulties in, making overseas remittances, restrictions on the possession and use of foreign currencies, and difficulties in accessing to or exchanging local currencies. The last category of impediments concerning FDI liberalization is iv) “restrictions on the movement of people and employment

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<sup>3</sup> Category i) corresponds to 1.restrictions on foreign entry and 21.restrictions on foreign ownership of land in the JMC survey. Similarly, category ii) corresponds to 2.local content requirements, 3.export requirements, and 18.technology transfer requirements: category iii) 11.foreign remittances, 12.control of foreign exchange, and category iv) 16.employment in the JMC survey.

requirements”, which includes difficulties in obtaining and/or renewing necessary visas for foreign representatives, and requirements on the employment of local people (or specific types of local people). All of these problems can certainly be impediments to new foreign entry or expansion of investment by existing foreign firms.

The six categories of impediments related to FDI facilitations are as follows: v) “lack of transparency in policies and regulations concerning investment (institutional problems)”, vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)”, vii) “insufficient protection of intellectual property rights (IPRs)”, viii) “labor regulations and related practices excessively favorable to workers”, ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, and x) “restricted competition and price controls”.<sup>4</sup>

Categories v) “lack of transparency in policies and regulations concerning investment” and vi) “complicated and/or delayed procedures with respect to investment-related regulations” cover issues concerning various investment-related regulations in terms of institutional problems and implementation problems, respectively. Category v) “lack of transparency in policies and regulations concerning investment” is specifically concerned with sudden and/or frequent changes (without notification in advance), non-transparency, ambiguity in various investment-related regulations and lack of certain regulations, while category vi) “complicated and/or delayed procedures with respect to investment-related regulations” covers problems in implementing regulations on establishments, approval of foreign entry, taxation, customs clearance, withdrawal/reorganization of operations, arbitrary and/or inconsistent interpretation and implementation of various regulations, and other such matters. Examples of problems in categories vii) “insufficient protection of IPRs”, viii) “labor

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<sup>4</sup> Category v) corresponds to 5. regulations on policies of supporting industries, 7. implementing procedure for Foreign Capital Act, 8.issues of FDI hosting agencies, 9.regulations on export/import activities and customs clearance, 10.restrictions on activities in free trade zones (FTZs)/special economic zones (SEZs), 14.taxiation, 19.(industrial) standards and conformity, 22.issues of environmental pollution and waste disposal, 24.lack of legal regulations/sudden changes in regulations, and 26.others in the JMC survey. Note that some of the issues in these categories in the JMC survey are classified as those in category vi) when they are the issue of implementation. In addition, category vi) includes 4.regulations on withdrawal of operations and 23.inefficient administrative procedures of various regulations, in the JMC survey. Category vii) is composed of 17.problems of IPRs, category viii) consists of a part of 16.labor, the category ix) includes 6.diminished incentives for FDI, 13.finance, 16.labor (human capital-related), and 26.others (infrastructure-related), and category x) takes in 15.price control and 20.monopoly.



regulations and related practices excessively favorable to workers”, ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, and x) “restricted competition and price controls” include the following: insufficient protection of IPRs and issues involving patents for category vii), non-modern labor regulations that are excessively favorable to workers, such as difficulty in firing workers, drastic/frequent changes in minimum wage levels, never decreasing wages, and restrictions on temporary workers for category viii), underdeveloped physical infrastructure and logistics, shortages of human resources such as management staff and engineers, and high turnover ratios for category ix), and oligopolistic market structure and monopolistic pricing for category x).

Most of the problems classified into categories iv) to x) are not necessarily discriminatory measures aimed at foreigners but are, rather, measures driven by domestic issues. These impediments could, however, directly and indirectly prevent potential investment from entering the economy. In other words, if a country solves these problems and improves the investment climate, it would receive a larger amount of investment than without such improvements. Of 10 major categories for FDI liberalization and facilitation, six are those concerning FDI facilitation. We emphasize the importance of implementing FDI facilitation measures, in addition to FDI liberalization measures, as will be discussed in the following section.

We conduct the analysis based on the methodology discussed above by using information obtained from the survey conducted by the Japan Machinery Center (JMC) for Trade and Investment. The JMC collects and compiles the detailed survey, “Issues and Requests for Trade and Investment Activities by Country/Region” annually. This survey is based on responses to the “questionnaire on the problems in trade, investment, and production activities abroad,” conducted by the Japan Business Council for Trade and Investment Facilitation (JBCTIF). The JBCTIF has approximately 150 industry associations as members. The respondents to the questionnaire are its members that are involved in trade and FDI activities. We employ the 2010 version of the JMC survey (JMC survey 2010 hereafter), which was conducted from November 2009 to January 2010, with responses from 38 industry associations (in the case of ASEAN10). Note that this survey does not provide individual firm data, and thus does not allow us to calculate ratios such as those of firms that identify the specified impediments to the total sample of targeted firms. For a comparison, we also employ the results in Urata, Ando, and Ito (2007), based on the 2005 version of this survey

(JMC survey 2005 hereafter), Urata and Ando (2009) based on the 2008 version (JMC survey 2008), and Urata and Ando (2010) based on the 2009 version (JMC survey 2009).

## **2.2. The Results**

Table 2.2 summarizes the results of our analysis of the investment climate in 2010 in the ASEN10 countries, showing the number of incidents by category and country. Since the JMC survey deals with precisely the problems raised by firms in many industry associations that are members of the JBCTIF, we first collect all the information on the countries concerned and identify the problems by country. We then classify these problems into 10 categories and collate them for all the countries, as shown in Table A.2.1 in the Appendix. Table 2.2 is constructed based on Table A.2.1. By way of comparison, Table 2.3 presents the results of a similar analysis of the investment climate in 2005, 2008, and 2009.<sup>5</sup>

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<sup>5</sup> See Table A.2.2 for the detailed information on FDI issues in 2005, 2008, and 2009.

Table 2.2 Investment Climate in ASEAN10 Economies in 2010: the Number of Incidents by Category and Country

	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam	Total	Share by category (%)
<b>(a) The number of Japanese affiliates in each country</b>	<b>1</b>	<b>10</b>	<b>659</b>	<b>6</b>	<b>759</b>	<b>10</b>	<b>419</b>	<b>991</b>	<b>1,577</b>	<b>332</b>	<b>4,764</b>	
<b>(b) Issues to be solved for FDI liberalization and facilitation</b>												
<b><u>FDI liberalization</u></b>	<b>0</b>	<b>0</b>	<b>19</b>	<b>1</b>	<b>14</b>	<b>8</b>	<b>8</b>	<b>1</b>	<b>20</b>	<b>10</b>	<b>81</b>	<b>21%</b>
i) Restrictions on foreign entry	0	0	9	1	8	2	7	0	8	5	40	10%
ii) Performance requirements	0	0	5	0	3	0	0	0	3	0	11	3%
iii) Restrictions on overseas remittances and controls on foreign currency transactions	0	0	2	0	1	6	1	0	6	3	19	5%
iv) Restrictions on the movement of people and employment requirements	0	0	3	0	2	0	0	1	3	2	11	3%
<b><u>FDI facilitation</u></b>	<b>0</b>	<b>14</b>	<b>64</b>	<b>13</b>	<b>43</b>	<b>20</b>	<b>31</b>	<b>5</b>	<b>55</b>	<b>64</b>	<b>309</b>	<b>79%</b>
v) Lack of transparency in policies and regulations concerning investment (institutional problems)	0	5	22	1	11	7	4	0	16	20	86	22%
vi) Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)	0	3	29	6	15	8	13	0	25	22	121	31%
vii) Insufficient protection of intellectual property rights	0	0	1	0	2	0	0	0	1	0	4	1%
viii) Labor regulations and related practices excessively favorable to workers	0	0	2	0	5	0	8	2	2	5	24	6%
ix) Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives	0	6	8	6	7	5	6	3	10	13	64	16%
x) Restricted competition and price controls	0	0	2	0	3	0	0	0	1	4	10	3%
<b>Total</b>	<b>0</b>	<b>14</b>	<b>83</b>	<b>14</b>	<b>57</b>	<b>28</b>	<b>39</b>	<b>6</b>	<b>75</b>	<b>74</b>	<b>390</b>	<b>100%</b>

Data source: authors' calculation, based on Toyo Keizai (2008) for (a) the number of Japanese affiliates abroad and JMC (2010) for (b) the issues to be solved for FDI.

Note: Japanese affiliates abroad are here defined as those with Japanese ownership of no less than 10%.

Table 2.3 Investment Climate in ASEAN Economies in 2005, 2008, and 2009: the Number of Incidents by Category and Country

	ASEAN10 in 2009												ASEAN10 in 2008												ASEAN7										
	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam	Total	Share by category (%)	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam	Total	Share by category (%)	2005										
																									Brunei	Indonesia	Malaysia	Philippines	Singapore	Thailand	Viet Nam	Total (2005)	Total (2008)	Total (2009)	Total (2010)
<b>FDI liberalization</b>	<b>0</b>	<b>0</b>	<b>17</b>	<b>0</b>	<b>11</b>	<b>8</b>	<b>10</b>	<b>1</b>	<b>19</b>	<b>8</b>	<b>74</b>	<b>20%</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>11</b>	<b>7</b>	<b>9</b>	<b>1</b>	<b>15</b>	<b>9</b>	<b>66</b>	<b>21%</b>	<b>0</b>	<b>10</b>	<b>17</b>	<b>11</b>	<b>3</b>	<b>16</b>	<b>16</b>	<b>73</b>	<b>59</b>	<b>66</b>	<b>72</b>
i) Restrictions on foreign entry	0	0	10	0	5	2	7	0	8	3	35	10%	0	0	10	0	5	2	6	0	8	4	35	11%	0	5	4	6	1	6	5	27	33	33	37
ii) Performance requirements	0	0	3	0	3	0	0	0	3	2	11	3%	0	0	2	0	3	0	0	0	2	2	9	3%	0	2	5	2	0	1	5	15	9	11	11
iii) Restrictions on overseas remittances and controls on foreign currency transactions	0	0	2	0	1	6	2	0	5	2	18	5%	0	0	0	0	1	5	2	0	3	2	13	4%	0	1	4	1	0	3	4	13	8	12	13
iv) Restrictions on the movement of people and employment requirements	0	0	2	0	2	0	1	1	3	1	10	3%	0	0	2	0	2	0	1	1	2	1	9	3%	0	2	4	2	2	6	2	18	9	10	11
<b>FDI facilitation</b>	<b>0</b>	<b>14</b>	<b>51</b>	<b>4</b>	<b>44</b>	<b>20</b>	<b>42</b>	<b>6</b>	<b>50</b>	<b>58</b>	<b>289</b>	<b>80%</b>	<b>0</b>	<b>16</b>	<b>28</b>	<b>4</b>	<b>33</b>	<b>21</b>	<b>48</b>	<b>6</b>	<b>45</b>	<b>49</b>	<b>250</b>	<b>79%</b>	<b>1</b>	<b>52</b>	<b>36</b>	<b>37</b>	<b>6</b>	<b>53</b>	<b>34</b>	<b>219</b>	<b>209</b>	<b>251</b>	<b>262</b>
v) Lack of transparency in policies and regulations concerning investment (institutional problems)	0	5	13	0	13	8	7	0	12	18	76	21%	0	5	5	1	8	8	11	0	14	12	64	20%	1	14	10	10	1	14	6	56	50	63	73
vi) Complicated and/or delayed procedures with respect to investment-related regulations	0	3	23	1	14	7	16	0	24	19	107	29%	0	5	11	1	10	7	16	0	20	18	88	28%	0	21	14	12	0	24	14	85	75	96	104
vii) Insufficient protection of intellectual property rights	0	0	1	0	2	0	3	0	1	1	8	2%	0	0	2	0	3	0	3	0	2	1	11	3%	0	4	3	1	0	2	2	12	11	8	4
viii) Labor regulations and related practices excessively favorable to workers	0	0	2	0	5	0	10	3	3	4	27	7%	0	0	2	0	5	0	10	3	3	4	27	9%	0	3	5	6	3	3	2	22	27	27	24
ix) Underdeveloped infrastructure, shortages of human resources, and insufficient investment	0	6	9	3	8	5	6	3	9	13	62	17%	0	6	6	2	7	5	8	3	5	11	53	17%	0	8	4	8	2	9	8	39	40	48	47
x) Restricted competition and price controls	0	0	3	0	2	0	0	0	1	3	9	2%	0	0	2	0	0	1	0	0	1	3	7	2%	0	2	0	0	0	1	2	5	6	9	10
<b>Total</b>	<b>0</b>	<b>14</b>	<b>68</b>	<b>4</b>	<b>55</b>	<b>28</b>	<b>52</b>	<b>7</b>	<b>69</b>	<b>66</b>	<b>363</b>	<b>100%</b>	<b>0</b>	<b>16</b>	<b>42</b>	<b>4</b>	<b>44</b>	<b>28</b>	<b>57</b>	<b>7</b>	<b>60</b>	<b>58</b>	<b>316</b>	<b>100%</b>	<b>1</b>	<b>62</b>	<b>53</b>	<b>48</b>	<b>9</b>	<b>69</b>	<b>50</b>	<b>292</b>	<b>268</b>	<b>317</b>	<b>334</b>

Data source: Urata, Ando, and Ito (2007), Urata and Ando (2009), Urata and Ando (2010), and Table 2.2.

Four points should be kept in mind in interpreting these results. First, some problems can be classified into categories that are different from those in Table A.2.1. Some may be classified into two or more categories. In constructing Table A.2.1, such problems are classified into the most relevant categories in our classification.

Second, the number of incidents in the tables indicates the presence of direct and indirect barriers to FDI (at least those identified). It does not, however, directly imply the degree of seriousness of the barriers distorting investment decisions.

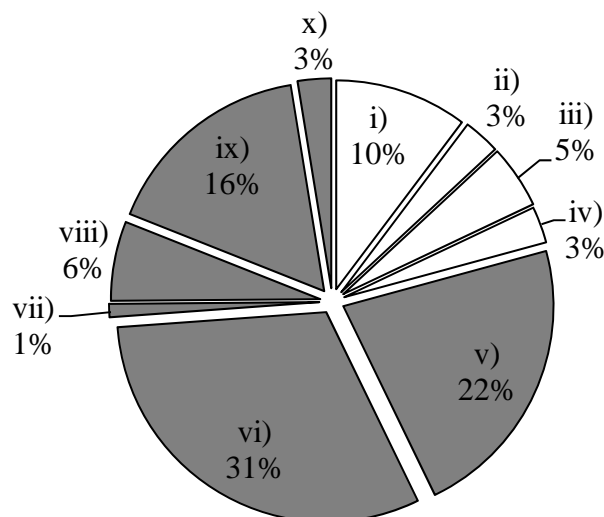
Third, there is a possible bias in the identification of the problems in that the number of incidents tends to be high in countries where a large number of FDI projects are undertaken. As mentioned above, the respondents to the questionnaire on which the JMC survey is based are those engaged in trade with and/or investment in the countries concerned, and are not individual firms. Therefore, the countries in which Japanese firms are more active in trade and investment, or those which Japanese firms consider to be attractive investment locations, may tend to have a larger number of incidents since they are more likely to face various problems through their operations (Table 2.2). At the same time, the countries with fewer problems identified here do not necessarily receive a large amount of investment. The countries with a smaller number of Japanese firms involved may have a larger number of issues, in practice, than those identified here if firms were not able to enter those countries due to impediments, and the actual investment climate was not known. We will consider this point in interpreting the results for the individual countries below.

Fourth, most problems identified are those related to manufacturing activities. Since the major activity of most respondents is manufacturing, impediments to FDI in non-manufacturing sectors might be underestimated.

Table 2.2 and Figure 2.1 give an overall picture of direct and indirect impediments to investment in ASEAN10. Various kinds of indirect barriers to FDI exist in the region: 79 percent of the total problems identified (309 out of 390) are concerned with FDI facilitation. This finding indicates that there is plenty of room to improve FDI facilitation in order to promote FDI in ASEAN. In particular, more than half the problems fall into two categories v) institutional problems (lack of transparency in policies and regulations on investment) and vi) implementation problems (complicated and/or delayed procedures with respect to investment-related regulations; these account for 22 percent and 31 percent of the total

incidents, respectively. Although neither institutional nor implementation problems are necessarily discriminatory against foreign firms, as discussed above, they need to be resolved to promote investment activity in the region.

Figure 2.1 Decomposition of the Incidents into 10 Categories: ASEAN10 in 2010



Data source: Table 2.2.

Note: i) to iv) indicates four categories for FDI liberalization and v) to x) indicates six categories for FDI facilitation. Figures express shares of each category. See Table 2.2 for 10 categories.

The major problems identified in many countries for category v) are underdevelopment, lack of transparency, ambiguity, sudden changes, frequent changes, and uncertainty over various legal regulations and institutions, particularly those concerning taxation, investment incentives, safety and environmental standards and conformity, and financial markets (including exchange rates). The major problems for category vi) are complexity, delay, difficulty, and inefficiency of various administrative procedures; arbitrary interpretation in implementing regulations; corruption; smuggling; particularly complicated customs clearance procedures; delayed, difficult, inefficient, and complicated procedures for visa applications and renewals; import tariff reimbursement/exemption; value-added tax exemption (including non-implementation) procedures; taxation; and withdrawal of business; arbitrary and/or

inconsistent interpretation and implementation of safety certification; customs clearance; and arbitrary tax collection.<sup>6</sup>

Categories v) and vi) are followed by another category classified under FDI facilitation: category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (16 percent of total incidents). It suggests that access to necessary infrastructure, human resources, and investment incentives is also an important factor for firms in making the decision to enter a new country or expand operations in the host country. Major problems in category ix) are as follows: difficulty in hiring and securing human resources due to shortages of management staff and engineers; high turnover ratios; underdevelopment of industrial infrastructure such as electric power, paved roads and transportation, and ports; insufficient investment incentives for the development of supporting industries; and immaturity of financial markets.

Categories other than v), vi), and ix) are arranged in descending order in terms of the percentage of the total number of incidents: category i) restrictions on foreign entry (10 percent), category viii) labor regulations and related practices excessively favorable to workers (6 percent), category iii) restrictions on overseas remittances and controls on foreign currency transactions (5 percent), category ii) performance requirements (3 percent), category iv) restrictions on the movement of people and employment requirement (3 percent), category x) restricted competition and price controls (3 percent), and category vii) insufficient protection of IPRs (1 percent). Although relatively low percentages for the categories for FDI liberalization imply that issues involving direct barriers to FDI (problems preventing FDI liberalization) are not as serious as those involving indirect barriers to FDI (problems preventing FDI facilitation) in the region, they are critical impediments in some low-income countries.

Major problems for category i) include prohibition of or restrictions on foreign entry (for specific sectors); restrictions on foreign ownership ratios, joint venture requirements (with specified business partners); and restrictions on foreign ownership of land. The problems for category viii) include; difficulty in firing workers, wage-related issues such as rapidly rising wage levels; dramatic increases in minimum wage levels; and no allowance for lowering wage levels; and labor regulations and related practices that are excessively favorable to workers. The problems for category iv) include: a nationality requirement for directors; restrictions on

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<sup>6</sup> Delays in procedures are sometimes a result of their complicated nature.

hiring foreigners including a requirement to hire local people (or specific types of local people); and difficulty and tightened issuance conditions in obtaining and/or renewing visas. The problems for category vii) include: widespread counterfeiting and pirating goods due to insufficient protection of IPRs; lack of intellectual property rights treaties; and infringement of trademark rights and patents. Those for category ii) include: local content requirements and their strengthening investment incentives linked with export requirements; technological transfer requirements; and hiring local people. Those for category iii) include: restrictions on overseas remittances and restrictions on the amount, use of, foreign currencies. Those for category x) include: monopolistic energy supply and discriminatory raising of its prices, and discriminatory pricing for loads at ports.

To capture changes in the investment climate in ASEAN countries, let us compare the patterns of pervasiveness of the identified problems in 2010, with those in 2005 provided by Urata, Ando, and Ito (2007), those in 2008 provided by Urata and Ando (2009), and those in 2009 provided by Urata and Ando (2010). ASEAN countries available for a comparison between 2010/2009/2008 and 2005 are composed of seven countries that are the members of both ASEAN and APEC. Table 2.3 presents the results for the investment climate in 2009/2008 in ASEAN10, and in 2005 in ASEAN7: it shows the number of incidents by category and country. Recently, the total number of issues for ASEAN10 has gradually increased from 316 in 2008 to 363 in 2009, and to 390 in 2010; the number of issues related to FDI liberalization increased from 66 in 2008 to 74 in 2009, and to 81 in 2010, while the number of issues in the FDI facilitation sub-category were 250, 289, and 309 over the same three-year period. This does not necessarily indicate the implementation of new barriers and would partly reflect more active and deeper operations by Japanese firms in ASEAN countries than before. Such a growing number, however, clearly implies that further efforts to improve the investment climate through various liberalization and facilitation measures are expected.

As the figure suggests, ASEAN7 as a whole maintained a more or less equal number of issues directly preventing FDI, while it saw a significant increase in the number of issues indirectly preventing FDI: the number of incidents drops from 73 to 72 for FDI liberalization, though the number of incidents rises from 219 to 262 for FDI facilitation. In particular, issues due to complicated and/or delayed procedures with respect to investment-related regulations (implementation problems) increase from 85 to 104. This suggests that ASEAN countries explicitly improved their investment climate but at the same time, more and more indirect



barriers to FDI emerged, partly reflecting more active and deeper operations by Japanese firms in ASEAN countries than before, who are therefore more likely to face various problems through their operations.

Wide variations among the ASEAN countries, however, do exist. Although we cannot strictly conduct a comparative analysis among the countries due to the nature of the survey, the tables provide several interesting findings. First, various problems have prevailed in Indonesia, Malaysia, the Philippines, Thailand, and Vietnam. Second, among those five countries, Indonesia (from 62 to 83), Thailand (from 69 to 75), and Vietnam (from 50 to 75) have increased in terms of the total number of issues by five or more. In particular, for Vietnam, a country that has recently attracted a significant amount of new FDI, the number of incidents increased substantially in categories for institutional problems and implementation problems for investment-related policies and regulations and underdeveloped infrastructure and shortages of human resources. Third, in terms of both FDI liberalization and facilitation, the number of issues identified in the Philippines has decreased, while in Indonesia, Thailand, and Vietnam the number of issues in both categories have increased. Fourth, in Laos, one of newcomers to ASEAN, the number of issues identified increased rapidly from 4 in 2008/2009 to 14 in 2010, though the number is not so large yet, per se.

To sum up, the explicit investment climate in ASEAN economies as a whole tend to have relatively improved as the number of the incidents revealing problems preventing FDI directly declined so far as FDI liberalization is concerned. Direct barriers to FDI, however, still remain. Further efforts by ASEAN countries to reduce them are necessary, if they want to attract FDI. At the same time, the reduction of indirect barriers to FDI or the promotion of FDI facilitation is also indispensable, as the increasing number of issues identified in categories for FDI facilitation suggests. Particularly important areas for improvement include institutional problems, complicated and delayed procedures, underdeveloped infrastructure, inflexible labor market conditions (such as difficulty in hiring and firing workers and burdensome labor regulations and wage-related issues), and problems involving taxation regulations (including double taxation problems due to lack of double taxation treaties). As mentioned above, further indirect barriers to FDI have tended to emerge, partly reflecting more active and deepening operations by Japanese firms in ASEAN countries than before, who are therefore more likely to face various problems because of their operations. Thus the increasing number does not necessarily indicate the implementation of new barriers. However, this growing number

clearly implies that further efforts to improve the investment climate through various facilitation measures are expected.

## Discussion by country

In the following, we briefly discuss major problems by country.

### Brunei (0 incident, 1 Japanese affiliate)

For Brunei, no problems are identified in JMC Survey 2010, though one problem was identified in JMC Survey 2005 in category v) lack of transparency in policies and regulations concerning investment: ambiguity of government procurement procedures. It should be noted that few Japanese affiliates operate in Brunei, leading to low probability of incidents.<sup>7</sup>

### Cambodia (14 incidents, 10 Japanese affiliates)

The categories with issues identified are v) lack of transparency in policies and regulations concerning investment (5),<sup>8</sup> vi) complicated and/or delayed procedures with respect to investment-related regulations (3), and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (6). The examples include underdevelopment, ambiguity, and lack of transparency of various legal regulations and institutions for category v), complexity of administrative procedures of customs clearance, arbitrary interpretation in implementing customs and taxations, and corruption for category vi), inadequate infrastructure such as electricity supply, road and traffic, and telecommunication, and underdevelopment of financial markets for category ix).

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<sup>7</sup> In Brunei, some non tariff measures (NTMs) are applied to many tariff lines, including technical measures for food industries, automatic licensing measures and import quotas for machinery industries, and automatic and non-automatic licensing measures for the chemical and timber industries. These measures may influence the investment climate indirectly. See Ando (2009) and Ando and Obashi (2010) for an analysis of NTMs, using frequency ratios of NTMs by type and industry.

<sup>8</sup> The number of incidents is shown in parenthesis.

#### Indonesia (83 incidents, 659 Japanese affiliates)

Major categories are vi) complicated and/or delayed procedures with respect to investment-related regulations (29), v) lack of transparency in policies and regulations concerning investment (22), i) restrictions on foreign entry (9), and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (8). While the number of incidents fluctuated in the categories concerning FDI facilitation among 52 in 2005, 28 in 2008, 50 in 2009, and 64 in 2010, the number of issues steadily increased in those relating to FDI liberalization from 10 in 2005 to 14 in 2008, 17 in 2009, and 19 in 2010. As a result, the total number of incidents increased from 62 in 2005 to 83 in 2010. One should note that the number of incidents of restrictions on foreign entry, which is one of the categories for FDI liberalization, increased from 5 to 9. Such a change seems to have been caused by the introduction of a more restrictive “new negative list” (in effect since July 2007) which specifies the sectors in which no foreign entry is allowed, as well as sectors subject to certain conditions for foreign equity participation, particularly in the service sectors. Examples include complexity, delay, and inefficiency of various administrative procedures, arbitrary interpretation in implementing regulations, and corruption under category vi), underdevelopment, ambiguity, and sudden and frequent changes of various legal regulations and institutions under category v), restrictions on foreign ownership ratios in specific sectors mainly in services sectors and joint venture requirements under category i), and insufficient infrastructure under category ix).

#### Lao PDR (14 incidents, 6 Japanese affiliates)

The main categories in which issues were identified are vi) complicated and/or delayed procedures with respect to investment-related regulations (6) and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (6). Examples include delayed customs clearance procedures under category vi) and inadequate infrastructure such as electrical power, roads and traffic and shortage of human resources under category ix). As mentioned above, in Laos there was a rapidly increase in the number of issues identified from 4 in 2008/2009 to 14 in 2010, though the number per se is not

particularly large yet, due to increasing number of indirect impediments to FDI. Such a rapid increase would reflect very recent active and deepening operations by Japanese firms in ASEAN countries, which are, in turn, more likely to face various problems. However, this apparently implies the necessity of FDI facilitation.

#### Malaysia (57 incidents, 759 Japanese affiliates)

The number of incidents increased in categories for FDI facilitation, mainly in categories covering institutional and implementation problems for investment-related regulations, while the number decreased in categories for FDI liberalization. As a result, the total number of incidents slightly increased from 53 to 57. The major categories are vi) complicated and/or delayed procedures with respect to investment-related regulations (15), v) lack of transparency in policies and regulations concerning investment (11), and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (7). Examples include complexity, delays, and difficulty of administrative procedures and arbitrary interpretation in implementing regulations under category vi), lack of transparency and instability of regulations and taxation issues under category v), and difficulty in hiring and securing human resources due to shortages of management staff and engineers, high turnover ratios, and issues involving investment incentives, and inadequate infrastructure such as electricity supply and road and traffic under category viii).

#### Myanmar (28 incidents, 10 Japanese affiliates)

The total number of incidents did not change from 2008 to 2010. The major categories are v) lack of transparency in policies and regulations concerning investment (7), vi) complicated and/or delayed procedures with respect to investment-related regulations (8), iii) restrictions on overseas remittances and controls on foreign currency transactions (6), and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (5). The examples are underdevelopment and ambiguity of legal systems, and regulations such as the multiple exchange rate regime, double taxation due to lack of tax treaties, and taxation under category v), complexity and delay of administrative procedures such as customs clearance and overseas remittances under category vi), ambiguity and

strengthened regulations on overseas remittances and various controls on foreign currency transactions under category iii), and underdevelopment or lack of infrastructure such as electricity supply, ports, and airports under category ix).<sup>9</sup>

#### The Philippines (39 incidents, 419 Japanese affiliates)

The number of incidents in the Philippines increased in categories for FDI facilitation from 37 in 2005 to 42 in 2009, particularly due to a growing number of issues related to implementation problems for investment-related policies and regulations and labor regulations and practices excessively favorable to workers. However, the number of incidents rapidly drops in 2010. Consequently, the total number of incidents decreased from 48 to 39. The major categories are vi) complicated and/or delayed procedures with respect to investment-related regulations (13), viii) labor regulations and related practices excessively favorable to workers (8), i) restrictions on foreign entry (7), and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (6). The issues in the Philippines are spread widely across many categories: complexity, delays, and inefficiency of administrative procedures, arbitrary interpretation in implementing regulations, and corruption under category vi), various labor restrictions under category viii), restrictions on foreign entry into specific sectors under category i), and high turnover ratios, underdeveloped infrastructure such as electricity and road and traffic, and insufficient incentives for foreign investment and supporting industries under category ix).

#### Singapore (6 incidents, 991 Japanese affiliates)

For Singapore, the categories with a positive number of incidents, although they are very few in number, are ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (3), viii) labor regulations and related practices excessively favorable to workers (2), and iv) restrictions on the movement of people and employment requirements (1). The issues reflect rapid increases in wage levels, the increasingly heavy burden of employee pensions, the burden of educational funding, and difficulty in hiring and

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<sup>9</sup> See Ando (2009) for multiple exchange rate regimes in Myanmar.

securing human resources due to shortages of management and engineers, and high turnover ratios.

#### Thailand (75 incidents, 1577 Japanese affiliates)

Thailand is the country where the number of Japanese affiliates is the largest among ASEAN countries, and thus it potentially receives many requests to improve its investment climate. The number of incidents increased in both the FDI liberalization and FDI facilitation categories from 16 to 20 and from 53 to 55, respectively. As a result, the total number of incidents slightly rose from 69 to 75. The major categories, in which incidents are recorded are vi) complicated and/or delayed procedures with respect to investment-related regulations (25), v) lack of transparency in policies and regulations concerning investment (16), ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (10), and i) restrictions on foreign entry (5). Examples include complexity and delays in administrative procedures and arbitrary interpretation in implementing regulations under category vi), underdevelopment and lack of transparency of various regulations and taxation issues under category v), restrictions on foreign entry under category i), and high turnover ratios and inadequate infrastructure under category ix).

#### Vietnam (74 incidents, 332 Japanese affiliates)

Vietnam has been active in hosting FDI in recent years, and thus an increasingly large number of issues are likely to be reported; the total number of incidents gradually increased from 50 in 2005 to 58 in 2008, and from 66 in 2009 to 74 in 2010. The number of incidents noticeably increased in categories for FDI facilitation from 34 to 64, particularly due to a growing number of issues related to institutional problems and implementation problems for investment-related policies and regulations, and underdeveloped infrastructure and shortage of human resources. Consequently, the total number of incidents increased, though the number declined in categories for FDI liberalization as a whole from 16 to 10. Major categories in which incidents are registered incidents are vi) complicated and/or delayed procedures with respect to investment-related regulations (22), v) lack of transparency in policies and regulations concerning investment (20), and ix) underdeveloped infrastructure,

shortages of human resources, and insufficient investment incentives (13). The examples are complexity and delay of administrative procedures and arbitrary implementation of customs clearance under category vi), underdevelopment, ambiguity, and sudden changes in various regulations under category v), and underdeveloped infrastructure and difficulty in hiring and securing human resources due to shortages of management staff and engineers under category ix).

### **3. Assessment of FDI Environments based on a Survey of Firms in ASEAN**

This section analyzes the FDI environments of ASEAN countries by using our original survey of foreign firms (mainly non-Japanese firms), sometimes with domestic firms, in ASEAN10.

#### **3.1. The Methodology and the Data used for the Analysis**

In order to collect information on the evaluation of investment climate by firms, mainly non-Japanese foreign firms operating in ASEAN10, we conduct an original survey, following the same categories used for the analysis in Section 2.

The questionnaire employed for the analysis is presented in Table 3.1. It is composed of two parts, namely: company profile and survey on investment climate. In the part of survey on investment climate, firms are asked to evaluate the seriousness of the 10 kinds of impediments in conducting business in the country of operation at present, by indicating the most appropriate rating from one to five (1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem). In particular, for the category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, the following three sub-categories are added to identify which factors are more serious: ix-1) “underdeveloped infrastructure, ix-2) shortages of human resources, and ix-3) insufficient investment incentives. Based on the results of the survey, with some detailed information if available, this section evaluates the investment climate in ASEAN10.

Table 3.1 The form of questionnaire

<b>A. Company Profile</b>			
Name	:	_____	
Address	:	_____	
Industry classification (refer to the appendix table at the end)	:	_____	
Major products/services	:	_____	
Foreign equity ratio (share of foreign equity in total equity):	:	_____	%
Name of the principal foreign investor:	:	_____	
Nationality of the principal foreign investor:	:	_____	
Foreign equity ratio of the principal foreign investor:	:	_____	%
Paid-in capital	:	_____	
Year of establishment	:	_____	
Form of establishment (please check one of the following):			
<input type="checkbox"/>	Newly established by a single company	<input type="checkbox"/>	Merger & acquisition
<input type="checkbox"/>	Newly established as a joint venture	<input type="checkbox"/>	Others
Types of operation (please check one of the following):			
<input type="checkbox"/>	Sales and marketing	<input type="checkbox"/>	Manufacturing and processing
<input type="checkbox"/>	R&D		
Employment	:	_____	
Total number of full-time employees	:	_____	
Total number of full-time foreign employees	:	_____	
Total number of part-time employees	:	_____	
Sales (total)	:	_____	
Percentage of exports in total sales	:	_____	%
Percentage of exports to the principal foreign investors in total exports:	:	_____	%
Royalty income	:	_____	
Purchase (total)	:	_____	
Percentage of imports in total purchases	:	_____	%
Percentage of imports from the principal foreign investors in total imports:	:	_____	%
Total assets	:	_____	



<b>B. Survey on the Investment Climate</b>
<i>We would like you to consider the investment climate in the ASEAN countries</i>
<b>1. On a scale 1 (no problem) to 5 (extremely serious problem), please evaluate the seriousness of the impediments in conducting business in the country of operation at present (2010) for the 10 kinds of impediments below, and check the most appropriate rating for each category (1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem)</b>
(i) Restrictions on foreign entry
(ii) Performance requirements
(iii) Restrictions on overseas remittances and controls on foreign currency transactions
(iv) Restrictions on the movement of people and employment requirements
(v) Lack of transparency in policies and regulations concerning investment (institutional problems)
(vi) Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)
(vii) Insufficient protection of intellectual property rights (IPRs)
(viii) Labor regulations and related practices excessively favorable to workers
(ix) Underdeveloped infrastructure, and shortages of human resources
ix-1) underdeveloped infrastructure
ix-2) shortages of human resources
ix-3) insufficient investment incentives
(x) Restricted competition and price controls
<b>2. Please make comments (or provide precise information), if any, on the impediments to FDI for the 10 categories (see B.1 in the questionnaire)</b>
<b>3. Please write down below your suggestions for improving the country's investment climate:</b>

### Industry classification

Industry classification	Industry code	
Agriculture, fishery, forestry	10	
Mining	20	
Construction	30	
Manufacturing	Food processing	40
	Textiles and apparel	41
	Wood, pulp and paper	42
	Chemical products	43
	Iron and steel products	44
	Non-ferrous metal products	45
	General machinery	46
	Electronic and electric machinery	47
	Transport equipment	48
	Precision machinery	49
Other manufacturing	50	
Services	Distribution	60
	Transportation services	61
	Communication services	62
	Financial services	63
	Other services	64

Table 3.2 summarizes the details of surveys for each country. The method of collecting surveys and the number of firms in the survey varies across countries, depending on the situation of the country; either via e-mail, in face-to-face interviews, via post, or a combination of them are used.<sup>10</sup> In addition, the number of responding firms in each country is unfortunately not so large due to various reasons and constraints, ranging between 3 and 35 respondents. The nationalities of the firms being surveyed are varied, with at least three different nationalities represented in each country.

Table 3.2 The details of surveys for ASEAN10

	How to conduct a survey	The number of firms to send questionnaires (have interviews)	The number of firms with responses	The returned ratio
Brunei	E-mail (with phone and interviews)	30	3	10%
Cambodia	Face-to-face interviews, e-mail, and personnel	96	35	36%
Indonesia	Face-to-face interviews	40 to 55	12	22%-30%
Laos	Postal (majority) and email and fax (minority)	12	8	67%
Malaysia	E-mail	Over 2000	34	About 2%
Myanmar	Face-to-face interviews	30	22	73%
Philippines	Phone, fax, and e-mail	100	27	27%
Singapore	Online survey and e-mail	About 80	15	About 19%
Thailand	Postal and e-mail (majority) and fax (minority)	72	10	14%
Vietnam	Survey and postal	40 + Over 100	5	About 3%

Tables 3.3 and 3.4 present some features of firms in the surveys. First of all, most of the firms in the surveys are in manufacturing or services industries; 72 percent of the firms in ASEAN10 as a whole in the surveys are in the manufacturing sectors and 24 percent are in the service sectors (Table 3.3). In particular, the textiles and apparel sector has the second largest share among those firms involved in manufacturing, following the ‘other manufacturing’ sector; many firms in this sector are observed in Cambodia, Myanmar, and Vietnam. If we look at by-country industry shares, the textiles and apparel sector is the largest in Cambodia (46 percent), Laos (25 percent), Myanmar (29 percent), and Vietnam (20 percent), which suggests how active this sector is in these countries, though firms in the surveys are not necessarily the representative of whole country. Similarly, the electronics and electrical machinery sector is (one of) the largest in the Philippines (30 percent) and Thailand (11 percent), the other manufacturing sector is the largest in Malaysia (47 percent) and Indonesia

<sup>10</sup> See Table A.3.1 for detailed explanation of the method to conduct surveys.

(25 percent), and the service sector is the largest in Brunei (33 percent for financial services, for instance) and Singapore (27 percent for distribution, for example). Singapore appears to be the most active country for the service sectors among the 10 countries.

Table 3.3 The industry distribution

Industry	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	ASEAN10
<b>(1) The number of firms</b>											
Agriculture, fishery, forestry	0	1	0	0	0	0	0	0	2	0	3
Mining	0	0	0	1	0	0	0	0	0	0	1
Construction	0	2	0	1	0	0	0	0	1	0	4
Manufacturing											
Food processing	0	3	0	0	4	3	0	1	1	3	15
Textiles and apparel	0	16	1	2	4	7	0	0	0	6	36
Wood, pulp and paper	0	0	0	0	1	0	1	0	0	0	2
Chemical products	0	0	0	2	0	0	0	0	0	3	5
Iron and steel products	0	0	0	0	0	1	0	1	0	5	7
Non-ferrous metal products	0	0	0	1	3	0	0	0	0	0	4
General machinery	0	0	0	0	1	1	2	0	0	0	4
Electronic and electric machinery	0	0	1	0	3	1	8	0	1	4	18
Transport equipment	0	0	1	0	2	0	6	0	0	4	13
Other manufacturing	0	1	3	1	16	5	6	0	1	5	38
Services											
Distribution	0	1	0	0	0	3	2	4	0	0	10
Transportation services	0	1	0	0	0	0	0	2	0	0	3
Communication services	0	3	1	0	0	0	0	0	0	0	4
Financial services	1	2	3	0	0	0	0	1	0	0	7
Other services	2	5	2	0	0	3	2	6	3	0	23
<b>Total</b>	<b>3</b>	<b>35</b>	<b>12</b>	<b>8</b>	<b>34</b>	<b>24</b>	<b>27</b>	<b>15</b>	<b>9</b>	<b>30</b>	<b>197</b>
<b>(2) Share</b>											
Agriculture, fishery, forestry	0%	3%	0%	0%	0%	0%	0%	0%	22%	0%	2%
Mining	0%	0%	0%	13%	0%	0%	0%	0%	0%	0%	1%
Construction	0%	6%	0%	13%	0%	0%	0%	0%	11%	0%	2%
Manufacturing											
Food processing	0%	9%	0%	0%	12%	13%	0%	7%	11%	10%	8%
Textiles and apparel	0%	46%	8%	25%	12%	29%	0%	0%	0%	20%	18%
Wood, pulp and paper	0%	0%	0%	0%	3%	0%	4%	0%	0%	0%	1%
Chemical products	0%	0%	0%	25%	0%	0%	0%	0%	0%	10%	3%
Iron and steel products	0%	0%	0%	0%	0%	4%	0%	7%	0%	17%	4%
Non-ferrous metal products	0%	0%	0%	13%	9%	0%	0%	0%	0%	0%	2%
General machinery	0%	0%	0%	0%	3%	4%	7%	0%	0%	0%	2%
Electronic and electric machinery	0%	0%	8%	0%	9%	4%	30%	0%	11%	13%	9%
Transport equipment	0%	0%	8%	0%	6%	0%	22%	0%	0%	13%	7%
Other manufacturing	0%	3%	25%	13%	47%	21%	22%	0%	11%	17%	19%
Services											
Distribution	0%	3%	0%	0%	0%	13%	7%	27%	0%	0%	5%
Transportation services	0%	3%	0%	0%	0%	0%	0%	13%	0%	0%	2%
Communication services	0%	9%	8%	0%	0%	0%	0%	0%	0%	0%	2%
Financial services	33%	6%	25%	0%	0%	0%	0%	7%	0%	0%	4%
Other services	67%	14%	17%	0%	0%	13%	7%	40%	33%	0%	12%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Table 3.4 The form of establishment, the type of operation, and foreign equity ratio: the number of firms

	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	ASEAN10
<b>(1) The number of firms</b>											
<b>Form of establishment</b>											
1: Newly established by a single company	1	24	2	6	7	10	11	12	5	24	102
2: Newly established as a joint venture	0	6	2	1	1	10	2	0	1	6	29
3: Merger & acquisition	0	2	6	1	1	2	0	1	0	0	13
4: Others	2	2	1	0	2	2	11	2	1	0	23
1&2									1		1
Total	3	34	11	8	11	24	24	15	8	30	168
<b>Type of operation</b>											
1: Sales and marketing	0	10	1	4	0	6	2	12	1	0	36
2: Manufacturing and processing	2	21	3	4	19	15	23	3	4	30	124
3: R&D	0	3	0	0	0	0	0	0	0	0	3
1&2			2			1			2		5
2&3					1						1
1&2&3					2				1		3
Total	2	34	6	8	22	22	25	15	8	30	172
<b>Foreign equity ratio (FER)</b>											
Domestic (FER=0)	3	1	0	3	3	0	0	2	0	0	12
Foreign: minority-owned (0<FER<=50)	0	2	1	0	6	2	1	3	4	2	21
Foreign: majority-owned (50<FER<100)	0	7	8	2	8	9	5	1	1	6	47
Foreign: wholly-owned (FER==100)	0	18	1	3	10	12	13	9	3	22	91
Total	3	28	10	8	27	23	19	15	8	30	171
<b>(2) Shares</b>											
<b>Form of establishment</b>											
1: Newly established by a single company	33%	71%	18%	75%	64%	42%	46%	80%	63%	80%	61%
2: Newly established as a joint venture	0%	18%	18%	13%	9%	42%	8%	0%	13%	20%	17%
3: Merger & acquisition	0%	6%	55%	13%	9%	8%	0%	7%	0%	0%	8%
4: Others	67%	6%	9%	0%	18%	8%	46%	13%	13%	0%	14%
<b>Type of operation</b>											
1: Sales and marketing	0%	29%	17%	50%	0%	27%	8%	80%	13%	0%	21%
2: Manufacturing and processing	100%	62%	50%	50%	86%	68%	92%	20%	50%	100%	72%
3: R&D	0%	9%	0%	0%	0%	0%	0%	0%	0%	0%	2%
<b>Foreign equity ratio (FER)</b>											
Domestic (FER=0)	100%	4%	0%	38%	11%	0%	0%	13%	0%	0%	7%
Foreign: minority-owned (0<FER<=50)	0%	7%	10%	0%	22%	9%	5%	20%	50%	7%	12%
Foreign: majority-owned (50<FER<100)	0%	25%	80%	25%	30%	39%	26%	7%	13%	20%	27%
Foreign: wholly-owned (FER==100)	0%	64%	10%	38%	37%	52%	68%	60%	38%	73%	53%

Notes: The total number of firms is not consistent with the number in Table 3.2 for some countries, due to missing data. Regarding type of operations and form of establishment, the major category cannot be identified for some firms because they chose multiple categories.

Second, regarding the type of operations, manufacturing and processing are the most typical operations for firms in the surveys for ASEAN as a whole (72 percent) as well as for all individual countries except Singapore; as the pattern of industry distribution implies,

sales and marketing are the most typical operations for Singapore (80 percent).

Third, as for the form of establishment, new establishment by a single company is the most common form for ASEAN as a whole (61 percent) and for all individual countries except Indonesia. As the data on foreign equity ratio suggests, more than half of the firms in the survey are wholly foreign-owned firms. Firms that are newly established as joint ventures are the second most common form of establishment (17 percent of firms in the survey). For firms in the survey of Indonesia, merger and acquisitions are the major form of establishment, and the majority-owned firms with foreign equity ratio of between 50 percent and 100 percent are the most numerous.

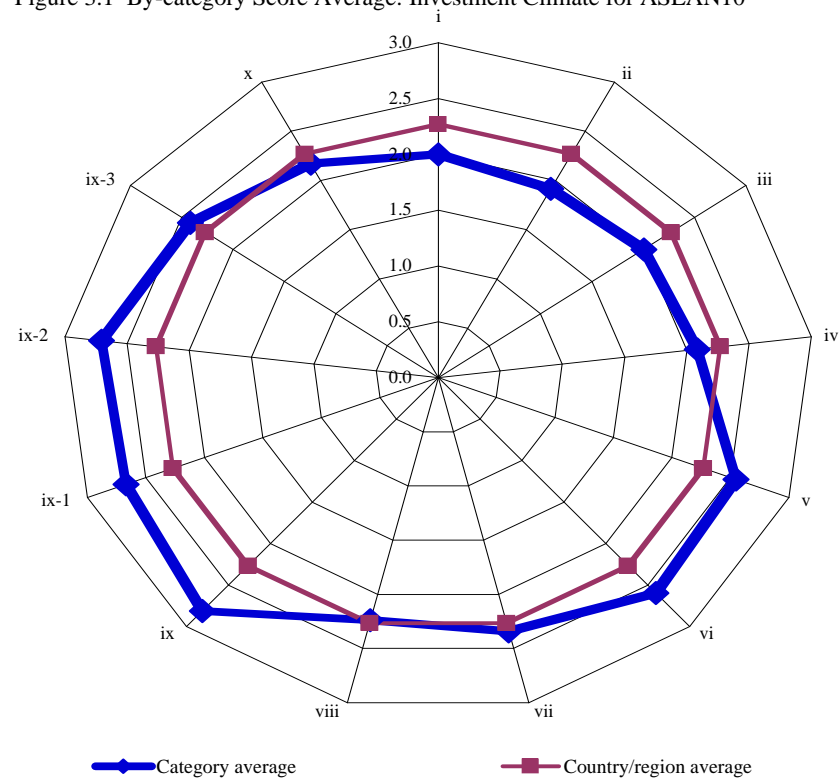
### **3.2. The Results**

Figure 3.1 demonstrates by-category average scores of investment climate in 2010 in ASEAN as a whole; the seriousness of the 10 kinds of impediments in conducting business in the country of operation, with scores from one for “no problem” to five for “extremely serious problem”. Since the number of firms in the survey significantly varies across countries, a category average for ASEAN10 is calculated, based on each of the 10 countries’ average scores in each category.<sup>11</sup> Figure 3.1 also shows a regional average, which is the average of 10 categories’ average at the country level, for ASEAN as a whole. The regional average is 2.3, suggesting that the overall perception of the investment climate is between “slight problem” and “substantial problem” on average. In other words, the problems and impediments in conducting business in ASEAN are on average not so serious.

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<sup>11</sup> When category averages are calculated, using all samples in the survey directly, they are similar to the scores in Figure 3.1, but some of them are a little lower.

Figure 3.1 By-category Score Average: Investment Climate for ASEAN10



1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem

Note: score average for ASEAN10 is calculated, based on the country average for 10 countries.

---

FDI liberalization

- i Restrictions on foreign entry
- ii Performance requirements
- iii Restrictions on overseas remittances and controls on foreign currency transactions
- iv Restrictions on the movement of people and employment requirements

FDI facilitation

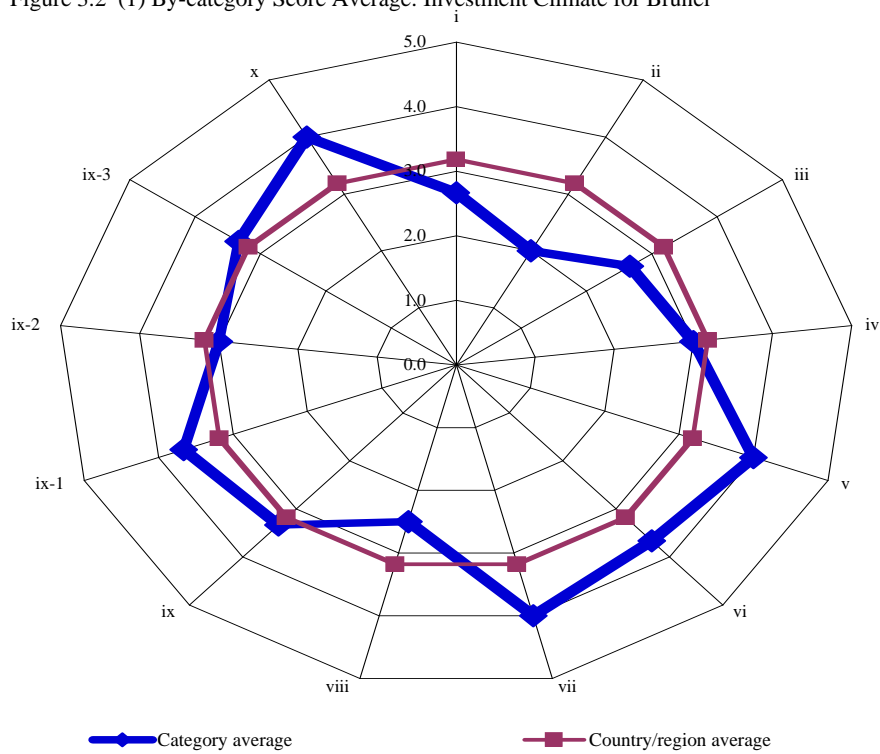
- v Lack of transparency in policies and regulations concerning investment (institutional problems)
  - vi Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)
  - vii Insufficient protection of intellectual property rights
  - viii Labor regulations and related practices excessively favorable to workers
  - ix Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives
    - ix-1 Underdeveloped infrastructure
    - ix-2 Shortages of human resources
    - ix-3 Insufficient investment incentives
  - x Restricted competition and price controls
-

The scores, however, vary among the 10 categories. As the figure shows, category v) “lack of transparency in policies and regulations concerning investment (institutional problems)”, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)”, category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, in particular, are more serious than others; scores are 2.5, 2.6, and 2.8, respectively. This is perfectly consistent with the results of the analysis conducted in section 2, using the information obtained from a survey on Japanese firms. It indicates that there is plenty of room to improve FDI facilitation in order to promote FDI in ASEAN. Although neither institutional nor implementation problems are necessarily discriminatory against foreign firms, they need to be resolved in order to promote investment activity in the region.

When we focus on the category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, scores are slightly higher for sub-categories ix-1) “underdeveloped infrastructure” (2.7) and ix-2) “shortages of human resources” (2.7) than for category ix-3) “insufficient investment incentives” (2.4). This implies that underdeveloped infrastructure and shortages of human resources, in particular, are relatively more serious issues in conducting business in ASEAN10.

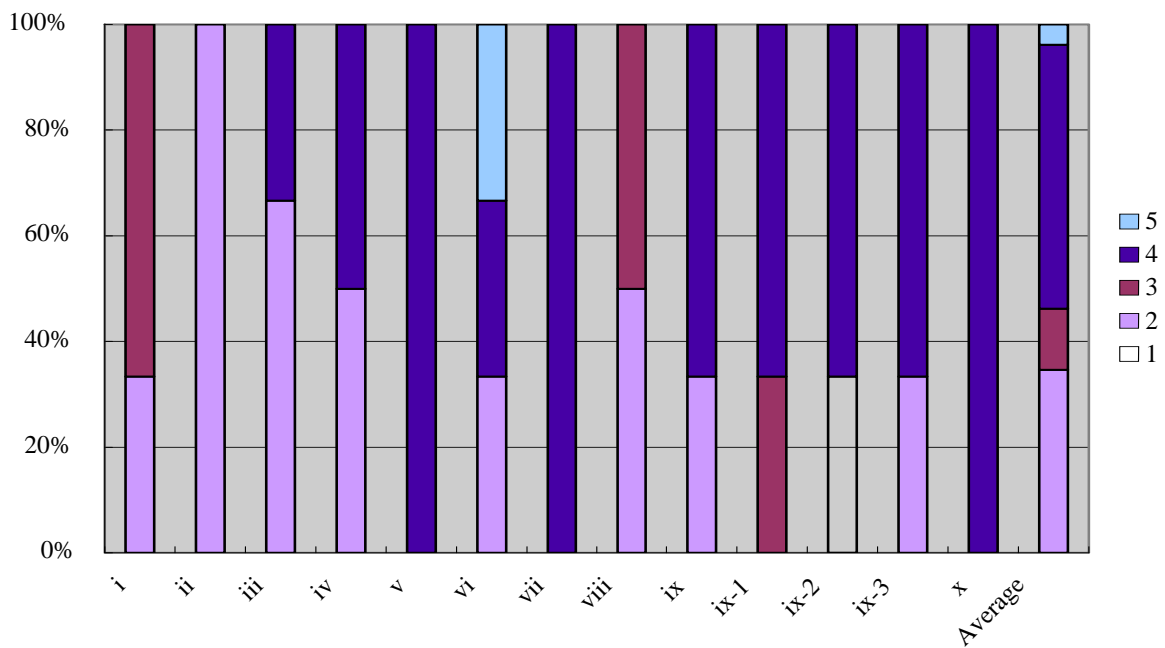
Let us discuss features of the investment climate by country. Figures 3.2 and 3.3 present by-category score average and shares by score and category for individual countries of ASEAN10.

Figure 3.2 (1) By-category Score Average: Investment Climate for Brunei



1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

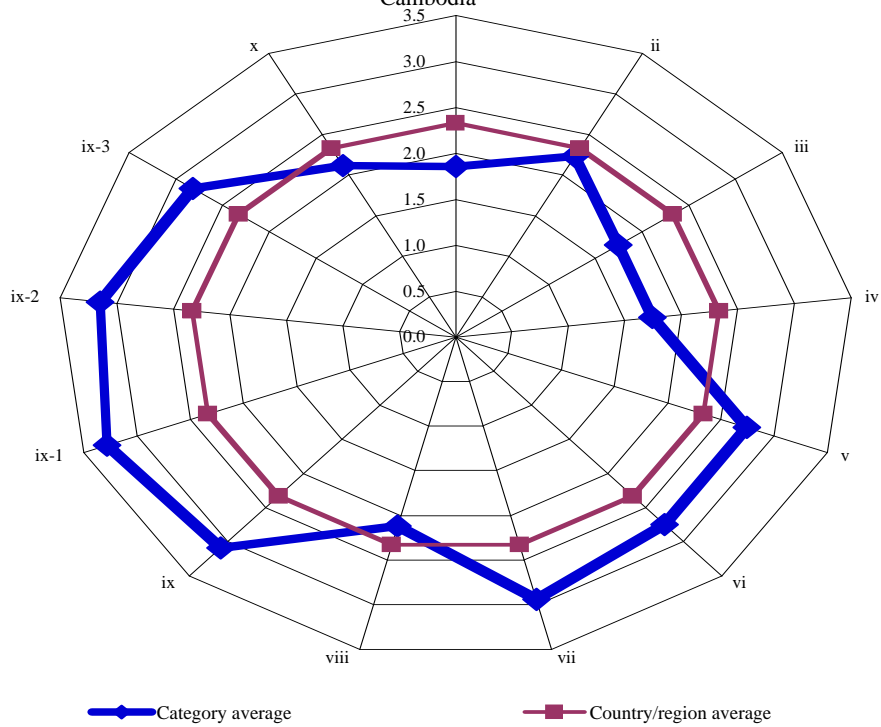
Figure 3.3 (1) Shares by Score and Category: Investment Climate for Brunei



See notes for Figure 3.2.

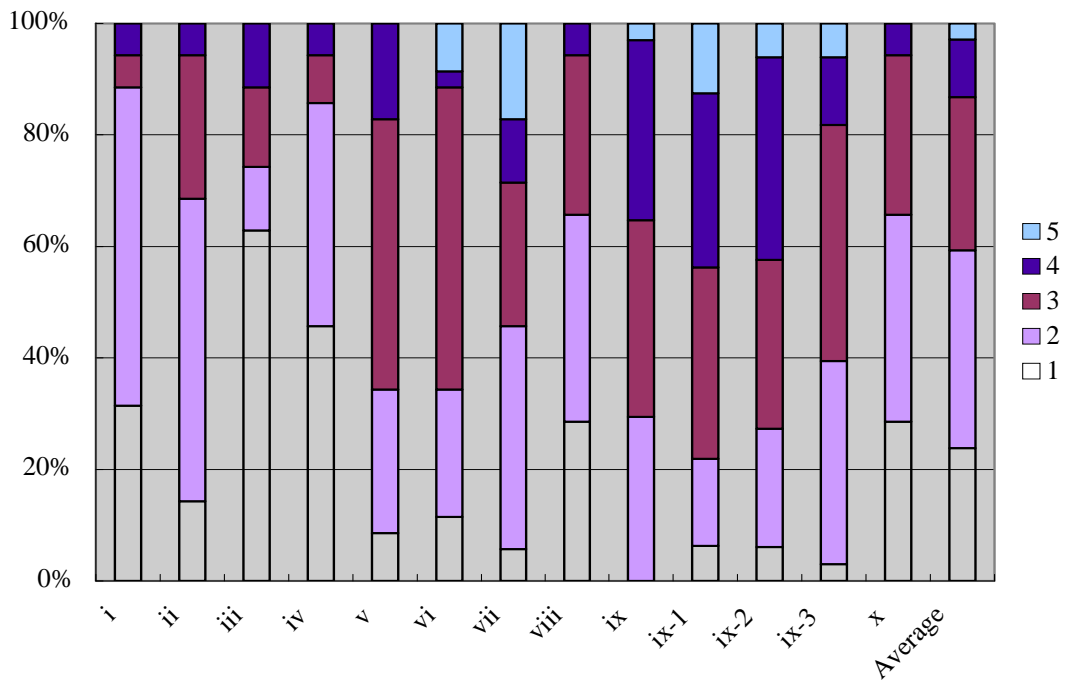


Figure 3.2 (2) By-category Score Average: Investment Climate for Cambodia



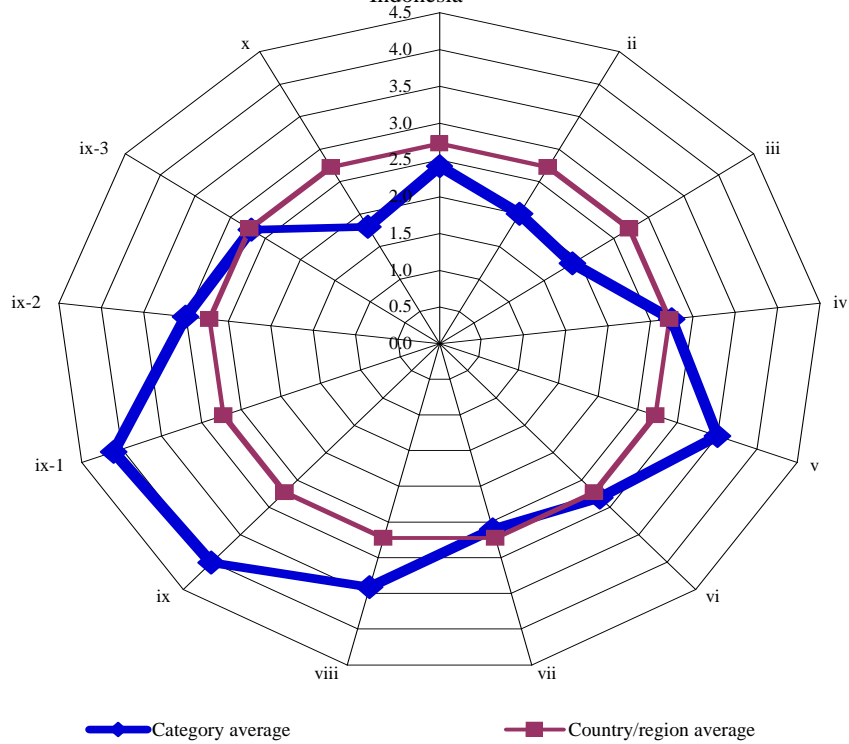
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (2) Shares by Score and Category: Investment Climate for Cambodia



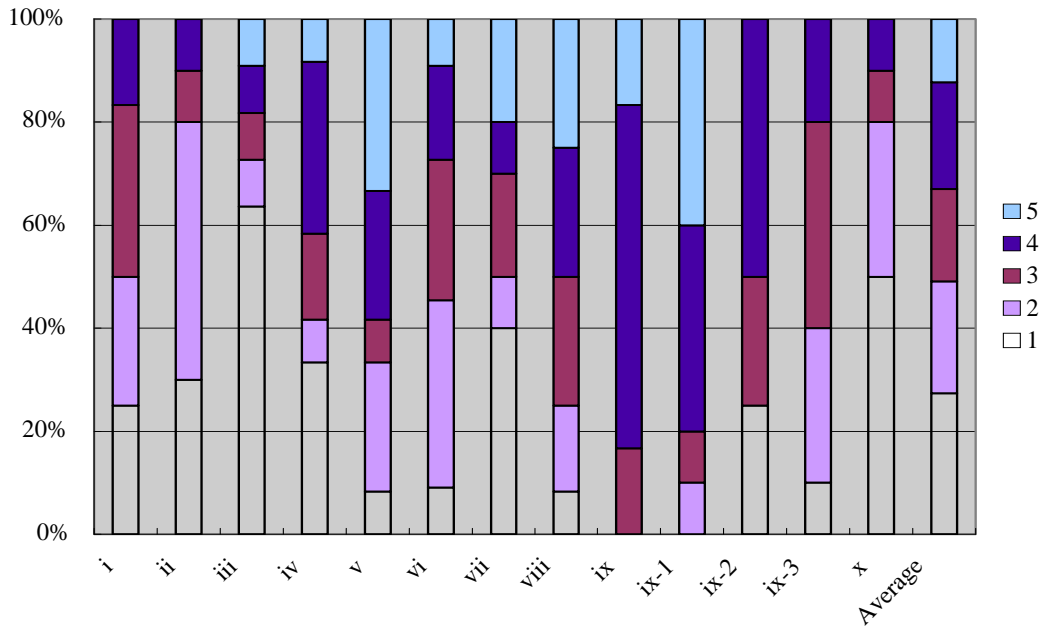
See notes for Figure 3.2.

Figure 3.2 (3) By-category Score Average: Investment Climate for Indonesia



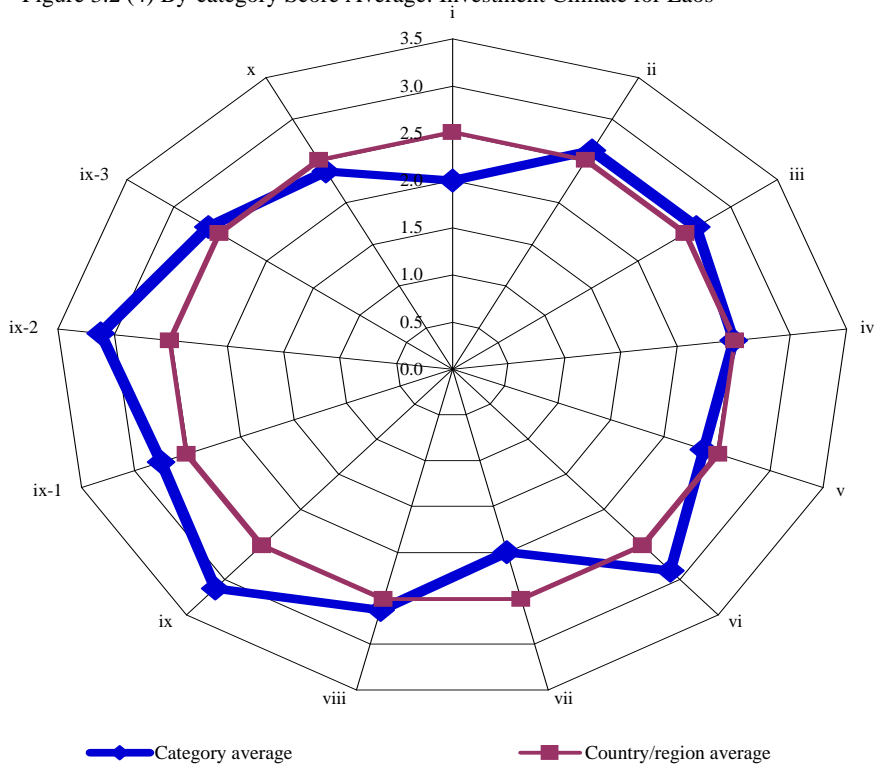
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (3) Shares by Score and Category: Investment Climate for Indonesia



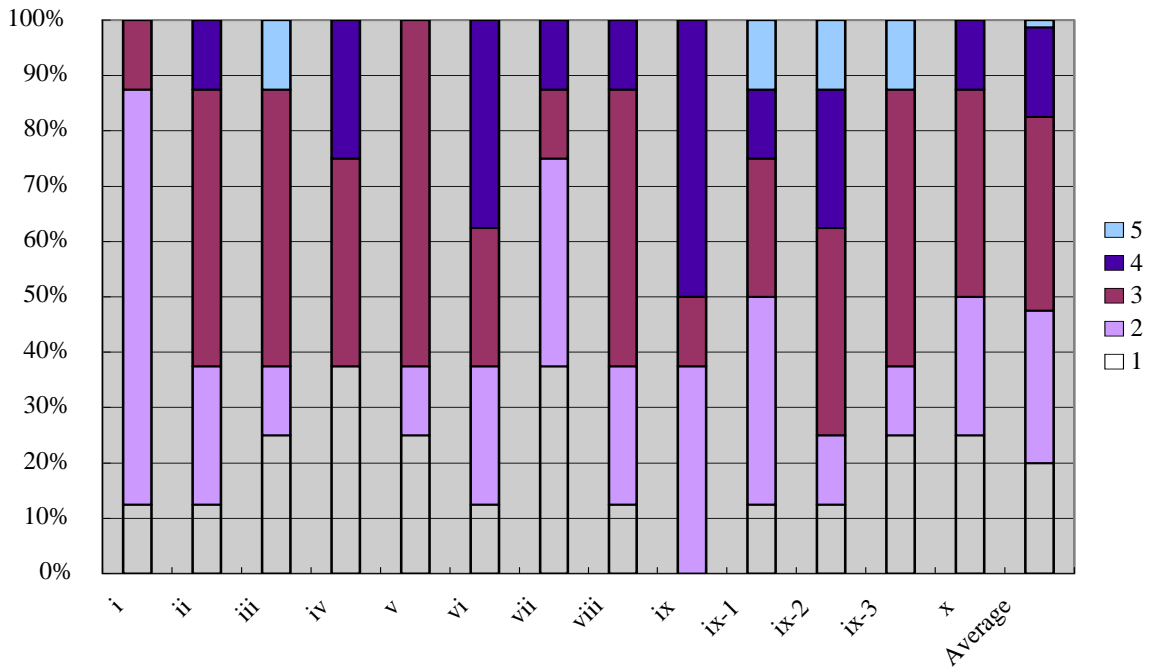
See notes for Figure 3.2.

Figure 3.2 (4) By-category Score Average: Investment Climate for Laos



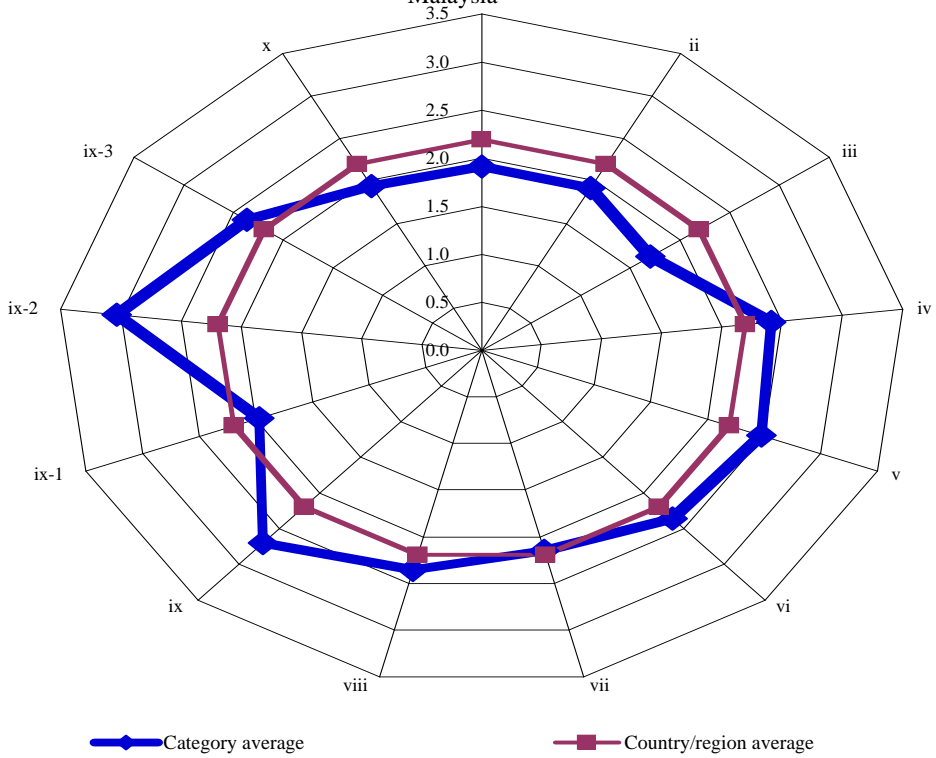
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (4) Shares by Score and Category: Investment Climate for Laos



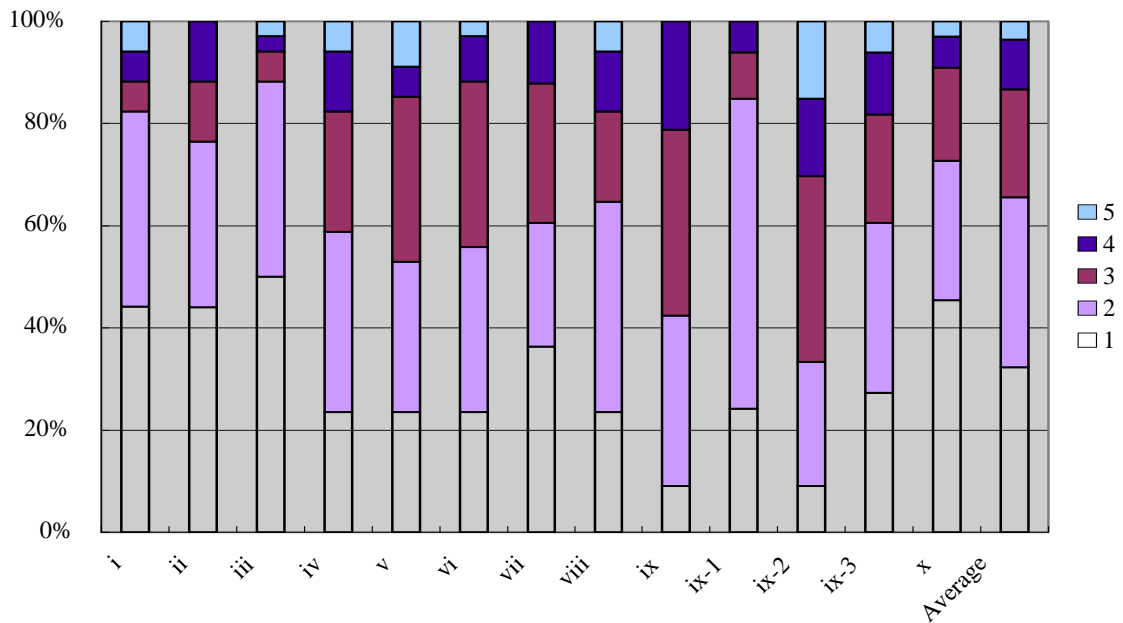
See notes for Figure 3.2.

Figure 3.2 (5) By-category Score Average: Investment Climate for Malaysia



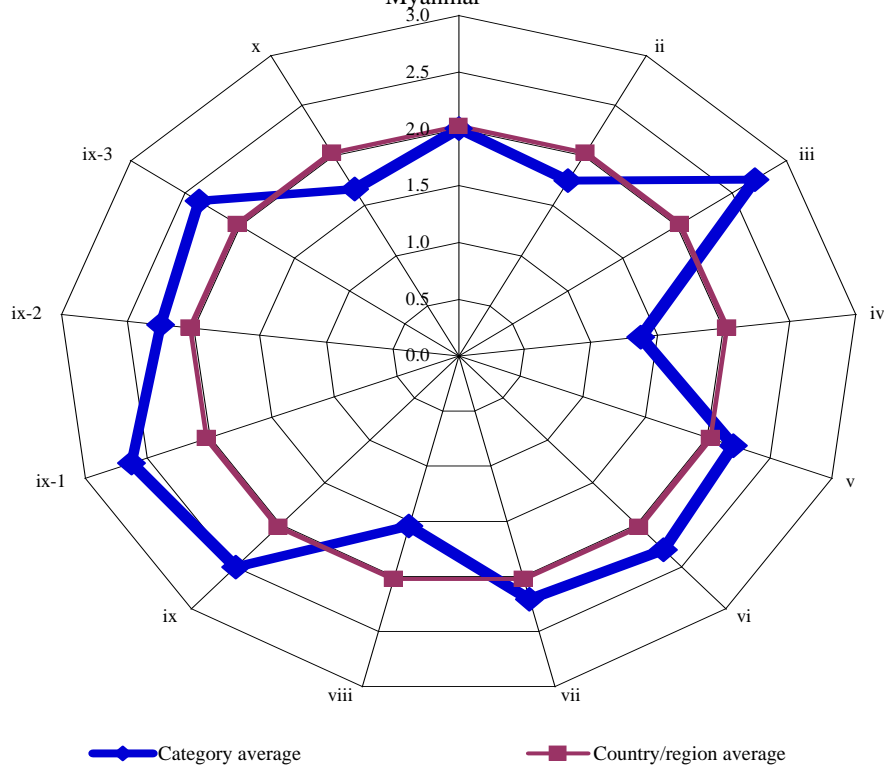
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (5) Shares by Score and Category: Investment Climate for Malaysia



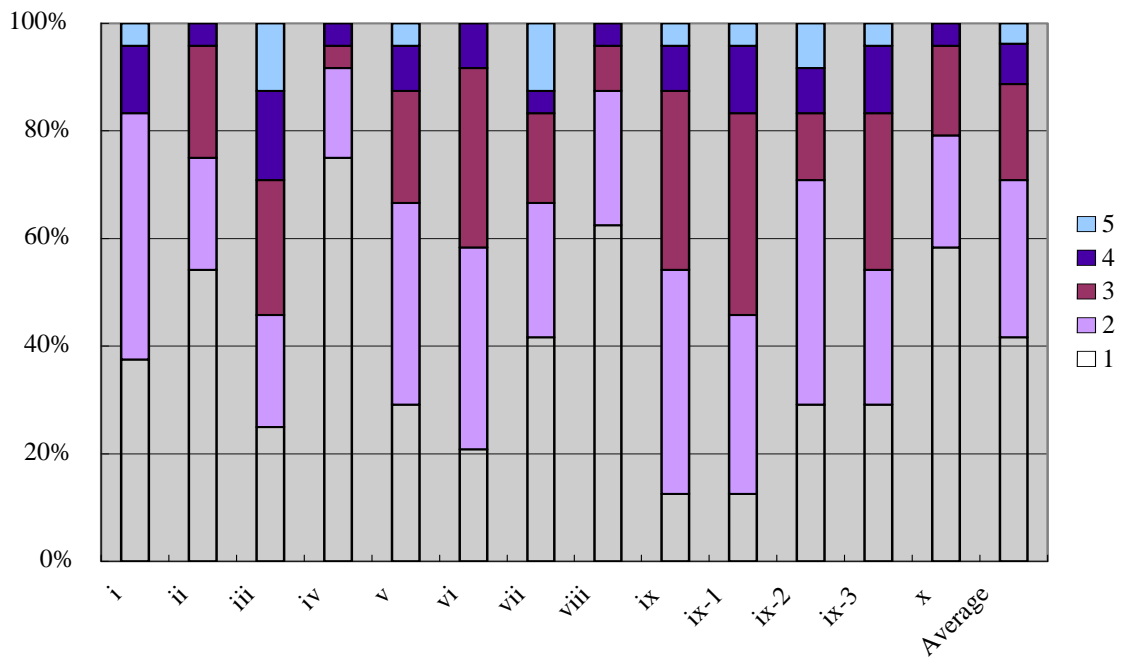
See notes for Figure 3.2.

Figure 3.2 (6) By-category Score Average: Investment Climate for Myanmar



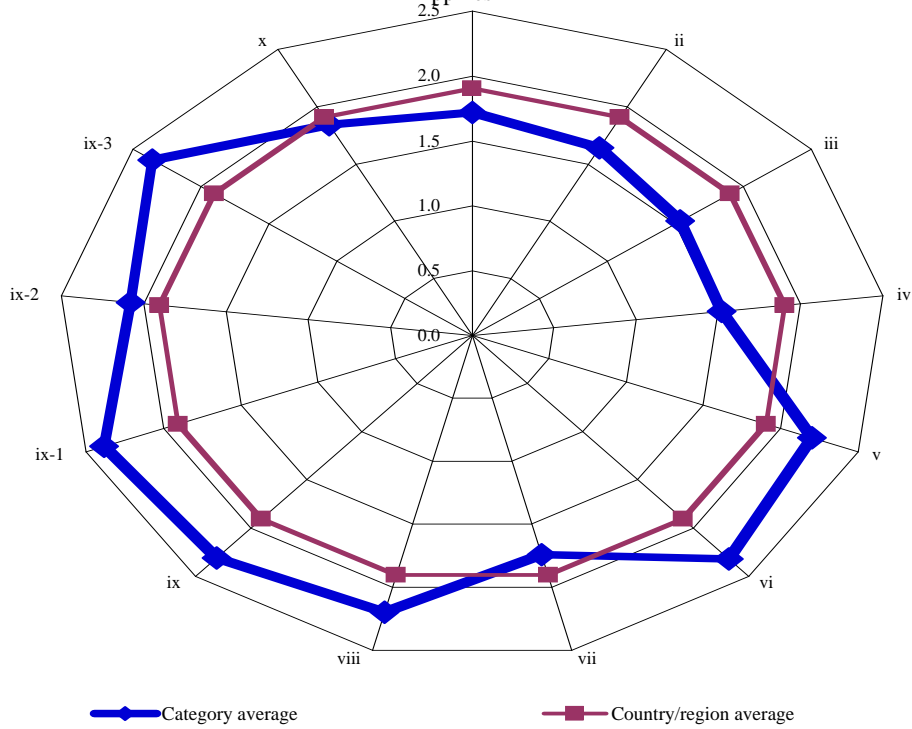
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (6) Shares by Score and Category: Investment Climate for Myanmar



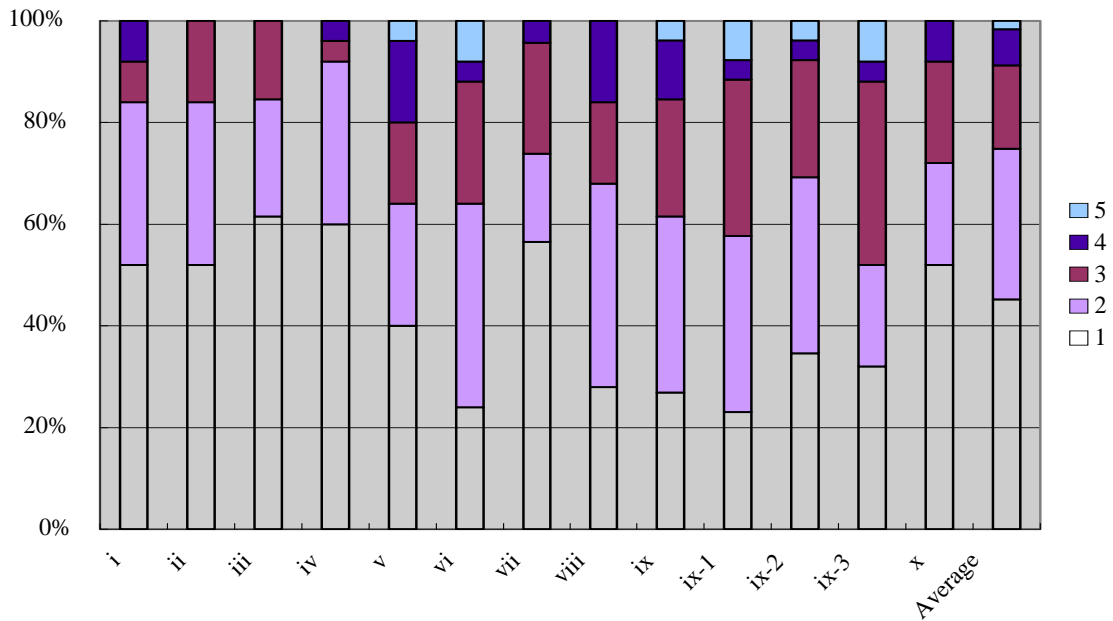
See notes for Figure 3.2.

Figure 3.2 (7) By-category Score Average: Investment Climate for the Philippines



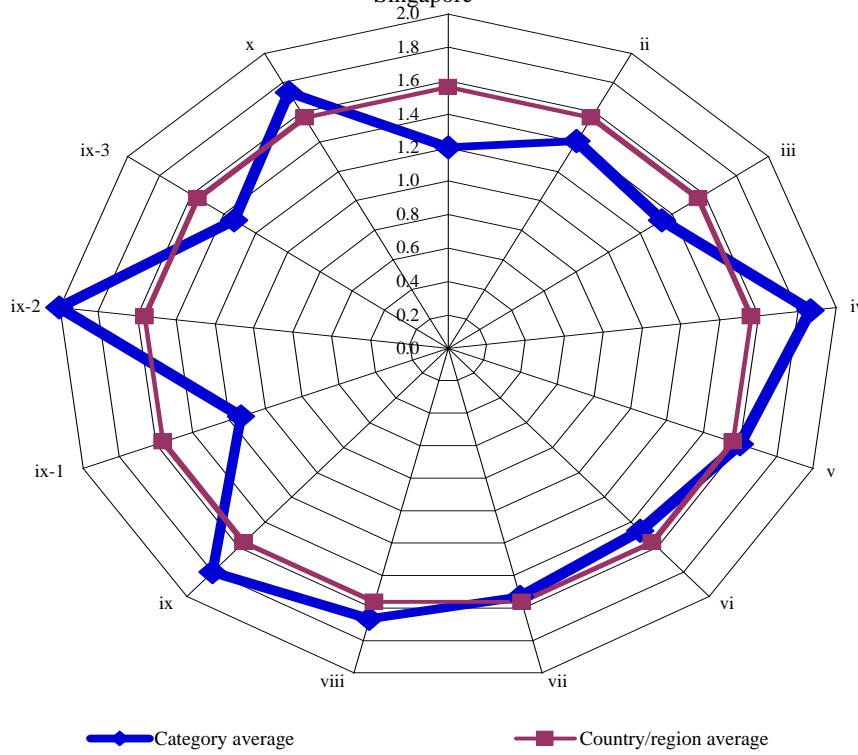
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (7) Shares by Score and Category: Investment Climate for the Philippines



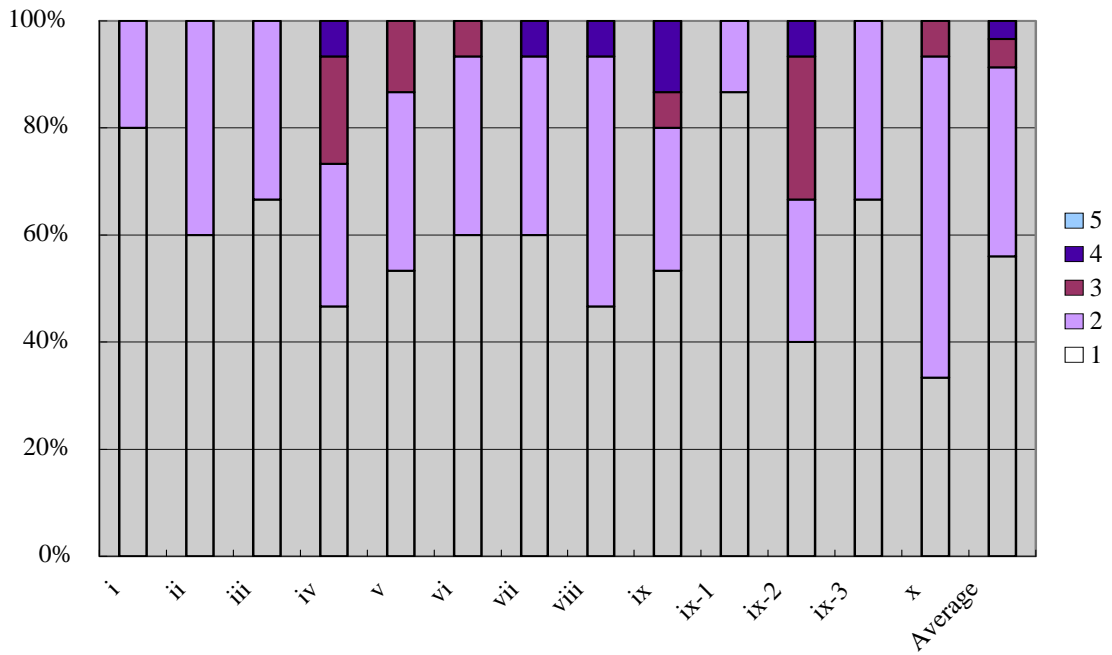
See notes for Figure 3.2.

Figure 3.2 (8) By-category Score Average: Investment Climate for Singapore



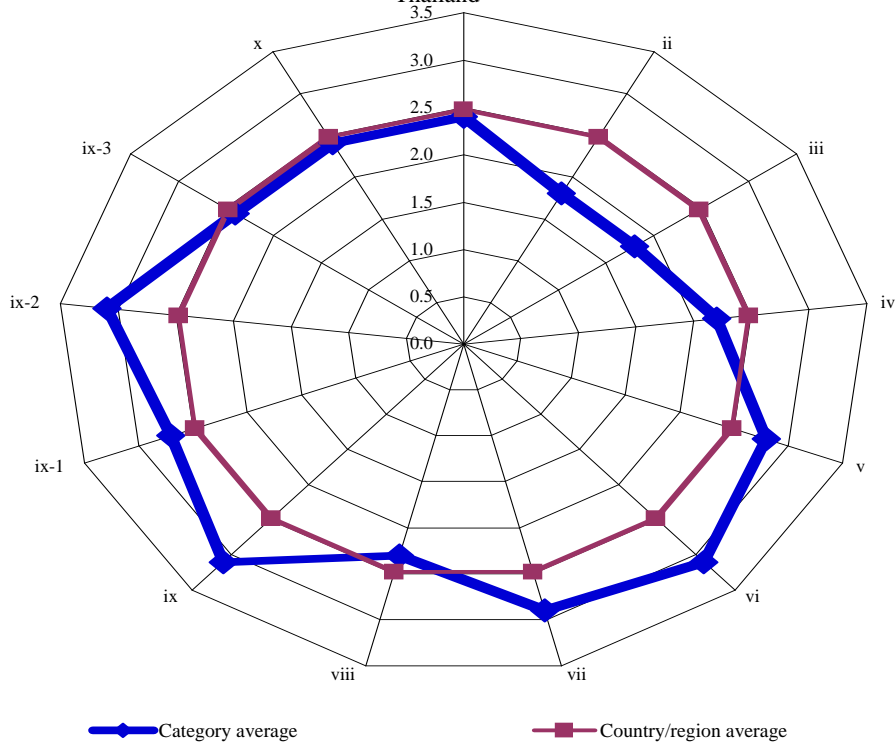
1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

Figure 3.3 (8) Shares by Score and Category: Investment Climate for Singapore



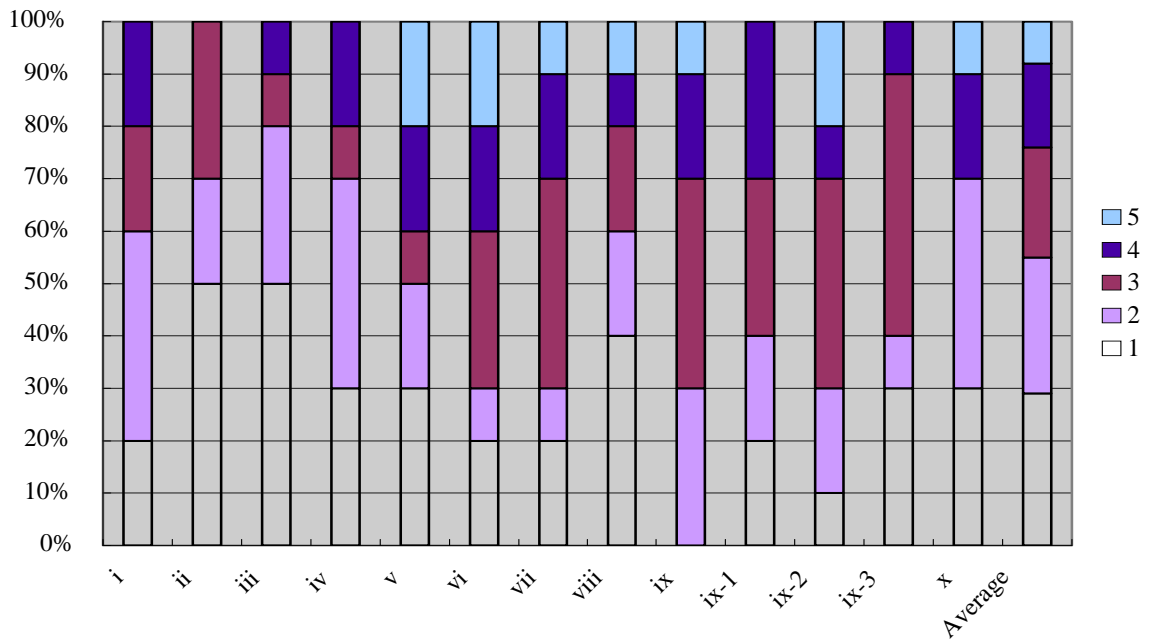
See notes for Figure 3.2.

Figure 3.2 (9) By-category Score Average: Investment Climate for Thailand



1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem  
See Figure 3.1 for category.

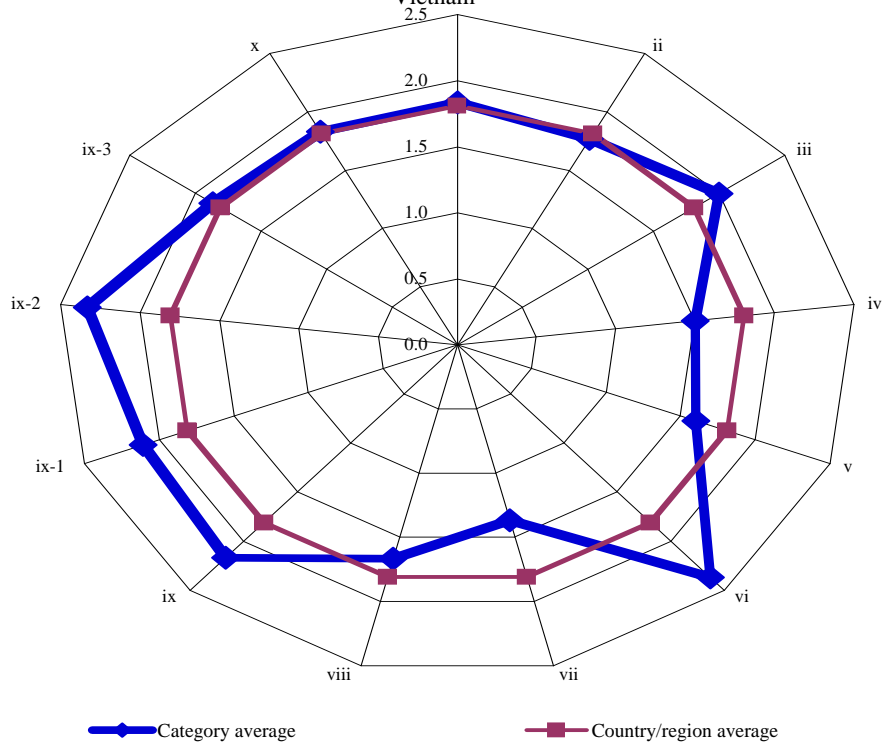
Figure 3.3 (9) Shares by Score and Category: Investment Climate for Thailand



See notes for Figure 3.2.



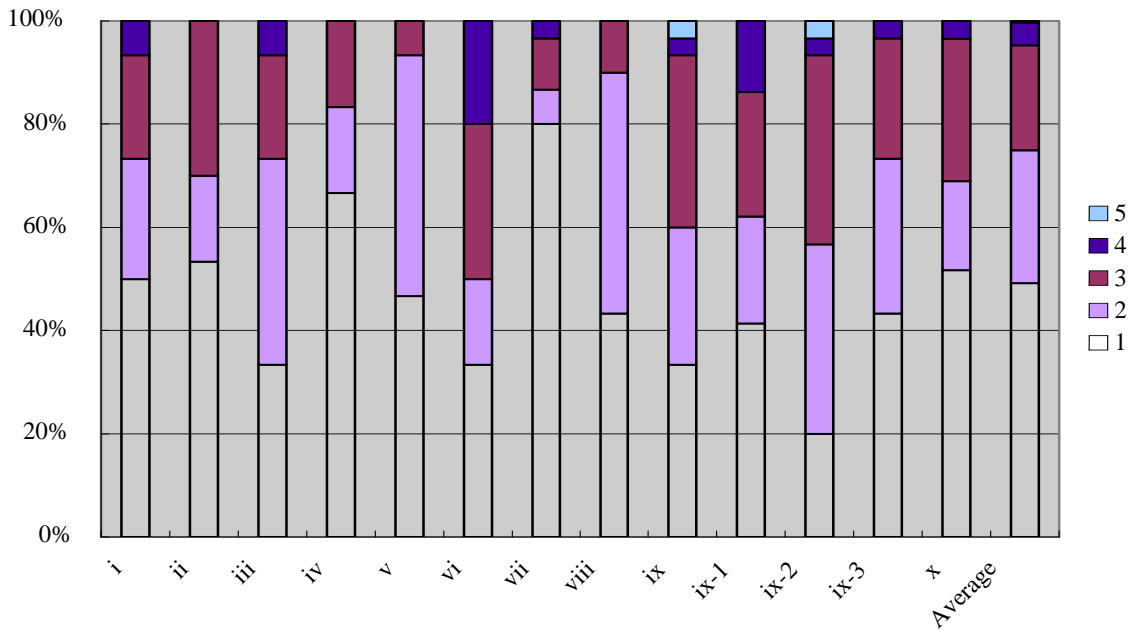
Figure 3.2 (10) By-category Score Average: Investment Climate for Vietnam



1 = No problem; 2=Slight problem; 3=Substantial problem; 4= Serious problem; and 5= Extremely serious problem

See Figure 3.1 for category.

Figure 3.3 (10) Shares by Score and Category: Investment Climate for Vietnam



See notes for Figure 3.2.

### Brunei (3 firms)

Since the number of firms in the survey is very limited, discussion on their features is omitted.

Although the number of firms in the survey is small, according to the survey, category v) “lack of transparency in policies and regulations concerning investment (institutional problems)”, category vii) “insufficient protection of IPRs”, and category x) “restricted competition and price controls” are the most serious; all firms in the survey gave a score of 4 (serious problem). Category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” and ix-1) “underdeveloped infrastructure”, with score of 3.7, indicates that these are also relatively serious barriers. These areas need improvement.

### Cambodia (35 firms)

The textile and apparel is the major sector for firms in the survey. Over 60 percent of the firms are engaged in manufacturing processing activities and about 30 percent are in sales and marketing activities. As for the form of establishment, around 70 percent of the firms are the ones newly established by a single company, and close to 20 percent are joint ventures. Regarding capital structure, 64 percent of the firms are wholly-owned and 25 percent are majority-owned foreign firms. Six out of 35 firms export (nearly) all of their products, and eight of them buy over 80 percent of total purchases from abroad.

The country average of scores for investment climate is 2.3. Among 10 categories, category v) “lack of transparency in policies and regulations concerning investment (institutional problems)” with a score of 2.7, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” with a score of 2.7, category vii) “insufficient protection of intellectual property rights (IPRs)” with a score of 2.9, and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 3.1 have higher scores which are higher

than the country average. More than 60 percent of firms in the sample view these areas as “substantial problem”, “serious problem”, or “extremely serious problem”. These problems need to be improved as a priority.

Regarding the category “lack of transparency in policies and regulations concerning investment”, current policies and regulations, including tax-related regulations, are not clear enough, which gives room for officers to interpret them differently. As a result, informal processing and facilitation fees are required when things become unclear and complicated. As for the category “complicated and/or delayed procedures with respect to investment-related regulations”, similar to transparency in policies and regulation, complicated procedures and regulations, delays in procedures, and bureaucracy are viewed as substantial problem. For instance, firms have to undergo many procedures for exports, which is time consuming and costs are high, resulting in making firms becoming less competitive. As for the category “insufficient protection of intellectual property rights (IPRs)”, the law on IPRs in Cambodia is at an early stage of development. Regarding the category “underdeveloped infrastructure, and shortages of human resources”, scores for sub-categories imply that ix-1) underdeveloped infrastructure (with a score of 3.3) and ix-2) shortages of human resources (3.2), in particular, need to be significantly improved.

The following are the examples of issues in some of the other categories. Regarding i) “restriction on foreign entry” (with a score of 1.9), about 11% of firms regard it as a substantial problem or serious problem that restricts foreign entry. According to laws on investment in Cambodia, foreign firms are not allowed to invest in the area such as gemstones, clay bricks both hollow and solid, tiles, rice milling, wood and stone carving, and silk-wear etc. Foreign firms are also prohibited from owning land, which could be an obstacle for investment in real estate and other sectors such as agriculture. Category iii) remittance and control on foreign currency transactions (with a score of 1.7) is the least serious because Cambodia doesn’t restrict capital flows and the US dollar is usually used for trading and transactions. As for category iv) restrictions on the movement of people and employment requirements, 30 out of 35 respondents recorded no problem or only slight problem. According to Cambodia Labor Law, however, there is a quota for foreign employees; up to 10 percent of the total number of employees can be foreigners (a request with justification is necessary when firms want to recruit a higher proportion of foreign employees). Although this quota is usually enough for firms to operate, this could be some burden. Category x) restricted competition and price

controls (with a score of 2.1) is less serious, compared with other areas; about one third of the firms regard this area as no problem. However, some firms view this area as being a serious problem. For example, the Ministry of Post and Telecommunication regulate the minimum tariff rate for the service providers to ensure the level of competition.

#### Indonesia (12 firms)

The majority sectors for firms in the survey are other manufacturing (25 percent) and financial services (25 percent), followed by other services (17 percent) and textiles and apparel, electronic and electric machinery, transport equipment, and communication services (8 percent, respectively). More than half of the firms in the survey take the form of M&A, and 80 percent of firms in the survey are majority-owned foreign firms. Compared with other countries, the proportion of firms that are newly established by a single company is much lower (18 percent), and M&A and joint venture are the major forms of establishment because, in some sectors, the form of wholly foreign-owned firms are not allowed (the form of joint-venture is requested). About 50 percent of the firms are engaged mainly in manufacturing and processing activities, and close to 20 percent are in sales and marketing activities (2 firms out of 11 are involved in both activities, and we can not identify which is the major one.).

The country average of scores for investment climate is 2.7. Among 10 categories, category v) “lack of transparency in policies and regulations concerning investment (institutional problems)” with a score of 3.5, category viii) “labor regulations and related practices excessively favorable to workers” with a score of 3.4, and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 4.0 have higher scores than the country average. Almost all firms in the survey regards these areas as being problematic, and more than half of the firms view these areas as a “serious problem” or “extremely serious problem”. It suggests how serious these issues are and how important it is to improve these areas.

Regarding the category “lack of transparency in policies and regulations concerning investment, many respondents complain that BKPM (Investment Coordinating Board) often changes regulations and do not regularly disseminate the information, and too many

procedures for investment are requested. The current regulation from the head of BKPM does not state precise requirements concerning investment. A company may try to contact BKPM official or come to the BKPM office for consultation on the requirements for the license, and this kind of process causes a lack of transparency. However, many respondents agree that the procedures in BKPM have been much better in the last three years in terms of corruption anymore, but it is still the case that firms are asked to give an ‘entertaining fee’ of around Rp 300,000 per year to the officials.

As for the category “Labor regulations and related practices excessively favorable to workers”, there are many complaints; laws are excessively favorable to workers and most of the decisions are given in their favor even if they are wrong. Moreover, a firm has to submit a full labor report to the Ministry of Manpower at the regional level frequently (monthly, quarterly, and biannually); it has been reported that government officials can ask for illegal fee of around Rp 15,000 per worker in order that the labor report can be registered in the government office.

Regarding category ix) “underdeveloped infrastructure, and shortages of human resources”, all firms regard this area as a “substantial problem”, “serious problem”, or “extremely serious problem. In particular, sub-category ”ix-1) underdeveloped infrastructure (with a score of 4.1) is the most serious; over 90 percent of firms regard this as a “serious problem”, or “extremely serious problem”. All respondents agree that land transport urgently needs to be improved, while telecommunication has been improving in recent years. Telecommunication and Internet access, however, remain below the levels of those in neighboring countries. Availability and reliability of electricity is still a serious problem. Regarding shortages of human resources, for example, firms need more specialists in both technology and marketing, engineers in the oil and gas industry, top business management, and manpower with high levels of English proficiency.

Examples of the issues in some of other categories are as follows: as for performance requirements, an expatriate employee issue is identified. The government asks for proof of knowledge transfer conducted in a company whenever an extension of the foreigners’ residency permit is conducted each year; for example, proof that on-the-job training is conducted in a company during the corresponding year.

Regarding restrictions on the movement of people and employment requirements,

there are restrictions for this category but companies can find ways to get around the regulations; many of them use the service of agents to manage the process of hiring foreign workers. However, if firms do not use agents, the procedures take longer than stated in the regulations, and also more costly due to many illegal fees. For instance, the legal visa fee for a working visa application for a foreigner is Rp 55,000, but the illegal fee may reach more than Rp 300,000. To get a KITAS (Indonesian temporary domicile card), the legal fee is Rp 770,000 but the illegal fee may be more. The bribery mostly occurs in the immigration office at a regional level. The procedure in the directorate general of immigration at central level has been better since the introduction of an online system in September 2010. In addition, USD 1200/year has to be paid to the Ministry of Manpower for every foreigner working in a company for DPKK/Dana pengembangan keterampilan tenaga kerja (Fund for improving workers' skills).

As for category vi) complicated and/or delayed procedure with respect to investment-related regulations (implementation problems), for instance, the procedure for the Excise and Duties Directorate is better than before since they now have EDI (Electronic Data Interchange) to facilitate importers and exporters in tracking the company's goods. However, there is a case that complicated procedures with respect to investment in Indonesia somewhat prevent parent companies from increasing their investment in Indonesia, particularly in building new establishments.

#### Laos (8 firms)

The majority of firms in the survey are in the textiles and apparel (25 percent) and chemical products (25 percent) sectors. Newly establishment by a single company is the most common form of establishment in Laos: 75 percent of firms take this form. All the firms are engaged in either manufacturing and processing activities or sales and marketing activities. In terms of capital structure, firms in the survey are either domestic, majority-owned, or wholly foreign-owned.

The country average of scores for investment climate is 2.6. Among the 10 categories, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” with a score of 2.9 and ix)

“underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 3.1 have higher scores than the country average. Almost all firms in the survey regard these areas as being a problem, and more than 60 percent of firms view them as a “substantial problem”, “serious problem”, or “extremely serious problem”. These responses suggest how the importance of improving these areas is.

For ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, which is the most problematic category in Laos, in particular, a score for sub-category ix-) shortages of human resources (3.1) is higher than those for the other sub-categories (2.8 and 2.6).<sup>12</sup> This indicates a necessity to supply sufficient skilled labor or develop human capital to match demand.

Some typical issues are raised in the survey. For instance, the investment approval process is not very quick as indicated in Law 2. Law enforcement is another issue since many laws have been introduced but are still weak in terms of enforcement. The current labor law seems to give greater preference to labor, which causes ineffectiveness of labor in many workplaces.

#### Malaysia (34 firms)

All firms in the sample are in the manufacturing sector; major ones are food processing (12 percent), textile and apparel (12 percent), non-ferrous metal products (9 percent), electronic and electric machinery (9 percent), and other manufacturing (47 percent). Also, almost all firms are involved in manufacturing and processing activities. Over 60 percent of firms in the survey are those newly established by a single company, but capital structure varies across 4 groups: domestic firms (11 percent), minority-owned (22 percent), majority-owned (30%), and wholly-owned (38 percent). Although the data for ratios of exports to total sales and imports to total purchases are available only for a few firms, those with high export ratios and/or import ratios are wholly foreign-owned firms.

The country average of scores for investment climate is 2.2. Among the 10 categories, category v) “lack of transparency in policies and regulations concerning

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<sup>12</sup> Domestic firms regards issues of underdeveloped infrastructure more serious while foreign firms see issues of shortage of human resource more substantial.

investment (institutional problems)” with a score of 2.5 and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 2.7 have much higher scores than the country average. Almost a half of firms consider category v) as being a “substantial problem”, “serious problem”, or “extremely serious problem” and close to 60 percent of firms regard category ix) similarly. In particular, among infrastructure, human resources, and investment incentives, shortages of human resources are more serious than others; a score for sub-category ix-2) “shortages of human resources” is 3.0, which is much higher than 2.0 or 2.4 for the other sub-categories. This indicates that the biggest concern is a shortage of human resources, and it is important to improve this area to host further investment. According to the survey, it is very difficult to get general workers, skilled workers, technicians and engineers locally. What the government could do is to a) allow more legal foreign workers to work in the industry and b) encourage practical training for skilled workers, technicians and engineers. What universities could do is to train more engineers for the industry.

Malaysia is trying to get out of the middle-income trap and move on to high-income status. In order to realize this transition, it is important to foster innovation and creativity, and thus not only FDI for assembling-type but also FDI that can foster innovation and creativity will become increasingly important.

#### Myanmar (24 firms)

Major sectors of firms in the survey are food processing (13 percent), textiles and apparel (29 percent), other manufacturing (21 percent), distribution (13 percent), and other services (13 percent). Regarding the form of establishment, most firms are newly established either by a single company or as a joint venture. Over two-thirds of the firms are involved in manufacturing and processing activities and the rest are in sales and marketing. As for capital structure, more than half of the firms are wholly foreign-owned firms, and about 40 percent are majority-owned; no domestic firm is included. For trade, among firms that indicate export ratio to total sales and import ratios to total purchases, most of them sell all of their products/services abroad and source all purchases from abroad.

The country average of scores for investment climate is 2.0. Among the 10



categories, category iii) “restrictions on overseas remittances and controls on foreign currency transactions” with a score of 2.7 and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 2.5 have much higher scores than the country average. Around half of firms view these areas as a “substantial problem”, “serious problem”, or “extremely serious problem”. Among infrastructure, human resources, and investment incentives, infrastructure is seen as a more serious issue than others; the sub-category score for ix-1) “underdeveloped infrastructure” is 2.6. These findings suggest that the biggest concerns are restrictions on overseas remittances and controls on foreign currency transactions, followed by underdeveloped infrastructure, which needs to be improved in order to host a larger amount of FDI.

The examples of “restrictions on overseas remittances and controls on foreign currency transactions” are dual exchange rates, unstable financial market, restricted overseas remittances, and restricted foreign currency transactions. There is also a complaint that it takes at least one month to get approval from the Central Bank for all foreign exchange settlement and overseas payments; although the government issues a Foreign Exchange Certificate (FEC) which is equivalent to US\$, overseas payments are not allowed to be made from FEC accounts, and the Bank issues FECs only when one withdraws money from a US\$ account. These issues are consistent with issues identified in the analysis in Section 2, Ando (2009), and Ando and Obashi (2010). The examples of “underdeveloped infrastructure” are underdevelopment of electricity supply, roads, telecommunications, road, transportation, water supply, and security.

Other major problems include issues such as lack of transparency and/or frequent and sudden changes in policies and regulations, prohibition of land ownership by foreigners, and shortage of local skilled labors.

#### The Philippines (27 firms)

Major sectors of firms in the survey are electronic and electric machinery (30 percent), transport equipment (22 percent), and other manufacturing (22 percent). Regarding the form of establishment, most firms are either newly established by a single company or others. Over 90 percent of firms in the survey are involved in manufacturing and processing

activities and the rest are in sales and marketing. As for capital structure, close to 70 percent of firms are wholly foreign-owned firms, and 26 percent are majority-owned; no domestic firms are included. For trade, most firms that fill out export ratio to total sales and import ratios to total purchases sell either all or almost all of their products/services abroad and source a large proportion of their purchases from abroad.

The country average of scores for investment climate is 1.9. Among the 10 categories, categories that have higher scores than the country average are category v) “lack of transparency in policies and regulations concerning investment (institutional problems)” with a score of 2.2, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” with a score of 2.3, category vii) “insufficient protection of intellectual property rights (IPRs)” with a score of 2.2, and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 2.3. Over 30 percent of firms view these areas as “substantial problem”, “serious problem”, or “extremely serious problem”. Among infrastructure, human resources, and investment incentives, infrastructure and investment incentives are more serious than the rest; sub-category scores for ix-1) “underdeveloped infrastructure” and ix-3) “insufficient investment incentives” are 2.4.

Examples of issues with category vi) related to complicated investment regulations and implementation problems are delays in processing of import commodity clearance due to lack of streamlined procedures, delays in application for royalties under the Japan-Philippines tax treaty, delayed issuance of environment permits, ineffective dissemination of information on changes in procedures, too much government bureaucracy, slow processing of applications, uncoordinated regulations among government agencies resulting in inconsistencies in interpretation and implementation of rules, delays in issuance of implementing rules and regulations of government programs, and problems in processing of business permits by local government units.

Regarding category ix) “underdeveloped infrastructure, shortages of human resources, and investment incentives”, the examples of issues include the lack of basic facilities such as airports, bridges, farm-to-market roads, as well as the high cost of power and logistics. In terms of lack of transparency in investment policies and regulations (category v), major issues include non-unification of fiscal incentives among various economic zones in the country, corruption, and too much bureaucratic red tape.

The examples of issues in some of other categories include non-diminution of benefits despite demotion of an employee, which does not provide an incentive for worker to perform well, complicated labor laws, overprotection of workers, and labor cases that take many years to be resolved with respect to labor regulations. The government needs to change its labor rules to allow investors to terminate employees and allow sub-contracting of workers. There are also restrictions on foreign ownership of land. Although foreigners are able to own land in practice by establishing a separate land holding company, this practice results in additional costs and resources in maintaining two separate legal entities. Protected sectors such as legal services, construction, and shipping need to be liberalized.

In summary, reducing power costs and building more infrastructures like roads and railway system to link the various ports, zones and markets are required to improve the investment climate in terms of infrastructure. It is important to relax nationality requirements and liberalize protected sectors such as legal services, construction, and shipping to foreigners. To improve automation in business transactions, and streamline and simplify business processes, changes in government policies and regulations must be disseminated effectively, and consistent and stable investment-friendly laws and policies should be introduced. It is also important to relax labor laws particularly those related to security of tenure and difficulty in terminating workers. Strengthening IPRs is a challenge and IPR enforcement is another important area to be improved.

#### Singapore (15 firms)

Most firms in the survey operate in the services sectors: distribution (27 percent), transportation services (13 percent), financial services (7 percent), and other services (40 percent). Regarding the form of establishment, 80 percent of firms in the survey are newly established by a single company. In terms of type of operations, 80 percent of firms in the survey are involved in manufacturing and processing activities and the rest are in sales and marketing. As for capital structure, 60 percent of firms are wholly foreign-owned firms, 20 percent are minority-owned, 7 percent are majority-owned, and 13 percent are domestic firm. The information on international trade is very limited.

The country average of scores for investment climate is 1.6, which is lower than

those for most ASEAN 10 countries. In other words, Singapore is the best in terms of investment climate in ASEAN10. Among the 10 categories, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” with a score of 1.9 and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, with a score of 1.8, have much higher scores than the country average. While about half of firms in the survey regard these areas as “no problem”, over 20 percent of firms view these areas as “substantial problem” or “serious problem”. Among infrastructure, human resources, and investment incentives, shortages of human resources are seen as more serious than the rest; the score for sub-category ix-2) “shortages of human resources” is 2.0, which is the biggest concern in Singapore.

In general, the investment climate is favorable in Singapore, except for labor issues. There are issues of shortage of workforce and job hopping; typical turnover rates of workers can cause a problem and requires continuous attention, and supply of well skilled, experienced, and internationally accredited local project managers are insufficient. Singapore’s unemployment rate is at a low 2% which exacerbates the talent crunch problem faced by many foreign as well as local firms. In addition, labor costs in Singapore are high relative to the other ASEAN nations, thereby driving up business costs.

#### Thailand (10 firms)

Firms in the survey operate in the following 6 sectors: agriculture, fishery, and forestry (22 percent), construction (11 percent), food processing (11 percent), electronic and electric machinery (11 percent), other manufacturing (11 percent), and other services (33 percent). The form of establishment with the largest number of firms in the survey is new establishment by a single company. Regarding the type of operations, half of firms are engaged in manufacturing and processing activities and 13 percent of firms are in sales and marketing. As for capital structure, 50 percent of firms are minority-owned foreign firms, 38 percent of firms are wholly foreign-owned firms, and 13 percent are majority-owned; no domestic firms are included. For trade, the ratios of exports to total sales and/or import to total purchases are low for most firms, though the number of firms that submitted this data is quite small.

The country average of scores for investment climate is 2.5. Among the 10 categories, those that have higher scores than the country average are category v) “lack of transparency in policies and regulations concerning investment (institutional problems)” with a score of 2.8, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” with a score of 3.1, category vii) “insufficient protection of intellectual property rights (IPRs)” with a score of 2.9, and category ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 3.1. 70 percent of the firms view categories vi), vii), and ix) as a “serious problem” or “extremely serious problem”. In particular, category ix) “underdeveloped infrastructure, shortages of human resources is regarded as being a problem (to a varying degree) by all firms in the sample. Among infrastructure, human resources, and investment incentives, shortage of human resources is more serious than the rest; the score for sub-category ix-2) is 3.1.

The examples of issues with regard to “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” include insufficient coordination among ASEAN countries in terms of the implementation of common standards and practices and becoming a single market; considering the increasing influence of China and India, lack of sufficient coordination as a region may slow or delay FDI inflow to ASEAN member countries. Also, there are some difficulties in importing plants due to differing interpretations of quarantine requirements. There are many requirements that are complicated and open to interpretation, which need clarification.

As for category vii) “insufficient protection of intellectual property rights (IPRs)”, examples of issues include almost impossible registration of brands, ineffective enforcement of IPR laws, lack of confidence in how to protect breeders’ rights for new plant varieties resulting from breeding programs, and insufficient IPR protection and law enforcement in terms of software piracy. Although the Creative Economy initiative has resulted in some improvement, the software piracy rate is still at 75 percent.

Regarding category ix) “underdeveloped infrastructure, shortages of human resources and insufficient investment incentives, shortages of human resources, particularly engineers and management with the skills necessary for the industries concerned, those with language proficiency and communication skills, and skilled workers in specific fields, are examples of problems to be solved. To improve this situation, it may be important for the

government to cooperate with the private sector (with very generous tax benefits) in establishing training schools and vocational schools to provide sufficient human resources, or at least to be more flexible in issuing work permits for foreigners to fill the shortage of human resources. In addition, infrastructure should be significantly upgraded; for instance traffic problems, insufficient prevalence of Internet access, and insufficient cost-effective logistics and communication.<sup>13</sup>

#### Vietnam (30 firms)

All firms in the survey operate in the manufacturing sectors: food processing (10 percent), textiles and apparel (20 percent), chemical products (10 percent), iron and steel products (17 percent), transport equipment (22 percent), and other manufacturing (22 percent). Regarding the form of establishment, all firms are either newly established by a single company (80 percent) or newly established as a joint venture (20 percent). Also, all firms in the survey are involved in manufacturing and processing activities. As for capital structure, over 70 percent of firms are wholly foreign-owned firms, the rest are majority or minority foreign-owned firms; no domestic firms are included. For trade, most firms sell all of their products either internationally or to the domestic market; only a few firms sell more or less half to the international market, and the rest to the domestic market. On the other hand most firms, except for a few firms, import about 60 percent to 70 percent of their purchases; in other words, about 30 percent are purchased locally.

The country average of scores for investment climate is 1.8. Among the 10 categories, categories that have higher scores than the country average are category iii) “restrictions on overseas remittances and controls on foreign currency transactions” with a score of 2.0, category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)” with a score of 2.4, and category

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<sup>13</sup> Thailand is ranked 88th out of 139 countries in WEF/GCR in Broadband Internet Subscription, 86th in Internet users and 75th in Internet Bandwidth. These infrastructures need to be improved in order to harness the country’s creative and innovation potential.

ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives” with a score of 2.2. Over 60 percent of firms regard these areas as having some problems. Among infrastructure, human resources, and investment incentives, shortages of human resources are viewed as more serious than the rest; the score for sub-category ix-2) “shortages of human resources” is 2.3.

According to the survey, procedures for overseas remittances and controls on foreign currency transactions are complicated and take a long time; payments in USD are also difficult. Regarding category vi) “complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)”, administrative procedures particularly for investment licensing, customs, and taxes require too much time, have to pass through many doors, and are cumbersome, sometimes involving corruption or extra fees. They need to be simplified, transparent, and efficient. Concerning ix) “underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, examples of issues include poor infrastructure including land transport (regular traffic jams), port system (absence of deep sea ports), and unstable electricity supply, and lack of (highly) skilled workers.

#### **4. Concluding remarks and policy recommendations**

Our analysis of the FDI climates of the ASEAN countries faced by Japanese and non-Japanese foreign firms conducting operations in ASEAN revealed that impediments to FDI are found not only in the policies but also in their implementation and enforcement. Although we found wide variations among countries, ASEAN countries as a whole tend to have relatively improved the explicit investment climate as the number of the incidents revealing problems directly preventing FDI declined in so far as FDI liberalization is concerned. Direct barriers to FDI, however, still remain. Further efforts to reduce them by ASEAN countries are necessary, if they want to attract FDI. At the same time, the reduction of indirect barriers to FDI or the promotion of FDI facilitation is also indispensable, as the increasing number of issues identified in categories for FDI facilitation suggests. Particularly important areas for improvement include institutional problems, complicated and delayed

procedures, underdeveloped infrastructure, inflexible labor market conditions (such as difficulty in hiring and firing workers and burdensome labor regulations and wage-related issues), and problems involving taxation regulations (including double taxation problems due to lack of double taxation treaties).

Our findings indicate the need for further liberalization of FDI policies and promotion of facilitation measures for ASEAN countries in order to successfully attract FDI. In order to achieve these goals, we would like to make several policy recommendations. First, in order to promote FDI policy liberalization, the ASEAN countries should use various existing frameworks, such as WTO/GATT's Trade Related Investment Measures (TRIMs) agreement, bilateral investment treaties (BITs), free trade agreements (FTAs), and other legal frameworks. In particular, ASEAN should use the ASEAN Comprehensive Investment Agreement (ACIA). Second, to overcome obstacles concerning FDI facilitation, the ASEAN countries should actively draw on various cooperation programs with developed countries to improve human resources engaged in the implementation and enforcement of FDI policies. Possible multilateral and regional sources of technical assistance in this area may be UNCTAD, the OECD, and ERIA. Third, monitoring of the achievement of FDI liberalization and facilitation has to be emphasized, in order to achieve a freer FDI environment. In this regard, a monitoring mechanism should be established in ASEAN, if it has not been established yet, or in ERIA.

Before ending this paper we would like to emphasize the need to collect more information on the impediments faced by foreign firms by expanding the number of samples under the survey we conducted this year, in order to formulate appropriate policies to attract more FDI. A lack of sufficient amount of information on FDI impediments precluded us from identifying the relationship between the characteristics of firms on the one hand and the types of problems encountered by the firms on the other hand. For example, some types of impediments may affect small and medium enterprises (SMEs) more significantly than large firms. If this is the case, the government should provide further support for SMEs. Another possibility might be that some types of issues are more serious for wholly foreign-owned firms than joint-venture firms, due to less information and weaker connection with local governments and local markets. If this is the case, more facilitated and non-discriminatory procedures for investment should be built. At the same time, we have to note that the restriction on the form of establishment, i.e., joint-venture requirements, itself may directly affect entry of foreign firms and reduce FDI. Besides, some problems may be more serious for firms in some industries



than those in others. To identify such tendencies, if any, we need to conduct a wider-scale survey. In order to expand the survey, it is important not only to obtain financial support but also to develop capable researchers who can undertake the survey and analyze the results of its survey.

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Table A.2.1 Investment issues in ASEAN Countries for 2010

Category	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam
<b>i) Restrictions on foreign entry</b>									
Existence of prohibition and restriction on foreign entry	○	○	○		○				
Prohibition of foreign entry for specific sectors	○								
Restriction on foreign entry for specific sector: distribution service sector	○								○
Restriction on foreign entry for specific sector: retail sector	○		○						○
Restriction on foreign entry for specific sector: wholesales sector		○							
Restriction on foreign entry for specific sector: no allowance of establishment of branches of general commercial bank		○							
Restriction on entry for specific sector: license requirement in the construction industry (license required only for foreign firms; no issuance of licenses for foreign-owned firms with more than 40% ownership)	○	○	○		○				
Restriction on foreign entry for specific sector: license requirement for integration, closing down, and movement of services centers					○				
Restriction on foreign entry for specific sector: stop of registration and renewal of licenses for trade								○	
Restriction on entry for specific sector: licensing of transport business allowed only to a single company (monopoly with a company runned by the former prime minister's family, in exclusion of foreign and other local companies)		○							
Restriction on entry for specific sector: limited approval of license for domestic sea freight distributor (discriminatory against foreign companies; exclusive approval of Filipino and Filipino wholly-owned partnership and companies with Filipino ownership ratio of more than 60%)			○						
Prohibition on foreign ownership ratio for specific sector: bid on government procurement		○	○						
Restriction on foreign ownership ratio for specific sector: non-manufacturing sector (restrictions on various types of services such as distribution and marketing)		○							
Restriction on foreign ownership ratio for specific sector: remaining regulations for manufacturing firms		○							
Restriction on foreign ownership ratio for specific sector: service sector (restrictions on the majority-owned foreign firms)	○				○				
Restriction on foreign ownership ratio before obtaining certificate of investment									○
Restriction on foreign ownership ratio for specific sector: linked with export ratio	○		○						
Joint venture issue: restrictions on foreign ownership ratios and joint venture requirement (including reduction in maximum foreign ownership ratios)	○								
Joint venture issue: joint venture requirement with a state enterprise, application of regulations for the government sector	○						○		
Minimum foreign capital requirement								○	
Land ownership and use: restrictions on (prohibition of) land ownership by foreign-owned firms			○		○				○
Land ownership and use: a lump-sum payment of land-use fee, implemented only for foreign-owned firms									○
Restrictions on the form of establishment of offices to support branches and affiliates					○				
Discriminatory treatment on Japanese firms vis-à-vis U.S. firms					○				
<b>ii) Performance requirements</b>									
Home country insurance principle (obligation)		○							
Local content requirement: link between local content ratio and tariff rate	○								
Local content requirement: requirement to use local firms (Bumiputra firms)		○							
Local content requirement: increasing ratios of local content requirement/ strengthening of requirement	○								
Local content requirement: insufficient ability of indigenous firms to satisfy local content requirement	○								
Local content requirement: local content requirement for government requirement	○								
Link with preferential treatment: requirement to hire local labors					○				
Link with preferential treatment: export ratio (export requirement)					○				
Link with preferential treatment: technological transfer requirement		○							
Government licensing requirement for royalty, brand-use fee, etc									
Obligation of local purchases of for coal	○								
Obligation of using ship with national flag for transportation under government procurement					○				
<b>iii) Restrictions on overseas remittances and controls on foreign currency transactions</b>									
Restriction on overseas remittances: difficulty in remittances of compensation for intangible assets and services in foreign currencies					○				
Restriction on overseas remittances: reinforcement and lack of transparency in restrictions on remittances in foreign currencies								○	
Restriction on overseas remittances: higher withholding rates for interest, dividends, and royalties in tax treaty					○				
Control on local currency transactions in offshore market	○				○				
Double exchange rates								○	
Foreign currency transactions: restrictions on having foreign currencies					○			○	
Foreign currency transactions: requirement to obtain foreign currencies from exports to get import licenses					○			○	
Foreign currency transactions: restrictions on currency convertibility with foreign currencies (prohibition of local currency exchange with JP yen)								○	
Foreign currency transactions: difficulty in getting foreign currencies, foreign exchange settlement, and foreign payment									○
Foreign currency transactions: difficulty in foreign exchange settlement for transactions in the local market									○
Foreign currency transactions: restriction on the way of using foreign currency deposits					○				
Difficulty in currency hedging (including forward exchange contracts of PE status)	○	○	○		○				
Restriction on "netting"								○	
Royalty payment: restrictions on royalty and strict method of calculating royalty									○
<b>iv) Restrictions on the movement of people and employment requirements</b>									
Mandatory employment of local labor: general	○								
Mandatory employment of local labor: employment of Malaysians with a priority (including request for handover of managing directorship)		○							
Restriction on hiring foreigners: employment quota for foreigners or restriction on foreign employment ratio				○	○				
Restriction on hiring foreigners: tightening restrictions on foreign employment (no allowance of exception for foreigners married with local people)	○								
Restriction on hiring foreigners: modification and tightening of restrictions on foreign employment		○							
Visa issue: difficulty in obtaining working visa, tightening of issuance condition (including cases of certain engineering or investors only), restriction on visa issuance					○				○
Visa issue: shortened period for validity of visa									○
Visa issue: introduction of obligation to obtain entry visa	○								
Visa issue: inconsistent procedures for visa application among embassy and consulates					○				

(Continue)

Category	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam
<b>v) Lack of transparency in policies and regulations concerning investment (institutional problems)</b>									
Underdevelopment, lack of transparency, and delay of implementation of regulations (inadequate implementing regulations and prolonged delays in their issuance): general	○					○		○	
Underdevelopment of legal system: no assurance of documentation for rules of tariffs under AFTA (CEPT tariffs)	○								
Underdevelopment of legal system: implementation rules of EPA					○				
Underdevelopment of legal system: insufficient system of tax-related dispute settlement									○
Underdevelopment of legal system: stock market and credit market						○			
Underdevelopment of legal system: financial system such as credit transactions									○
Underdevelopment of legal system: regulations on mortgage, lien, and hypothec									○
Underdevelopment of legal system: foreign exchange system (double exchange rates)								○	
Underdevelopment of legal system: temporary system of opening governments' windows responsive to emergency imports									○
Underdevelopment of legal system: insufficient economic system based on domestic currencies						○			
Underdevelopment of legal system (insufficiency): inadequate ax-related dispute settlement by the third party government	○								
Underdevelopment of legal system (insufficiency): double taxation due to lack of tax treaty								○	
Underdevelopment of legal system (inadequacy): obligation of issuing official receipts									○
Underdevelopment of legal system: unreasonable requirement of signature for imported products under domestic law									○
Underdevelopment of legal system: delay in issuing domestic regulations for ASEAN Cosmetic Directive	○								
Underdevelopment of legal system: different HS tariff classification from that of Japan					○				
Underdevelopment of legal system (inadequacy): no assurance of official receipts									○
Lack of transparency in legal system: tax-related administrative procedure and the method of tax calculation									○
Lack of transparency in legal system: no assurance of guideline for tax system of transfer pricing	○								
Lack of transparency in legal system: final tax rate for construction services and the procedure	○								
Lack of transparency in legal system: disapproval criteria of tax investigation	○								
Lack of transparency in legal system: complicated labor law	○								
Lack of transparency in legal system: ownership of land and its utilization system						○			
Lack of transparency in legal system: investment incentives	○								
Lack of transparency in legal system: licenses and approvals for construction					○				
Lack of transparency in legal system: an introduction of international practices		○							
Lack of transparency in legal system: disclosure of information on changes in regulations		○						○	
Ambiguity of legal system: the date to start digital broadcasting		○			○				
Ambiguity of legal system: the date of issuance, contents, and retroactive application of tax regulations	○								
Ambiguity of legal system: disparity of tariff rates among similar products	○								
Ambiguity of legal system: foreign exchange laws		○							
Ambiguity of legal system: export restrictions						○			
Ambiguity of legal system: detailed information on market research in expanding business									○
Ambiguity of legal system: inconsistency between country's tariff classification and ASEAN's									○
Ambiguity of legal system: definition of tariff classification (items)									○
Ambiguity of legal system: treatment of reinvoice under the third-country FTA					○				
Ambiguity of legal system: criteria to calculate IPP tariffs	○								
Ambiguity of legal system: method to calculate tax								○	
Ambiguity of legal system: criteria of imposing tax for PE	○				○				
Ambiguity of legal system: approval and license criterion of investment-related regulations							○		
Ambiguity of legal system: criteria and details of approval for divestment obligation	○								
Ambiguity of legal system: criteria to select the lease for afforestation							○		
Ambiguity of legal system (insufficiency): tariff classification for parts and components									○
Sudden modification of legal system (introduction): new tax (value-added tax for export processing firms)									○
Sudden modification of legal system: withholding tax regulations for lease contract					○				
Sudden modification of legal system (setting): sudden setting of holidays	○	○							
Sudden modification of legal system: issues of laws and regulations without sufficient period for adjustment									○
Sudden modification of legal system: reduction of export incentives									○
Sudden modification of legal system: no application of tax treaty due to sudden changes in criteria of application	○								
Sudden and frequent modification of legal system: laws and notices (general)	○								○
Instability of legal system: instable foreign capital law and definition of foreigners					○				
Instability of legal system: possible changes in investment incentives			○						
Instability of legal system: automobile-related taxation system									○
Instability of legal system: possible tightening regulations on market access to the retail firms					○				
Instability of legal system: regulations on foreign workers	○								
Instability of legal system: possible regulations inconsistent with WTO (requirements on investment and production etc as eco-car promoting policy)					○				
Instability of legal system: unconstitutional lawsuit for environment-related administrative procedures					○				
Instability of legal system: application of bidding for coal mining after completing the contract agreement	○								
Taxation issue: extremely high value-added taxes			○						
Taxation issue: dual taxation due to inconsistent interpretation of tax system for technical assistance					○				
Taxation issue: tax exemption discriminatory between national and non-national cars		○							
Taxation issue: contradictory interpretation of definition of residents under revised income tax law									○
Taxation issue: high commodity tax, registration fee, owner fee and for automobiles			○						
Taxation issue: inadequate reserve criteria for taxation regulations					○				
Taxation issue: tax on adverse spread					○				
Taxation issue: commercial and export tax (local production and exports and imports)								○	
Taxation issue: no application of reimbursement of commodity tax for imported parts		○							
Taxation issue: long-term retroactive period for tax investigation	○								
Taxation issue: strengthening tax regulations for transfer pricing, change in method of calculating tax, and threat of dual taxation	○								
Safety and environmental standards and certification issue: unique technical standard and safety certification (iron and steel, plug etc)					○				
Safety and environmental standards and certification issue: inconsistency with the international standards					○				
Safety and environmental standards and certification issue: unreasonable standard of waste water treatment and waste water quality management	○	○							
Safety and environmental standards and certification issue: unreasonable tightening of regulations for radiological examination		○							
Import restriction: import restriction by import quota and import licensing (build-up car, steel, and color copy machine)		○							
Import restriction: difficulty in obtaining import licenses	○								○
Export restriction: export tax and coordination with customs for exports and imports									○
Long-term procedures for labor dispute	○								

(Continue)

Category	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam
<b>vi) Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)</b>									
Complicated procedures: approval and license procedures for new investment							○		
Complicated procedures: procedures for transactions of bonded goods between trade-processing firms	○								
Complicated procedures: procedures for equipment lease and rental certification									○
Complicated procedures: purchasing procedures of foreign currencies	○								
Complicated procedures: approval and license procedures for merge, dissolution, or relocation of the service center					○				
Complicated procedures: renewal of import licensing (short period in effective)								○	
Complicated procedures: preparation of invoices of imported materials for each incentives					○				
Complicated procedures: obligation of pre-registration of import quota for parts that can not be purchased domestically	○								
Complicated procedures: pre-shipment inspection	○		○						
Complicated procedures: signature requirement for all pages of documents submitted to government agencies and ministries					○				
Complicated procedures: procedures for exception of import tariffs		○							
Complicated procedures (too-detailed): BOI approval and reporting procedures					○				
Complicated procedures (too-detailed): procedures for BOI tax exemption for reexports					○				
Complicated procedures (too-detailed): tax payment procedures for withholding tax					○				
Complicated procedures: procedures for exemption of value added tax	○								
Complicated procedures: changes in the format of certificate of resident receipt applied to tax treaty	○								
Complicated procedures: obligation of local currency settlement	○								
Complicated and delayed procedures: customs clearance (including clearance certificate requirement, AFTA origin certificate procedures and management, enforcement of certificate of origin document registration, off-shore trade customs clearance, and inefficiency of customs clearance)						○		○	○
Complicated and delayed procedures: conformity and assessment		○							
Complicated and delayed procedures: procedures to apply for working visa and its renewal (including work permit)	○	○	○		○				○
Complicated and delayed procedures: obtaining export and import licensing								○	○
Complicated and delayed procedures: procedures for overseas remittance									
Complicated and delayed procedures: tax regulations-related procedures	○		○						
Complicated and delayed procedures: AFTA procedures	○								
Complicated and delayed procedures: import tariff reimbursement and tax exemption procedures		○			○				○
Complicated and delayed procedures: government approval procedures for withdrawal		○							
Complicated and delayed procedures: BOI export and import approval and reporting procedures for products, materials, equipments, defective products and rejected materials					○				
Complicated and delayed procedures: patent registration application procedures					○				
Delayed procedures: import custom clearance and cargo inspection (including uncertainty)		○					○		○
Delayed procedures: procedures for licensing (general)	○							○	○
Delayed procedures: procedures for licensing of waste disposal									○
Delayed procedures: delayed procedures to transfer licensing permit from central government to regional government	○								
Delayed procedures: stock reshuffle procedure	○								
Delayed procedures: procedures for land registration		○							
Delayed procedures: oversea payment								○	
Delayed procedures: permission of oversea remittance								○	
Delayed procedures: renewal of import licensing and automatic import licensing for dangerous goods					○				○
Delayed procedures: removal of ATIGA tariffs					○				
Delayed procedures: safety standard and assessment					○				
Delayed procedures: issuing final settlement of tax		○							
Delayed procedures: examination of safety qualification		○							
Delayed procedures: civil execution procedures					○				
Delayed procedures (including difficulty): procedures for prepayment of corporate tax reimbursement	○								
Delayed procedures (including difficulty): difficulty in obtaining AICO approval									○
Delayed procedures (including difficulty): renewal of business license								○	
Delayed procedures (including non-refunding and difficulty): value-added tax reimbursement procedures	○		○		○				
Delayed procedures (including non-refunding): corporate withholding tax reimbursement procedures					○				
Difficulty in procedures: corporate tax advance declaration and payment procedures		○							
Inefficiency of procedures: administrative procedures for afforestation							○		
Inefficiency of procedures (including corruption): investment approval procedures	○				○				
Disunity of procedures: inconsistent procedures and interpretation among administrative officials	○	○	○						○
Complicated corporate tax prepayment system	○								
Complicated banking business resulting from the regulations requiring banking transactions in rupiah	○								
Lack of transparency and multiple procedures for borrowing in foreign currencies	○								
Complicated L/C import system (iron and steel products)			○						
Insufficient enforcement of environmental protection									○
Security and environment standard, standard recognition issue: rigorously of marking systems					○				
Security and environment standard, standard recognition issue: obligation to acquisition the Philippines National Standards for steel pipes, steel stick			○						
Arbitrary application of system: disunity of legal interpretation and implementation (including disunity and inconsistency of implementation of product safety certification system, excessive power of local officials, etc.)	○	○			○				
Arbitrary application of system: diversity of implementation and interpretation by customs (including arbitrary tariff classification and tariff evaluation, difference with international rules, inequity of tariff rate application and ITA nonperformance)	○	○							
Arbitrary application of system: arbitrary corporate tax examination					○				
Arbitrary application of system: arbitrary and corrupt tax collection (including back taxes and tax on business corporations)	○				○				
Inflexible application of systems: judgement of application fees imposed by customs	○								
Disunity of legal interpretation for application of system: rules of origin					○				
Inconsistent interpretation of legal system: inconsistent requirements among customs in accepting ASEAN's Certificate of Origin									○
Insufficient notification and understanding of changes in legal systems and procedures among administrative offices							○		○
Disunity of regulations, controls, and legal interpretation for application among relevant ministries and agencies							○		
Insufficiency and disunity of executive power in local regions									○
Insufficient legal enforcement (insufficient announcement of EPA Certification of Origin procedure)	○	○			○				○
Authorities' acquiescence for misconduct		○			○				○
Special personal connection and political bribery and corruption of public savants (including collusion and corruption in customs)	○	○				○			○
Unanimous voting at the board meeting of joint ventures									○
Prohibitive port charge and departure tax	○								
High costs for custom clearance									○
Heavy burden of value-added tax			○						
High luxury tax imposed on imported or domestically produced goods	○								
Inconsistent tax collection									○
Irrational traffic regulation			○						
Business tax			○						
Difficulties in the process of reimbursement of prepaid tax and so on			○						
High chages for the land lease for afforestation							○		
Irrational payment due for public utility charges			○						
Rampant smuggling	○					○		○	○

(Continue)

Category	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam
<b>vii) Insufficient protection of intellectual property rights (IPRs)</b>									
IPRs: widespread counterfeit goods and pirated copy goods due to insufficient protection of IPRs	<input type="checkbox"/>					<input type="checkbox"/>			
IPRs: insufficient crackdown on counterfeit goods at the border, delayed appraisal during suspension of imports and uncertainty of disposal of seized articles		<input type="checkbox"/>							
IPRs: unratified IPR treaty (global treaty)		<input type="checkbox"/>							
<b>viii) Labor regulations and related practices excessively favorable to workers</b>									
Difficulty in firing workers: retirement and firing regulations excessively protective for workers	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>				<input type="checkbox"/>
Difficulty in firing workers: unfair judgment of a labor court			<input type="checkbox"/>						
Wage: substantial raising, frequent and arbitrary revision and disparity control of minimum wage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						<input type="checkbox"/>
Wage: rapid increase in wage level (raising of labor cost)		<input type="checkbox"/>							
Wage: disapproval of and difficulty in demotion and salary cut		<input type="checkbox"/>			<input type="checkbox"/>				
Difficulty in renewing employment contract and obligation of permanent employment									<input type="checkbox"/>
Official fixed rates of gaps among different categories in salary table									<input type="checkbox"/>
Illegal strike									<input type="checkbox"/>
Payment of costs for labor-related court		<input type="checkbox"/>							
Labor union issues: moderation of authorization to organize labor union			<input type="checkbox"/>						
Restrictions on the period to hire temporary workers			<input type="checkbox"/>						
Irrational regulations on ages of young workers			<input type="checkbox"/>						
Excessive holidays and/or work absence		<input type="checkbox"/>							
Specificity of working time			<input type="checkbox"/>						
Unreasonably high wage rates for working on holidays			<input type="checkbox"/>						
Prohibition of employing contract workers			<input type="checkbox"/>						
Greater burden of employees' pension				<input type="checkbox"/>					
Burden of educational fund				<input type="checkbox"/>					
<b>ix) Underdeveloped infrastructure, shortage of human resources, and insufficient investment incentives</b>									
Difficulty in hiring and securing human resources due to shortage of management staff and engineers (including brain drain of IT engineers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>		<input type="checkbox"/>
High turnover ratio and job hopping practices		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		
Infrastructure issue: increased risk of power shortages and electrical power supply (instability)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Infrastructure issue: underdeveloped road and traffic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Infrastructure issue: underdevelopment and lack of seaport infrastructure	<input type="checkbox"/>							<input type="checkbox"/>	<input type="checkbox"/>
Infrastructure issue: inadequate spaces for railway and underdeveloped containerized railway transportation					<input type="checkbox"/>				
Infrastructure issue: creaky existing infrastructure	<input type="checkbox"/>								
Infrastructure issue: delayed delivery due to traffic jam in cities									<input type="checkbox"/>
Infrastructure issue: inadequate public sanitation	<input type="checkbox"/>	<input type="checkbox"/>							
Infrastructure issue: insufficiency and underdevelopment of waste disposals									<input type="checkbox"/>
Infrastructure issue: insufficient air transport infrastructure					<input type="checkbox"/>			<input type="checkbox"/>	
Infrastructure issue: underdeveloped telecommunication infrastructure/roadband internet network access		<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Infrastructure issue: remarkable difference between a plan to develop logistics and the progress of construction (highway, subway, et al.)									<input type="checkbox"/>
Incentives issue: disparity of incentives in the same zone due to project-by-project grant of BOI incentives (irrationality)					<input type="checkbox"/>				
Incentives issue: shrinking of incentives for foreign investors according to the change of investment promotion areas					<input type="checkbox"/>				
Incentives issue: insufficient exemption of import tariffs imposed on capital goods within economic zone			<input type="checkbox"/>						
Incentives issue: elimination of tax incentives and export promoting policies for firms in industrial park according to WTO accession									<input type="checkbox"/>
Incentive issues: review of tax exemption for parts used in producing exports, which are subject to anti-dumping duties					<input type="checkbox"/>				
Incentives issue: insufficiency, shrinking and ambiguity of incentives for foreign investors (high-tech industry; petroleum gas, oil refinery, petrochemistry)	<input type="checkbox"/>								
Incentive issues: application of investment allowance and reinvestment allowance only for manufacturing		<input type="checkbox"/>							
Incentives issue: absence of incentives for parts manufacturer									<input type="checkbox"/>
Incentives issue: insufficient incentives for foreign finished car maker and discriminatory favorable incentives for national cars		<input type="checkbox"/>							
Incentives issue: insufficient BOI tax incentives					<input type="checkbox"/>				
Incentives issue: insufficient tax incentives other than BOI incentives (corporate tax and withholding tax under tax treaty)					<input type="checkbox"/>				
Insufficient incentive for nurture of supporting industries (including local industrial development policy)									<input type="checkbox"/>
High tax rate: corporate tax		<input type="checkbox"/>							
High tax rate: individual income tax									<input type="checkbox"/>
Financial market: immature financial market						<input type="checkbox"/>			<input type="checkbox"/>
Financial market: underdeveloped foreign currency exchange system						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Financial market: underdeveloped capital market						<input type="checkbox"/>			
Public security: frequent occurrence of theft			<input type="checkbox"/>						
Political instability					<input type="checkbox"/>				
Underdeveloped system to prevent disasters: Strength of Buildings, Bird flu, Dengue fever	<input type="checkbox"/>								
<b>x) Restricted competition and price controls</b>									
Discriminatory high pricing for electricity, water, diesel for industrial use		<input type="checkbox"/>							
Excessive government intervention for pricing systems: standard export pricing and obligation of domestic supply for coal	<input type="checkbox"/>								
Ministerial regulation to allow price cap settings for electricity provided by state-owned power company	<input type="checkbox"/>								
High price due to monopoly by the government: industrial waste disposal		<input type="checkbox"/>							
Price reporting requirement to the Department of Commerce					<input type="checkbox"/>				
Government-designated trading company system									<input type="checkbox"/>
Monopolistic pricing									<input type="checkbox"/>
Discriminate pricing for loads at ports									<input type="checkbox"/>
Adversity such as high pricing due to oligopoly of operators		<input type="checkbox"/>							<input type="checkbox"/>
Double pricing between domestic and foreign investment									<input type="checkbox"/>

Data source: authors' preparation, based on JMC survey 2010.







(Continue)

Category	2009							2008							2005											
	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam	Brunei	Indonesia	Malaysia	Philippines	Singapore	Thailand	Vietnam	
Issues																										
Unsatisfactory quality of local parts and components due to insufficient regulations and standards																										
Taxation issue: extremely high value-added tax																										
Taxation issue: elimination of tax exemption for imported equipments and imposition of corporate tax																										
Taxation issue: tax withholding for PE and inter-branch transactions																										
Taxation issue: tax exemption discriminatory between national and non-national cars																										
Taxation issue: contradictory interpretation of definition of residents under revised income tax law																										
Taxation issue: high commodity tax, registration fee, owner fee and for automobiles																										
Taxation issue: conformity requirement on accounting and tax service																										
Taxation issue: inadequate reserve criteria for taxation regulations																										
Taxation issue: persisting system of corporate tax withholding from supporting industry firms																										
Taxation issue: tax on surplus remittances																										
Taxation issue: commercial and export tax (local production and exports and imports)																										
Taxation issue: rent tax (real estates)																										
Taxation issue: no application of preferential treatment of tax treaties (exemption of corporate tax at the source for subcontractors)																										
Taxation issue: conditions on application of excise tax linked with incentive measures (eco-car policy)																										
Taxation issue: tax on adverse spread																										
Taxation issue: no application of reimbursement of commodity tax for imported parts																										
Taxation issue: long-term retroactive period for tax investigation																										
Safety and environmental standards and certification issue: inadequate safety evaluation standards																										
Safety and environmental standards and certification issue: insufficient regulations on anti-air pollution																										
Safety and environmental standards and certification issue: unique technical standard and safety certification (iron and steel, plug etc)																										
Safety and environmental standards and certification issue: inconsistency with the International Accounting Standards																										
Safety and environmental standards and certification issue: unreasonable standard of waste water treatment and waste water quality management																										
Safety and environmental standards and certification issue: unreasonable tightening of regulation for radiological examination																										
Depreciation issue: long depreciation period																										
Depreciation issue: lack of exemplification of designated products (ambiguity)																										
Import restriction: import restriction by import quota and import licensing (build-up car, steel, and color copy machine)																										
Import restriction: difficulty in obtaining import licenses																										
Import restriction: import restriction on final products by manufacturing firms																										
Export restriction																										
Unilateral abrogation of international commitments																										
Long-term procedures for labor dispute																										
Limited tariff exemption for companies in the Special Economic Zones																										
Unreasonable regulations and regulations without considering technological development trend																										
Cap on surplus reserve																										
Unilateral review of PPA																										
<b>vi) Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)</b>																										
Complicated procedures: regimes general																										
Complicated procedures: procedures for transactions of bonded goods between trade-processing firms																										
Complicated procedures: procedures for equipment lease and rental certification																										
Complicated procedures: procedures for overseas remittances																										
Complicated procedures: purchasing procedures of foreign currencies																										
Complicated procedures: approval and license procedures for merge, dissolution, or relocation of the service center																										
Complicated procedures: renewal of import licensing (short period in effective)																										
Complicated procedures: preparation of invoices of imported materials for each incentives																										
Complicated procedures: obligation of pre-registration of import quota for parts that can not be purchased domestically																										
Complicated procedures: pre-shipment inspection																										
Complicated procedures: bidding rules for joint venture with state owned enterprises (application of rules for SOEs)																										
Complicated procedures: signature requirements to documents submitted to government agencies and ministries																										
Complicated procedures: procedures for exception of import tariffs																										
Complicated procedures (too-detailed): BOI approval and reporting procedures																										
Complicated procedures (too-detailed): procedures for BOI tax exemption for reexports																										
Complicated procedures (too-detailed): import licensing procedures																										
Complicated procedures (too-detailed): tax payment procedures for taxation at the source																										
Complicated procedures (too-detailed): obtaining export and import licensing																										
Complicated procedures: tax payment registration for foreign individuals																										
Complicated procedures (including uniqueness): state customs clearance procedures																										
Complicated and delayed procedures: customs clearance (including clearance certificate requirement, AFTA origin certificate procedures and management, enforcement of certificate of origin document registration, off-shore trade customs clearance, and inefficiency of customs clearance)																										
Complicated and delayed procedures: conformity and assessment																										
Complicated and delayed procedures: procedures to apply for working visa and its renewal (including work permit)																										
Complicated and delayed procedures: tax regulations-related procedures																										
Complicated and delayed procedures: AFTA procedures																										
Complicated and delayed procedures: import tariff reimbursement and tax exemption procedures																										
Complicated and delayed procedures: export bounty coupon issuance procedures																										
Complicated and delayed procedures: government approval procedures for withdrawal																										
Complicated and delayed procedures: BOI export and import approval and reporting procedures for products, materials, equipments, defective products and rejected materials																										
Complicated and delayed procedures: patent registration application procedures																										
Delayed procedures: import custom clearance and cargo inspection (including uncertainty)																										
Delayed procedures: AICO approval procedures																										
Delayed procedures: procedures for licensing (general)																										
Delayed procedures: delayed procedures to transfer licensing permit from central government to regional government																										
Delayed procedures: stock reshuffle procedure																										
Delayed procedures: certificate procedures for CEPT																										
Delayed procedures: overseas payment																										
Delayed procedures: permission of oversea remittance																										
Delayed procedures: renewal of import licensing and automatic import licensing																										
Delayed procedures: safety standard and assessment																										
Delayed procedures: judgement of non-application of PE																										
Delayed procedures: issuing final settlement of tax																										
Delayed procedures: approval procedures for technology transfer																										
Delayed procedures: production license issuance (partial)																										
Delayed procedures: examination of safety qualification																										
Delayed procedures: civil execution procedures																										
Delayed procedures (including difficulty): procedures for waste disposal (and its renewal)																										
Delayed procedures (including difficulty): procedures for prepayment of corporate tax reimbursement																										
Delayed procedures (including difficulty): difficulty in obtaining AICO approval																										
Delayed procedures (including difficulty): renewal of business license																										
Delayed procedures (including non-refunding and difficulty): value-added tax reimbursement procedures																										
Delayed procedures (including non-refunding): corporate withholding tax reimbursement procedures																										

(Continue)

Category	2009							2008							2005											
	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam	Brunei	Indonesia	Malaysia	Philippines	Singapore	Thailand	Vietnam	
Issues																										
Difficulty in procedures: corporate tax advance declaration and payment procedures																										
Inefficiency of procedures (including corruption): investment approval procedures																										
Inefficiency of procedures (including corruption): obtaining licenses for operations in the construction sector																										
Disunity of procedures: inconsistent procedures and interpretation among administrative officials																										
Complicated corporate tax prepayment system																										
Complicated banking business resulting from the regulations requiring banking transactions in rupiah																										
Complicated offsetting of debtors and creditors account in foreign trade transactions																										
Complicated handling of BOI incentives																										
Complicated approval and licensing for automobile price																										
Complicated L/C import system (iron and steel products)																										
Insufficient enforcement of environmental protection																										
Security and environment standard, standard recognition issue: regorousness of marking systems																										
Security and environment standard, standard recognition issue: obligation to acquisition the Philippines National Standards for steel pipes, steel stick et al.																										
Ambiguous implementation of antitrust law																										
Arbitrary application of system: disunity of legal interpretation and implementation (including disunity and inconsistency of implementation of product safety certification system, excessive power of local officials, etc.)																										
Arbitrary application of system: diversity of implementation and interpretation by customs (including arbitrary tariff classification and tariff evaluation, difference with international rules, inequity of tariff rate application and ITA nonperformance)																										
Arbitrary application of system: arbitrary corporate tax examination																										
Arbitrary application of system: arbitrary and corrupt tax collection (including back taxes and tax on business corporations)																										
Arbitrary application of system: extension of valid period of license for air forwarder																										
Inflexible application of systems: judgement of application fees imposed by customs																										
Disunity of legal interpretation for application of system: rules of origin																										
Inconsistent interpretation of legal system: inconsistent requirements among customs in accepting ASEAN's Certificate of Origin																										
Disunity of legal interpretation for application of system: acquisition of indigenous rights for land-use																										
Disunity of regulations, controls, and legal interpretation for application among relevant ministries and agencies																										
Disunity of legal interpretation for application of system: discriminately application for foreigners of a criteria of environment at the office																										
Insufficient notification and understanding of changes in legal systems and procedures among administrative offices																										
Inconsistent interpretation of regulations and laws among related officials																										
Insufficient legal enforcement (insufficient announcement of EPA Certification of Origin procedure)																										
Inconvenience of centralized authorization rights (including disapproval of PROSEC licensing procedures in rural areas)																										
Special personal connection and political bribery and corruption of public savants (including collusion and corruption in customs)																										
Unanimous voting at the board meeting of joint ventures																										
Prohibitive port charge and departure tax																										
Introduction of value-added tax to free trade zones																										
Heavy burden of value-added tax																										
Prohibitive individual income tax																										
Income tax at the source for expensive expenses of the use																										
High luxury tax imposed on imported or domestically produced goods																										
Collection of technology promotion funds																										
Inconsistent tax collection																										
Irrational traffic regulation																										
Business tax																										
Difficulties in the process of reimbursement of prepaid tax and so on																										
Irrational payment due for public utility charges																										
Irrationality of listed company provision																										
Existence of excessive regulations such as X-ray controls																										
Heavy burden of individual income tax																										
Restricted transfer of the equity share																										
Difficulty in obtaining plans of governments																										
Excessively strict foreign exchange control																										
Signature requirement for document submitted to government and other public offices																										
Discrimination against foreign firms provided by the Board of Investment																										
Rampant smuggling																										
Rampant illegal import of used cars																										
Deemed tax valuation system																										
<b>vii) Insufficient protection of intellectual property rights (IPRs)</b>																										
IPRs: widespread counterfeit goods and pirated copy goods due to insufficient protection of IPRs																										
IPRs: insufficient crackdown on counterfeit goods at the border , delayed appraisal during suspension of imports and uncertainty of disposal of seized articles																										
IPRs: unratified IPR treaty (global treaty)																										
Trademark right: underdeveloped and insufficient trademark right protection system																										
<b>viii) Labor regulations and related practices excessively favorable to workers</b>																										
Difficulty in firing workers: retirement and firing regulations excessively protective for workers																										
Difficulty in firing workers: judgment of a labor court																										
Wage: absence of minimum wage system (no minimum wage system and high labor cost)																										
Wage: substantial raising , frequent and arbitrary revision and disparity control of minimum wage																										
Wage: rapid increase in wage level (raising of labor cost)																										
Wage: disapproval of and difficulty in demotion and salary cut																										
Strike: easy implementation of strike and long-term strike practices																										
Illegal strike																										
Payment of costs for labor-related court																										
Labor union issues : moderation of authorization to organize labor union																										
Restrictions on the period to hire temporary workers																										
Irrational regulations on ages of young workers																										
Labor-management agreement and practices excessively favorable to workers; difficulty in revision of conservative labor regulations and vested conditions of employment																										
Misuse of medical leave																										
Excessive holidays and/or work absence																										
Abuse of family and medical leave system																										
Specificity of working time																										
Unreasonably high wage rates for working on holidays																										
Prohibition of employing contract workers																										
Restriction on transfer of insurance officials among companies																										
Greater burden of employees' pension																										
Burden of educational fund																										
Heavy burden of obligation to distribute taxable profits and profit sharing dividends to employees																										

(Continue)

Category	2009							2008							2005											
	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam	Indonesia	Malaysia	Philippines	Singapore	Thailand	Cambodia	Laos	Myanmar	VietNam	Brunei	Indonesia	Malaysia	Philippines	Singapore	Thailand	Vietnam	
<b>ix) Underdeveloped infrastructure, shortage of human resources, and insufficient investment incentives</b>																										
Difficulty in hiring and securing human resources due to shortage of management staff and engineers (including brain drain of IT engineers)	○	○	○				○	○		○	○	○								○	○	○	○	○		
High turnover ratio and job hopping practices	○	○	○							○	○	○								○	○	○	○	○		
Infrastructure issue: underdeveloped (industrial) infrastructure (general)										○	○	○								○	○	○	○	○		
Infrastructure issue: increased risk of power shortages and electrical power supply (instability)	○	○	○	○	○	○	○	○		○	○	○	○	○	○	○	○	○		○	○	○	○	○		
Infrastructure issue: underdeveloped road and traffic	○	○	○	○	○	○	○	○		○	○	○	○	○	○	○	○	○								
Infrastructure issue: underdevelopment and lack of seaport infrastructure	○							○	○	○							○	○								
Infrastructure issue: inadequate spaces for railway and underdeveloped containerized railway transportation					○								○													
Infrastructure issue: creaky existing infrastructure																				○						
Infrastructure issue: poor public physical distribution services																				○						
Infrastructure issue: underdeveloped intermediate distribution																				○						
Infrastructure issue: inadequate public sanitation	○	○								○	○										○				○	
Infrastructure issue: runaway cost of public utilities (instability)																				○						
Infrastructure issue: insufficiency and underdevelopment of waste disposals								○												○		○			○	
Infrastructure issue: delayed delivery due to traffic jam in cities								○												○						
Infrastructure issue: underdeveloped telecommunication infrastructure/roadband internet network access	○				○			○			○									○						
Infrastructure issue: insufficient air transport infrastructure								○					○				○									
Infrastructure issue: remarkable difference between a plan to develop logistics and the progress of construction (highway, subway, et al.)								○																		
Incentives issue: disparity of incentives in the same zone due to project-by-project grant of BOI incentives (irrationality)																								○		
Incentives issue: shrinking of incentives for foreign investors according to the change of investment promotion areas					○																					
Incentives issue: absence of investment incentives for the construction industry																								○		
Incentives issue: insufficient incentives for existing foreign-owned firms																								○		
Incentives issue: insufficiency, shrinking and ambiguity of incentives for foreign investors (high-tech industry; petroleum gas, oil refinery, petrochemistry)	○									○										○	○			○		
Incentives issue: insufficient exemption of import tariffs imposed on capital goods within economic zone		○									○															
Incentives issue: elimination of tax incentives for industrial park								○																		
Incentive issues: review of tax exemption for parts used in producing exports, which are subject to anti-dumping duties					○																					
Incentive issues: application of investment allowance and reinvestment allowance only for manufacturing	○																									
Incentives issue: absence of incentives for parts manufacturer								○																	○	
Incentives issue: insufficient incentives for foreign finished car maker																									○	
Incentives issue: insufficient BOI tax incentives					○																			○		
Incentives issue: insufficient tax incentives other than BOI incentives (corporate tax and withholding tax under tax treaty)					○																					
Incentives issue: discriminatory favorable incentives for national cars	○									○											○					
Insufficient incentive for nurture of supporting industries (including local industrial development policy)	○	○						○	○	○	○							○			○			○		
Issues of local suppliers in terms of delivery time and quality																										○
High tax rate: corporate tax																					○					
High tax rate: individual income tax																					○					
Financial market: immature financial market								○													○					
Financial market: underdeveloped foreign currency exchange system						○	○	○							○	○	○					○			○	
Financial market: underdeveloped capital market						○	○	○							○	○	○					○			○	
Insufficiency of medical institutions											○	○										○				
Public security: frequent occurrence of theft											○	○														
Political instability		○									○	○														
Underdeveloped system to prevent disasters: Strength of Buildings, Bird flu, Dengue fever	○				○																					
<b>x) Restricted competition and price controls</b>																										
Monopoly / unilateral increase in price of energy supply										○											○					
Discriminatory high pricing for electricity, water, diesel for industrial use		○																			○					
Discriminatory rise in fuel price for industrial use	○									○											○					
Excessive government intervention for pricing systems: standard export pricing and obligation of domestic supply for coal	○																									
Arbitrary regulation to allow price cap settings for electricity provided by state-owned power company	○																									
High price due to monopoly by the government: industrial waste disposal	○																									
Price reporting requirement to the Department of Commerce					○								○											○		
Government-designated trading company system								○																○		
Monopolistic pricing								○																○		
Discriminate pricing for loads at ports								○																○		
Double pricing between domestic and foreign investment																								○		

Data source: Urata and Ando (2010) (original data: authors' preparation, based on JMC surveys).

Table A.3.1 The detailed method to conduct a survey

Brunei	<p>The Survey was initially sent by e-mail and subsequently followed up by phone calls and interviews for clarification of response for those that responded by e-mail and/or fax.</p> <p>Companies are members of the Brunei Darussalam International Chamber of Commerce &amp; Industry and ad hoc SME's in the private sector.</p>
Cambodia	<p>A number of methods to deliver questionnaires are used; 1. for companies with easily access (in terms of location), staff were sent to meet the respondents directly (if they were available during the working time for sink tank). 2. for companies with a difficulty in access, emails are used. 3. the questionnaires were sent through friends and connections who are working in the target companies (usually this is the most effective method and have highest response rate). 4.,the face to face</p> <p>Firms located in Phnom Penh and surrounding area were selected by checking the website of Cambodia Chamber of Commerce, different professional business associations, and different Cambodia-Foreign Business Associations, and among them, 120 companies are picked up from the compiled list (examples: from GMAC (Garment Manufacturing Association in Cambodia),</p>
Indonesia	<p>We checked out our own connections and friends of CSIS who seemed to be keen on filling the</p> <p>Most of them are friends of CSIS and/or companies who had been our respondents from the</p>
Laos	<p>The majority of questionnaires are sent by postal, and few are sent by email and fax.</p> <p>Foreign firms were selected from the most well known.</p>
Malaysia	<p>The survey was sent by email, with the assistance of the Federation of Malaysian Manufacturers and Vistage Malaysia.</p> <p>The Federation of Malaysian Manufacturers, because of its very large number of members, does not have the resources to identify foreign firms to email the questionnaires to, and thus emails we re sent to everyone. On the other hand, Vistage Malaysia, because of its very much smaller number of members, was able to send the questionnaires only to members who are non-Japanese MNCs.</p>
Cambodia	<p>The face-to-face interviews is applied.</p> <p>We selected foreign firms for interview from the list of firms provided by five industrial zones in</p>
The Philippines	<p>The questionnaires were sent through fax and email.</p> <p>A masterlist of foreign companies operating in three economic zones is created: PEZA (Cavite and Laguna), SBMA (Zambales), and CDC (Pampanga). The members of Philexport, leading exporters' group in the Philippines as well as a list of regional headquarters from the Board of Investments are also included. From the masterlist, sample firms are randomly selected.</p>
Singapore	<p>The original questionnaire was converted into an online survey form using Google Form. We approach the various chambers of commerce and provided an email template for them to send to</p> <p>Only foreign firms are selected, based on the country (e.g. US, Europe, Japan, etc).</p>
Thailand	<p>The questionnaires were directly sent to foreign companies with various methods; postal mail, e-mail and fax. We also asked cooperation from the foreign chambers of commerce to send the questionnaires to their board of directors and members via e-mail., and consistently followed up</p> <p>1. We checked top-ten countries that have highest FDI in Thailand during 2005-2009 (5 years) by using source from Bank of Thailand (2010): Singapore, Netherlands, Hong Kong, United States, Switzerland, Germany, United Kingdom, Malaysia, South Korea, and France. (Due to the survey's instruction, Japan is not included although it is on the first ranking of countries with highest FDI in Thailand.). 2. We selected companies from these countries based in Thailand. 3. In the process, we tried to cover all industry size; small, medium and large companies, as well as industry types as the</p>
Vietnam	<p>Two methods are used: (1) surveys and (2) postal mail. For survey, we cooperated with statistics office in Hanoi and Ho Chi Minh City.</p> <p>industries (garment, electric, electronics, motor spare parts and some other firms in manufacturing areas). For the mail survey, we major focus on manufacturing firms and also some firms in service industry.</p>

## CHAPTER 4

### Free Flow of Skilled Labor in the ASEAN Economic Community

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*Skilled labor mobility is essential for effective implementation of services liberalization and FDI liberalization as well as a goal in itself for deeper economic integration in the AEC. Currently Singapore is the main recipient, while the Philippines and Malaysia are the main suppliers. However, as ASEAN countries move up the technology ladder, demand for skills will increase. Foreign talent is needed to augment the domestic pool, as well as to create the competitive synergy for domestic talents. Strategic actions on the free flow of skilled labor outlined in the AEC Blueprint include --- facilitate the issuance of visas and employment passes; mutual recognition arrangements (MRAs) for major professional services; core concordance of services skills and qualifications; and enhance cooperation among ASEAN universities to increase regional mobility for students and staff.*

*The MRA is a major instrument for skilled labor mobility in ASEAN. However, recognition of each other's qualifications and experience does not ensure market access. Policies and regulatory frameworks that constrain and impede skilled labor mobility include--- requirements and procedures for employment visas and employment passes; constitutional provisions reserving jobs for nationals; policies that close or impose numerical caps on foreign professionals and skills in sectors and occupations; economic and labor market tests that constrain employment of foreigners and requiring to have them replaced by locals within a stipulated period; licensing regulations of professional associations; and language proficiency requirements. Countries should cooperate to minimize the impediments. More information exchange and transparency and simplifying visa and employment pass applications would help.<sup>1</sup>*

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<sup>1</sup> The author gratefully acknowledges the questionnaire responses and information on their respective countries supplied by the ERIA network of research institutions from Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

## 1. Introduction

The AEC Blueprint covers only “free flows of skilled labor” and is silent on flows of unskilled/semi-skilled labor. The free flow of skilled labor has important implications for services trade, FDI and productivity growth. In allowing for movement of skilled labor, according to the prevailing regulations of the receiving country, ASEAN is working to:

- Facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labor who are engaged in cross-border trade and investment related activities.
- Facilitate the free flow of services, particularly, develop core competencies and qualifications for job/occupational and trainers skills required in the priority service sectors by 2009 and in other services sectors by 2015.
- Enhance cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region.
- Strengthen the research capabilities of each ASEAN Member Country in terms of promoting skills, job placements and developing labor market information networks among ASEAN Member Countries

The time-lines are:

- Complete MRAs for major professional services, including Priority Integration Services (PIS) sectors of e-commerce, healthcare, air travel, tourism and logistics by 2008.
- Develop core competencies (concordance of skills and qualifications) for job/occupational skills required in PIS by 2009

- Develop core competencies (concordance of skills and qualifications) for job/occupational skills in all service sectors by 2015.

The AEC provides for market access for ASEAN professionals and skilled manpower. The main action is to implement Mutual Recognition Arrangements (MRAs) for major professional services. However, recognition is not enough to ensure market access. Hence this report focuses on the policies and regulatory frameworks on skilled labor mobility in ASEAN countries, highlighting the various policy and regulatory constraints and impediments. For comparison with the AEC, this report also includes a discussion of movement of natural persons provisions in the WTO and in selected ASEAN and bilateral FTAs.

## **2. Movement of Natural Persons or Skilled Labor Mobility -- Provisions in the WTO and in ASEAN FTAs and the Issue of Brain Drain**

### **Movement of Natural Persons in the WTO**

Cross-border mobility of unskilled labor is excluded from the WTO agenda, while cross-border mobility of skilled labor is covered under GATS Mode 4 on movement of natural persons (MNP). MNP refers to cross-border mobility of professionals and skilled individuals on a temporary basis either as self-employed individual service providers or as employees of foreign companies supplying services. MNPs cover:

- Business visitors: engage in business without seeking employment

- Traders and investors: natural persons carrying out specific trading and investment activities
- Intra-corporate transferees: employees of MNCs that move their staff across borders
- Professionals: include doctors and nurses, lawyers, accountants, engineers, IT personnel and other professions

Barriers to MNP include:

- Restrictive immigration visa requirements and employment passes and work permits, other administrative constraints and processing costs
- Quality assurance: pre-employment requirements, health and security clearance, personal and professional references
- Educational and professional qualifications and regulations and licensing requirements by receiving country professional associations
- National treatment limitations: qualifications and restrictions based on nationality; economic needs test; numerical quotas for each profession; ethnic preferences; and language requirements
- Measures to discourage and prevent brain drain

GATS commitments represent the lower bound of the actual degree of liberalization of immigration policy. Most of the existing GATS commitments in Mode 4 pertain to executives,



managers and professional employees of the foreign companies supplying services through Mode 3.

### **Movement of Natural Persons in ASEAN's Regional and Bilateral FTAs**

FTAs do not all have provisions to facilitate movement of natural persons (MNP), reflecting the difficulties in addressing them even at the regional and bilateral levels. FTAs tend to replicate GATS in favouring only mobility of highly skilled and professional workers, and closely linking them to investment requirements. Some ASEAN regional and bilateral FTAs deal with issues relating to Movement of Persons in separate chapters. Such FTAs provide the platform for bargaining across issues and the greater probability of achieving results. FTAs that do not provide for full labor or service supplier mobility tend to use GATS type carve-outs and generally exclude permanent migration and access to the labor market and also do not impinge on the sovereign rights of countries to regulate entry and stay of individuals.

#### ***ASEAN-Australia-New Zealand FTA (AANZFTA):***

This is the only ASEAN+1 agreement that has been comprehensively completed and implemented to date.

- Movement of natural persons (MNP) is contained in Chapter 9 of the Agreement, which complements the chapters on services and investment. It established streamlined and

transparent procedures for applications of immigration formalities for MNPs. Temporary entry of natural persons include business visitors; installers and servicers; executives of a business headquartered in the FTA partner by establishing a branch or subsidiary or other commercial presence of that business in another FTA partner; intra-corporate transferees; and contractual service suppliers. Temporary entry means entry without the intent to establish permanent residence. Such natural persons must follow prescribed application procedures for the immigration formality sought and meet all relevant eligibility requirements for entry to the granting partner country. The chapter does not apply to measures affecting natural persons seeking access to the employment market of FTA partner, nor to measures regulating citizenship, residence, or employment on a permanent basis.

- Nothing in the chapters of movement of natural persons, services and investment, shall prevent an FTA partner from applying measures to regulate entry of natural persons or their temporary stay, including those measures necessary to protect the integrity of and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to another FTA partner under the chapter or to unduly impair or delay trade in services and goods and investment
- Annex 4 of chapter 9 contains the schedule of commitments for the temporary entry and stay of natural persons of the country signatories. These schedules specify the conditions and limitations governing those commitments, including the length of stay for each category of natural persons. The schedules of most ASEAN countries in the

AANZFTA improve on their WTO commitments--- with new categories of service suppliers; lengthening of stay for various categories; and increased in number of sectors covered by commitments;

- This FTA also contains regulatory disciplines which help facilitate freer and more efficient movement of Australians seeking to travel to ASEAN countries for temporary business purposes. The disciplines include obligations of FTA partners to process completed applications for temporary entry and stay promptly; notify applicants, on request, about the status or outcome of the application; and ensure that fees for visas and entry permits are reasonable.

***Japan's EPAs with ASEAN countries:***

Japan's bilateral EPAs with selected individual ASEAN countries have specific provisions on labor mobility into Japan. The over-arching ASEAN-Japan EPA has no similar provisions, probably reflecting the difficulties of negotiating trade-offs for the diverse ASEAN countries.

- ***Japan-Singapore EPA*** includes the movement of natural persons, specifically for business purposes, that is, business visitors, intra-corporate transferees, and certain categories of investors and professionals. Chapter 9 on Movement of Persons contains specific commitments set out in an Annex for short term visitors and intra-corporate transfers. There are also provisions on a joint committee devoted to mutual recognition of professional qualifications. A separate chapter on mutual recognition effectively takes the form of a bilateral mutual recognition treaty.

- *Japan's bilateral EPAs with Philippines, Thailand and Indonesia* include provisions on the movement of natural persons, in particular for entry and employment in Japan of limited numbers of Filipino nurses and caregivers; Thai cooks, care workers, spa therapists and instructors of Thai dance, music and cuisine, language and boxing; and Indonesian healthcare givers. There are no MRAs. In particular, the Japan-Philippines EPA provides for easier entry of qualified Filipino nurses and certified care workers through language training, clear guidelines on exercise of profession/occupation and streamlined processing of application. It was reported that 281 health workers (93 nurses, 190 caregivers) were dispatched to Japan in May 2009 to undergo onsite language and culture training for 6 months before starting to work and acquire necessary knowledge and skills at hospitals or care facilities in Japan. Another group of 10 workers who were exempted from the 6-month Japanese language training because of their language proficiency, were sent on 31 May 2009, while a third batch of 30 qualified Filipino students were sent to study care giving for 2 years on 27 September 2009.

***Singapore-US FTA:***

Among the bilateral FTAs signed by ASEAN countries, the most interesting from the perspective of MNP is the Singapore-US FTA. Chapter 11 deals with Movement of Persons and contains 11 pages of text and annexes.

- There are provisions on information exchange, transparency criteria and an agreement to appoint temporary entry coordinators in each country. It provides for mutual

consultation on acceptable standards and criteria for licensing and certification of professional service providers.

- For professional services: Singapore will ease conditions on US firms creating joint law ventures to practice Singapore law; recognize degrees earned from 4 US law schools for admission to the Singapore bar; reduce board of director requirements for architectural and engineering firms; phase out capital ownership requirements for land surveying firms; both sides will engage in consultation to develop mutually acceptable standards and criteria for licensing and certification of professional service providers, especially with regard to architects and engineers.
- Annex 11A sets out details of arrangements under 4 section headings, with the following conditions applying to Singapore citizens ---business visitors, 90 days; intra-corporate transferees with L1A and L1B visas are allowed up to an initial period of 1-3 years, extendable for a maximum stay period of 7 years; traders with E1 or E2 visa are allowed a 2-year maximum stay period with indefinite extension allowed; professionals with H1B visas are allowed to stay for a maximum period of up to 18 months, with indefinite extension allowed, but subject to an annual numerical cap of 5,400 visas for Singaporeans.
- The issue of recognition is dealt with in Chapter 8 on Services, indicating that recognition of education or experience obtained, or licenses or certificates may be achieved by harmonization and provides general principle as to how such harmonization may be negotiated. An annex to the chapter sets out more details on how professional standards should develop on a mutually acceptable basis in more

detail. Recognition issues are also covered in Chapter 12 on Temporary Entry of Business Persons; Section IV is on short term entry arrangements for professionals and commits each party to grant entry to professionals in categories entered in an Appendix, provided that the person involved possess appropriate credentials.

### **Issue of Brain Gain and Brain Drain**

Skilled labor mobility is a growing issue of debate in recent years, reflecting the impact of globalization and explosive growth of ICT. Globally, there has been a net flow of highly skilled professionals and executives or “brains” from the less developed countries to the more developed countries and this phenomenon has gained importance in the past two decades, although their numbers are still small relative to the large flows semi-skilled and unskilled foreign workers. Many developed countries as well as advanced developing countries now have deliberate policies of attracting “brains”.

At the same time, liberalization of the “movement of natural persons” in GATS and growing FDI presence have resulted in significant labor mobility of the professionals and skilled from developed to developing countries as well as flows among developing countries

Receiving countries of skilled labor are generally regarded as enjoying “brain gain”, as inflows augmented and supplemented domestic supplies, removing domestic shortages, improving economic competitiveness and productivity and facilitating structural transformation and industrial upgrading. Yet not all countries, whether developed or developing, are unreservedly open to skilled labour inflows. While some countries have put in

place policies and measures to attract “foreign talent”, most countries have introduced measures to manage and even restrict such inflows. Motivations include the political, economic and social pressures to “reserve” jobs for nationals, the “closed shop” licensing practices of professional bodies, and the security dimensions when critical and sensitive jobs are held by foreigners.

Brain drain occurs when professionals and skilled manpower emigrate because some countries have been unable to efficiently employ them because of sluggish economic growth and high unemployment. Also, many of these skilled emigrants started the migration process when they left for the OECD countries to pursue tertiary education and then stayed on to gain work experience and were attracted by the job opportunities, better remuneration and working conditions and quality of life.

The developing countries generally have a scarcity of skills and a sizeable brain drain would adversely affect the development potential of sending countries. At the least, the brain drain represents losses to past educational investments. In most cases these human resources would have been trained at great public expense and emigration often leads to the loss of a country’s “best and brightest”. Some of the negative effects of skills depletion are seen in the Philippines, where success in sending nurses abroad has depleted its healthcare services of experienced nurses. Some developing countries have restrictive emigration policies that make it difficult for their nationals to take jobs abroad. Many governments in developing countries have bonded scholars on government scholarships that ensure their return to serve their country. A proposal to impose a brain drain tax on receiving countries to compensate the sending country for the brain drain has failed to take off, as it present problems of estimating the

appropriate amount of such a tax, who should pay the tax (the receiving country, the employer or the migrant professional himself), who should benefit from the tax (sending country government and how should the tax revenue be used. Many developed countries have tried to mitigate the developing countries problem with temporary entry programs that require workers or students to return to their source country after a period of time

It is also increasingly recognised that the brain drain could also have positive effects on the sending countries, as emigrants can make a greater contribution to development of their home countries through their remittances. Prospects of emigration for work can also lead to a higher level of human capital formation in the sending country. For example, more Filipinos seek education and training as nurses to facilitate their employability abroad. Also, there are significant gains when the “brains” eventually return. Returnees bring with them greater experience, knowledge, savings and business and social networks. For those who stay abroad, they send back remittances; transfer technology and knowledge; and provide crucial networks for trade and investment. Thus an initial brain drain may become a long term brain gain.

The Asian diaspora is increasingly viewed by their countries of origin as a valuable resource to be tapped for national economic development --- for their remittances and investments, entrepreneurial and professional skills, and business and social networks. For example, returnees have contributed much to the technological development and industrial upgrading of South Korea and Taiwan. The “overseas Chinese” communities in Hong Kong and Taiwan and to a lesser extent in Southeast Asia have been major foreign investors in China, particularly in the first decade of China’s open-door policy. In its current phase of development India is also trying to tap its diaspora for their investments and expertise.



### **3. *Recognition of Professional Qualifications in the WTO and ASEAN FTAs***

This section is based largely on Nielson (OECD 2004)

Nielson noted that there is a growing demand for greater recognition of foreign qualifications arising from the following:

- Universities assessing students to admit for further study.
- Employers, professional associations and licensing bodies and migration authorities increasingly require information on recognition of foreign qualifications.
- Liberalization of trade in services in the WTO and in FTAs which led to an increased demand for recognition of professional qualifications. International trade in a range of services such as health and education and professional services such as accounting and engineering is often conducted via Mode 4 or temporary movement of individuals to supply these services. For example, trade in health services occur when a nurse from one country moves to another for a limited period to work; and trade in engineering services take place when a company with a contract to build a bridge in another sends its engineer to supervise the project.

In terms of professional qualifications, recognition usually refers to both the recognition of the equivalence of the content of the training and to the recognition of the home country's authority to certify such training through the granting of diplomas and other qualifications. The principle of equivalence is generally understood to mean that where the host country's regulatory goal is addressed by home country regulation, the host country should accept the

home country's regulation as equivalent. But where aspects of the host country's regulatory goals are not met, for example, with regard to required local knowledge or where there are differences in the scope of the licensed activities between jurisdictions, the host country is permitted to set additional requirements for recognition. Most recognition agreements require considerable cooperation in adaptation of their respective regulatory regimes. Also, many recognition agreements include a general safeguard, in addition to the specific rules of recognition, enabling the authorities to re-assert regulatory jurisdiction in order to protect national interests.

Recognition requires or assumes that a country has in place a system for regulating a given profession, but in some countries such systems are either poorly developed or non-existent. Development of a domestic regulatory framework for a profession requires well-developed and competent institutions such as ensuring the quality and adequate supply of the profession. Recognition also requires a complex comparison between frameworks established to meet different sets of economic, social and cultural circumstances to determine whether the standards set are actually equivalent. Recognition also involves a number of stages --- information exchange, analysis of the other party's regulatory regime, assessment of whether there are gaps and, if so, what might be appropriate compensatory measures, whether some aspects should be excluded from recognition altogether, and whether any adaptation of the home country regulatory framework is required. The speed and efficacy with which these processes can be undertaken will vary with the degree of differences between the parties in education system, standards, approaches to regulation and level of development, and also with the number of parties involved. Once agreed, recognition agreements also require ongoing resources for monitoring and assessment.

It should be noted that, while the quality of a professional qualification is clearly an important factor in whether a professional from one jurisdiction will be permitted to practice in another, it is not the only factor. To practice in a given jurisdiction, governments or professional bodies may impose additional requirements related to local ethics laws and membership of national professional bodies. It should also be noted that recognition of qualifications and other requirements does not automatically confer the right to exercise a profession, as market access must be granted. In many countries, certain professions are restricted to nationals.

### **Recognition of Qualifications in GATS**

GATS does not require members to recognize the professional qualifications of other members nor does it require any particular standards to be applied in considering recognition. *Article VII* simply allows members to recognize the education or experience obtained, requirements met, or licenses or certification granted in some WTO members and not others, as given the range of regulatory differences, recognition is most likely to be agreed bilaterally or plurilaterally. The main requirement of Article VII is that members entering into recognition arrangements amongst themselves must afford adequate *opportunity* to other interested members to negotiate their accession to the agreement or to negotiate a comparable agreement. Article VII states that a member may recognize “education or experience obtained, requirements met, or licenses or certification granted” and that recognition may be achieved “through harmonization or otherwise”. Countries are not required to use international standards.

*GATS Article VI.6* states that where a country chooses to make a commitment to allow access for a particular type of foreign professional, that country is required to have adequate procedures in place to verify the competence of those professionals from all other WTO members. A country has to have actually chosen to make a GATS commitment on market access for a particular professional service for the obligation to apply. A market access commitment to allow foreign professionals does not mean that the country is obliged to accept all foreign professionals; whether an individual professional is actually permitted to practice will depend on whether the requirements of the domestic regulatory framework regarding who is competent to practice are met.

### **Recognition of Qualifications in FTAs**

FTAs generally do not provide for recognition, but simply include general language that recognition should be pursued between the parties. Recognition in FTAs typically involves both mutual agreement to accept agreed competent authorities for the mutual determination of standards, and agreements on the mutual recognition of more narrowly specified items such as notarial attestations or certificates. Some agreements leave recognition agreements to be concluded subsequent to the FTA agreement, often identifying those services where market access has been granted under the agreement as a priority. On the other hand, recognition agreements concluded pursuant to FTAs are often delegated to and take the form of agreements between industry associations such as in architecture, engineering and accountancy. Some FTAs do not even formally envisage the development of recognition agreements. The Japan-Singapore EPA uses the language of GATS Article VII, and simply permits the development of

recognition agreements but does not specify any professions for which agreements should be negotiated.

Many recognition agreements do not provide for automatic recognition of qualifications. Coverage varies widely ---some are far-reaching; others provide for reduced requirements or procedures; some provide a degree of facilitation; others are limited to broader types of cooperation or dialogue. While some agreements relate to specific sectors (such as accountants, architects, engineers), many agreements are based on a general recognition of diplomas in partner countries, on the basis of mutual trust and judgement of the equivalence of educational institutions and study programs. Agreements limited to specific professions are often agreements initiated and negotiated by industry or professional bodies themselves. The content of these agreements varies considerably and includes automatic membership of counterpart organizations.

Nielson highlighted the experience with recognition in various FTAs. For example:

- Some agreements such as within *EU* and the *Trans-Tasman MRA* have gone far in establishing recognition, resulting more or less in the ability of professionals licensed in their home country to practice in other parties to the agreement. However, this level of recognition is rare, being largely limited to regional trade agreements aimed at deep integration.
- Some FTAs encourage development of recognition agreements between the parties to facilitate trade in professional services. These specify priority professions and delegate negotiation of such agreements to the relevant professional bodies.

- In the *New Zealand-Singapore CEP*: Part 5 (Services) Article 22 (Professional Qualifications and Registration) states that “with a view to ensuring that measures relating to professional qualification and registration requirements and procedures do not constitute unnecessary barriers to trade in services between them, the Parties agree to have identified by the date of entry into force of this Agreement priority areas to address with respect to the recognition of professional qualifications or registration. The parties further agree to facilitate the establishment of dialogue between experts in these priority areas with a view to the achievement of early outcomes on recognition of professional qualifications or registration in these areas. Such recognition may be achieved through recognition of regulatory outcomes, recognition of professional qualifications awarded by one Party as a means of complying with regulatory requirements of the other Party or by other recognition arrangements which might be agreed between the Parties. The parties have agreed to facilitate dialogue between experts in 10 priority sectors (engineers, planners, architects, landscape architects, registered valuers, dentists, dental technicians, doctors, nurses, midwives).
- In the *Japan-Singapore EPA*, Chapter 9 Article 93 Movement of Natural Persons covers mutual recognition of professional qualifications. It is closely based on GATS Article VII, in that it permits but does not require recognition. Where a Party grants recognition to a non-Party, the other Party must be given an adequate opportunity to demonstrate that they should be accorded similar recognition.

Nielson found that recognition made limited progress for several reasons. First, is the wide range of practices among WTO members in relation to education and training of

professionals and the wide range of cultural influences and assumptions that lie behind these. Second is the fear of loss of regulatory sovereignty or that recognition will lead to harmonization of standards or practices, including at the lowest common denominator. Many professional or other regulatory bodies at the national level pride themselves on their high standards and would be reluctant to adopt or recognize others' standards or equivalent. In some cases, there is concern that particular local knowledge will not be adequately reflected in a recognition agreement. Third, is the absence of licensing systems for some professions or of formal qualification mechanisms in some countries, against which equivalence could be judged. The promise of access for their professionals to other countries under an FTA has spurred some developing countries to introduce more formal licensing or other requirements for its own professionals to ensure that they will be more easily able to meet the standards in other countries and therefore be able to use the access granted.

Fourth is the difficulty of calculating the equivalence of on-the-job and formal training, where formal training may be less important than practical and up-to-date experience as with the ICT profession. Fifth, many recognition initiatives are led by, or require the close involvement of, professional associations and organized, well-resourced and representative associations may be lacking in some countries, or else may not be interested in facilitating the access of foreign suppliers. Sixth is the lack of awareness at the professional level of the possibilities provided by recognition agreements for high quality professionals to become more mobile. Seventh are the resource-intensive and highly complex processes involved in establishing recognition and hence the need for the advantages of such agreements to be clear. In the absence of a clear short term gain to balance the costs, recognition agreements may not be viewed as a good use of resources by professional organizations responsible for their

negotiation. Eighth, for some professions, there is little interest in negotiating recognition agreements if foreigners are not permitted to practice the relevant professions in other countries. Most progress in reaching recognition agreements has been in those professions where there is a clear demand and where other countries are open to foreign professionals. Where the provision of some professional services is reserved for nationals, professional bodies are unlikely to see any value in negotiating recognition agreements.

#### **4. Policies and Regulatory Frameworks on Skilled Labor Mobility in ASEAN Countries**

##### **Provisions in AFAS**

In recent years, ASEAN Labor Ministers meetings have supported greater intra-regional labor mobility of skilled persons, both in relation to ASEAN trade and investment liberalization as well as the social dimensions of ASEAN economic integration. The ASEAN Labor Ministers Meeting on 11 May 2000 called for the labor force of member countries to be “prepared for and benefit from economic integration within ASEAN”. Following signing of AEC in 2003, Labor Ministers expressed in 2004 their commitment to address the priorities in the ASEAN Socio-Cultural Community ---to continue existing efforts to promote regional mobility and mutual recognition of professional credentials, talents and skills development. They noted the need for accelerated service liberalization by 2010 and MRAs by January 2008 and importance of developing an ASEAN agreement to facilitate the movement of experts, professionals, skilled labor and talents by Dec 2005.



National sensitivities to the migration issue has prevented much cooperation to date. The 1995 AFAS provides, inter alia, for regulatory convergence and regulatory harmonization including MRAs. ASEAN countries may recognize the education or experience obtained, requirements met and licensing or certification granted by other ASEAN countries. However, progress in Mode 4 on movement of natural persons (MNP) and progress in mutual recognition agreements (MRAs) have been slow. The Bali Concord II in 2003 called for completion of MRAs for qualifications in major professional services by 2008 to facilitate the free movement of professionals and skilled labor. With MRAs, each country may recognize education and experience, requirements, licenses and certificates granted in another country.

### **Mutual Recognition Arrangements**

ASEAN has concluded 7 packages of commitments under AFAS. These packages provide for details of commitments from each ASEAN country in the various services sectors and sub-sectors. There have also been 3 additional packages of commitments in financial services and 2 additional packages on commitments in air transport. The AEC Blueprint adopted at the 13<sup>th</sup> ASEAN Summit in Nov 2007 set concrete steps to be taken to achieve a free flow of services by 2015 with flexibility. MRAs enable the qualifications of professional services suppliers to be mutually recognized by signatory member states, thus facilitating easier movement of professional services providers in the ASEAN region. At present, ASEAN has concluded 7 MRAs

- MRA on Engineering Services signed on 9 Dec 2005

- MRA on Nursing Services signed on 8 Dec 2006
- MRA on Architectural Services and Framework Arrangement in the MR of Surveying Qualifications both signed on 19 Nov 2007
- MRA on Medical Practitioners, MRA on Dental Practitioners, and MRA Framework on Accountancy Services signed on 26 Feb 2009

### **ASEAN University Network (AUN)**

The AEC Blueprint lists as one of its actions toward free flow of skilled labor as enhancing cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region.

The 4<sup>th</sup> ASEAN Heads of Government meeting in 1992 emphasized the need to promote human resource development by considering ways to strengthen institutions of higher learning in the ASEAN region with a view to ultimately establish an ASEAN university network (AUN). The specific objectives of AUN are to promote cooperation and solidarity among professionals, academicians, scientists and scholars in the region; develop academic and professional human resources in the region; and promote information dissemination including electronic networking of libraries, exchanges and sharing of appropriate information among members of the academic community, policy makers, students and other relevant users.

The AUN structure comprises a Board of Trustees, Participating Universities and Secretariat. The initial participating leading universities of ASEAN are Universiti Brunei

Darussalam; Gadjah Mada; Universiti Sains Malaysia and Universiti Malaya; University of the Philippines; National University of Singapore and Nanyang Technological University; Burapha University of Thailand. Academic institutions of any ASEAN member country may be admitted to the AUN upon submission of application for such membership to the Board of Trustees. The AUN Secretariat is based at Chulalongkorn University in Thailand. At the Second AUN Rectors' meeting in March 2010, progress of the implementation of the ASEAN Credit Transfer System (ACTS) was discussed. Quality of the courses offered by AUN member universities is essential to the success of ACTS

### **Factors in ASEAN Skilled Labor Mobility**

The ASEAN region has seen growing international and regional labor mobility. There are two types of flows. First, the much larger flow of unskilled and semi-skilled workers on short term contracts. Second, the much smaller flow of professionals and skilled manpower. The AEC covers only the second type of flows.

Cross-border skilled labor mobility in ASEAN countries reflect an interplay of various forces that include the following:

- *First, large disparities in wages and employment opportunities:* The more advanced countries, with higher wages and better employment opportunities, tend to attract migrants from less developed neighboring countries. Among the ASEAN countries the per capita income rankings (and reflective of salary rankings) are Singapore, Brunei, Malaysia, Thailand, Philippines, Indonesia, Vietnam and CLM. Singapore, Brunei and Malaysia are

experiencing general labor shortage as well as skills shortages, while the other countries are experiencing skills shortages to varying degrees.

- *Second, geographic proximity and social-cultural-linguistic environment:* Historically there was much free movement among the populations of Southeast Asia. In particular, people moved freely between Malaysia and Singapore as the two countries shared a long common history and social-cultural-linguistic ties. So when educational and job opportunities for ethnic Chinese in Malaysia became restrictive, many of them sought such opportunities in nearby Singapore and stayed on as permanent residents and Singapore citizens. However, in this day of globalization and the Internet, geographic proximity and its accompanying ready access to information and socio-cultural affinities are no longer strong pulls for skilled migrants, while language and educational links have become more important. Hence, many English-speaking professionals from ASEAN found employment in English-speaking countries in North America, UK and Australia-New Zealand. On the other hand, professionals conversant in the various European and Japanese languages tend to seek employment in these countries.
- *Third, disparities in educational development:* Countries in East Asia (Philippines, South Korea, Taiwan) that adopted the American and Japanese educational systems have long had broad-based tertiary education and produced large numbers of university and college graduates. With this foundation, South Korea and Taiwan were able to transit towards knowledge-based economies with little difficulty. On the other hand, Philippines economic development has been less robust, and Filipino university and college graduates had difficulties in securing remunerative employment at home and hence sought overseas

employment. Singapore, Malaysia and Hong Kong adopted the more restrictive British educational system. Singapore only rapidly expanded its university and polytechnic intakes from the 1980s and hence there is a shortage of experienced mid-level professionals and managers. Increasingly, ASEAN students studying in developed countries in North America, Europe, Japan and Australia-New Zealand are often attracted to stay on after graduation because of better-paying jobs, career-development prospects, and quality of life. The capacity of ASEAN professionals to secure overseas employment often depends on the quality of education received and the foreign language (particularly English) proficiency.

- *Fourth, policy factors.*

ASEAN countries can be divided into 3 main groups with respect to the mobility of professionals and skilled manpower. First, where inflows of skills far exceeded outflows of skills (that is, net brain gain). Singapore, Brunei and to a lesser extent Thailand are in this category. Second, where outflows of skills far exceeded inflows of skills (that is, net brain drain). Philippines and Malaysia are in this category. Most ASEAN countries do not have an active policy towards outward migration of its professionals and skilled workers except for the Philippines. Malaysia has historically large outflows of skills to Singapore but also increasingly to the developed countries of US-Canada, UK, Australia-New Zealand, reflecting dissatisfaction with discriminatory education and employment policies in the country. In recent years Malaysia is also actively promoting inflows of talents, including red-carpet treatment for its diaspora, as part of its economic restructuring strategy. Third, in the other ASEAN countries of Indonesia and CLV, skilled and professional manpower inflows and outflows do not figure prominently. In these countries, inflows have been limited by restrictive

regulations, while outflows have not been significant because of the small pool of professional and skilled manpower and their inadequate English proficiency that restricts their international mobility. Myanmar has English language proficiency but outflows are restricted by the political regime.

### ***Policies and Regulatory Frameworks on Outward Skills Mobility***

Policies range from “laissez faire” in which out-migration is regarded as a matter of individual choice, to specific policies to promote labour export, such as in Vietnam and Indonesia, so as to ease domestic unemployment and earn foreign exchange. Advances in modern transportation and ICT have greatly weakened the disadvantage of distance in choice of destination, while social and cultural links continue to bias migration in favour of certain locations. Measures to prevent brain drain by some countries include bonding of scholars on government scholarships ---- practiced in Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Vietnam. For example, in Indonesia, government scholarships are only given to civil servants and are regulated by each ministry’s regulation –minister’s decree. It is not a “national policy” since it is not stipulated on Law Perpres (government regulation) or Kepres (presidential decree). The Philippines and Malaysia are experiencing net brain drain.

### ***Philippines:***

Philippines stand out as the main supplier of skilled (also unskilled) labor to ASEAN countries and to developed countries such as the US, Canada, Europe and Australia. This reflects the large supply of Filipino professionals from its educational and training

institutions, Filipino command of the English language, and inadequate employment opportunities within the country. The Philippines government does not officially encourage overseas employment. But through the POEA, it promotes, facilitates and regulates the movement abroad of Filipino professionals, while TESDA provides the accreditation. Its labor attaches in the different countries gathers intelligence on employment opportunities and facilitates Filipino overseas employment. Filipino professionals working abroad include architects, engineers, health professionals, teachers, IT specialists and cultural workers. Filipino nursing and teaching professionals are in demand in various advanced countries because of the well established Filipino educational and training institutions and the command of the English language.

The Philippines represents a developing country that exports large numbers of its professional nurses to meet rising demand in OECD countries for healthcare professionals (nurses and doctors). The strong external demand has also attracted Filipino doctors and other health professionals to take up nursing qualifications to improve their “exportability”. Push and pull factors help explain why health professionals leave the Philippines. Push factors include low salaries at home, work overload, slow promotion, limited opportunities for employment, and the socio-political environment in the Philippines. Pull factors of receiving countries include higher compensation packages, better working conditions, opportunity to travel and learn other cultures, opportunity for family to migrate, and socio-political environment of receiving countries.

- The continuing exodus of experienced nurses is undermining the Philippines healthcare sector. Tullao (March 2008) argued that when the more productive human talents are

employed abroad, the less qualified and inexperienced are left domestically. Inefficiencies of these young and inexperienced service providers contribute to increases in labor costs in the Philippines. Also, the Philippines has to spend more to produce the same calibre of professionals that will in time also leave the country. The large remittances received by the Philippines are usually cited as a benefit from its out-migration. However, such remittances have also created the “Dutch disease” effect of exchange rate overvaluation.

### ***Malaysia:***

Kanapathy (March 2008) noted that Malaysian migration outflows are predominantly professional and technical manpower while migration inflows are almost entirely temporary low-skilled contract labor. Out-migration began in the early 1960s with migration for both work and long-term settlement, but recent trends suggest migrants are mostly temporary and in search of better opportunities. There are currently 784,000 Malaysians working abroad, with nearly half in Singapore, followed by Australia Britain and the US (Star Online 1 Nov 2010).

Programs have been implemented to woo the country’s talents back. In 2010, under the 10<sup>th</sup> Malaysia Plan, the government created the Talent Corporation to attract, motivate and retain talents and help agencies to ease the entry of skilled workers into the country. In addition to facilitating the diaspora to return, the Corporation also looks to engaging them, from wherever they are, to contribute to Malaysia. It also focuses on government scholars in local universities and abroad and chart out their professional development when they



return and join the workforce. It also looks into retaining highly skilled and talented foreign expatriates as well as enticing foreign experts who used to work in Malaysia to return. Criticisms of the work of the Talent Corporation include the need for a consistent policy of retaining talents and proposals for the government to offer incentives in the form of PR status in expatriates.

*Singapore* does not have a policy of restricting outward migration, but it has 2 regulations that temporarily restrict out-migration of young professionals and skilled manpower. One is the obligation for compulsory national military service for Singapore males. The other is the bonding of all tertiary students funded by government scholarships. Severe penalties are meted out to defaulters. A growing number of Singapore professionals are also working abroad, reflecting the internationalization of the Singapore economy and Singapore enterprises and the growing number of Singaporeans working for foreign MNCs, as well as Singaporean tertiary students studying abroad. Some have chosen to settle permanently abroad, particularly in the advanced countries. However, the inflow of brains exceeds the outflow. Nonetheless, given the small population size of Singapore, the government is concerned over the loss of the domestic talent pool and has supported networks to connect them with Singapore in the hope that they may one day return.

### ***Policies and Regulatory Frameworks on Inward Skills Mobility***

*Labour receiving* countries are sometimes apprehensive of the impact of large inflows of foreigners on their labour markets, and the demand pressures on social infrastructure and services. As a result, they attempt to control the volume and source of labour migrants. Policies are usually two-tracked and asymmetric, with liberal policies towards inflows of professionals and skilled manpower and highly restrictive policies towards inflows of unskilled and semi-skilled workers. Political-social-cultural considerations may also lead some receiving countries to prefer sourcing from particular regions and countries.

ASEAN governments have allowed or facilitated inflows of professionals and skilled manpower for various reasons, including:

- Facilitate FDI by permitting entry of foreign business people and professionals to accompany FDI – most ASEAN countries, with Singapore, Malaysia and Thailand having more liberal policies.
- To meet short-term skills shortages – Brunei, Cambodia, Laos, Malaysia, Singapore, Vietnam. Shortages are reported for Brunei in medical, nursing, accountancy and IT professions; Cambodia in engineering, IT, surveying; Indonesia in medical, dental, accountancy and IT; Laos in medical and dental; Malaysia in medical, dental, and IT; Philippines in scientists and technology workers; and Singapore and Vietnam in a wide spread of professions and skills.
- Facilitate structural/industrial upgrading –Indonesia, Myanmar, Philippines and Singapore. In the Philippines, to ensure a proper transfer of technology, DOLE requires employers of foreign nationals to provide an Understudy Training Program and

to designate at least 2 Filipino understudies. The functions of these employees must be deemed permanent and they must require skills or expertise that are scarce in the Philippines.

- Commitments under GATS and FTAs – ASEAN countries that are WTO members have to abide by their commitments under GATS, while ASEAN countries that are signatories to FTAs with provisions for services liberalization and investment liberalization would have to accommodate movement of natural persons.
  
- Promote health and education services: Several countries are seeking to improve and extend health and education services through permitting the entry of foreign professionals. Accreditation and recognition of professional qualifications through negotiations with and involvement of domestic professional bodies is one key policy area for movement of foreign professionals into these sectors. On education services, Singapore and Malaysia have policies encouraging establishment of foreign universities and campuses and recruitment of foreign academics to develop education hubs. On healthcare services several countries have facilitated inflows of health professionals to complement domestic doctors and nurses in providing healthcare services to nationals as well as promoting the country as medical centers for foreigners.

***Policies and regulations that facilitate and encourage inflow of professionals and skilled manpower:***

Foreign professionals and skilled manpower are attracted by:

- Better salaries and expatriate packages that include access to housing, medical benefits, education for children, and duty-free importation of household goods and vehicles.
- Better working conditions, job experience, and research opportunities
- Lower tax liabilities compared to home country
- Better quality of life compared to home country
- Prospects of permanent residence and citizenship

The main receiving countries are Singapore, Malaysia and Thailand. They have adopted different policy mixes that seek to balance various goals and differ significantly in the breadth and focus of policy. Singapore stands at one extreme, Thailand at the other and Malaysia is in between:

***Singapore:*** Singapore has a large net inflow of professionals and skilled manpower (and an even larger inflow of unskilled and semi-skilled workers). It has a national strategy to attract inflows of professionals and executives to augment its limited domestic “talent pool” so as to facilitate economic upgrading and ensure sustainable economic growth. Potential migrants consider salaries, career opportunities, the quality of life, amenities and the environment as well as personal income tax regimes. A perennial question for Singapore is whether its quality of life and tax regime are as attractive as that of Hong Kong.

Singapore’s foreign skilled manpower are associated with the large presence of FDI in manufacturing and in services. Traditionally most of them are from the advanced industrial

countries of US, Western Europe, Australia and Japan, reflecting the importance role of intra-corporate transferees from the thousands of MNCs operating in Singapore. The Singapore public sector and Singapore domestic enterprises also employ large numbers of foreign professionals and skilled workers. Increasingly, the government has sought to encourage the inflow of foreign talent from Asian sources. Foreign talent is being recruited through liberalized immigration policies, easing requirements for permanent residence and citizenship, offer of scholarships and research fellowships, recruitment missions to the main centres of learning by government agencies, and improving the living and cultural attractions and tax regime of Singapore for foreign expatriates. Active recruitment of these professionals for the public service is undertaken by the Professionals' Information and Placement Service (PIPS) formed under the Public Service Commission, while for the private sector, the Committee for Attracting Talent to Singapore (CATS) helps with the recruitment. Professionals and skilled foreigners seeking employment in Singapore require an Employment Pass, valid for up to 5 years and renewable.

Access to Singapore citizenship is limited to foreigners who are at least 21 years and have been PRs for at least 2–6 years immediately prior to the date of application. According to the immigration authorities, citizenship applicants must be “of good character”, intend to reside permanently in Singapore, and be able to support themselves and their dependents financially.

The very rapid growth of foreign professionals (including permanent residents and new citizens) in 2008-2009, coupled with the impact of the global recession on the job market for Singaporean professionals, led to rising public concerns over the influx of foreign

workers --- crowding out jobs, public civic space, public transport, education and healthcare facilities and leading to a real estate bubble. This has led the government to slowdown the intakes of permanent residents, new citizens, and employment pass holders in 2010 and a promise to keep foreign workers (professionals, skilled, semi-skilled and unskilled) at around one third of the Singapore workforce in the foreseeable future.

A growing number of Singapore professionals are also working abroad, reflecting the internationalisation of the Singapore economy and Singaporean enterprises as well as the growing number of Singaporeans working for foreign MNCs. Some have chosen to settle permanently abroad, particularly in the more advanced countries. However, the inflows of “brains” far exceed the outflow of “brains”. Nonetheless, the government is concerned over the “loss” of the domestic talent pool and have supported networks to connect them with Singapore in the hope that they may one day return.

**Malaysia:** Less than 2% of in-migration consists of high-skilled labor. The government argues that the lack of skilled and qualified workers was impeding its economic programs. By end of 10<sup>th</sup> Malaysia Plan, the percentage of skilled workers in the country must rise to 37%, highlighting ICT as a priority sector; the target is to increase GDP per capita to RM 38,000 by 2015. To encourage FDI and upgrade towards skill and knowledge intensive industries, policies on intake of foreign professionals and skilled manpower have been liberalized. Expatriates are allowed to work in almost all sectors, except those that impinge on national security and some restrictions are imposed on their numbers in banking and

finance. However, manufacturing, firms located in the various Economic Growth Regions can hire as many expatriates as required. Expats can bring along their dependents.

**Thailand:** Under the Investment Promotion Law, aliens are allowed to enter Thailand to investigate investment opportunities, or for other matters which might benefit investment. BOI will grant permission to stay in Thailand for not more than 6 months at a time. A promoted company will be allowed by BOI to bring in foreign personnel as skilled technicians/ experts together with their families. Duration of 1-year at a time for the work permit will be allowed except for positions that have been approved to work in the promoted company for more than 2 years. However, BOI encourage the employment of Thai nationals as managers/technicians. The majority of BOI-promoted firms are Japanese, British, and American. The largest share of occupations given work permits are managers and executives, followed by elementary occupations and professionals.

BOI has a One-stop Centre to handle all aspects of visa extensions and issuance of work permits, including work permit extensions, issuance of re-entry permits and changes in type of visas to non-immigrants. The office expected to be able to process extensions of visas and permits within 3 hours, assuming all necessary supporting documents are provided.

***Barriers to and regulations on employment of foreign professionals/skilled manpower:***

These cover constitutional provisions reserving such jobs for nationals; requirements and procedures for employment visas and employment passes and permits; sectors and occupations closed to or with numerical caps foreign professionals and skilled manpower; economic test to justify the need for employment of foreigners; requirement to have foreign professionals and skilled labor replaced by locals; lack of recognition of foreign professional education, training and experience; and licensing regulations of professional associations.

***(a) Legal and Administrative Framework on Inflows of Skilled Labor***

***Singapore:*** The government introduced several legislations since the 1980s for regulating the entry, employment, management, and departure of foreign labor. These include the Employment of Foreign Workers Act Immigration Act, Employment Agencies Act, Employment of Foreign Workers (levy order), Employment of Foreign Workers (fees) regulation, Work Permit (exemption) (consolidation) notification. The main government agencies involved are the Ministry of Home Affairs (MOHA) which exercises border controls under the Immigration and Checkpoint Authority, and the Ministry of Manpower (MOM) which issues work passes, enforces the regulations, and sees to the well being of foreign workers. Information regarding the different kinds of work permits and employment passes are available on the MOM website. There is extensive use of online information and applications resulting in transparency, efficiency and convenience. In January 2010, MOM launched the new Employment



Pass Services Centre (EPSC) to register and issue new Long Term Pass (LTP) cards to pass holders and their dependents entering Singapore on the various types of employment passes, providing a seamless and convenient service upon arrival in Singapore. Apart from MOHA and MOM, other agencies involved with managing and servicing foreign labour include the housing, physical planning and environmental authorities, the labour movement, and NGOs.

***Indonesia:*** Laws and regulations concerning foreign workers in Indonesia are:

- Law No. 13/2003 about Employment, Chapter 8: The Use of Foreign Labor
- Decision of Minister Manpower and Transmigration, Republic of Indonesia, Number Kep.228/Men/2003: About legislation procedures of “Plan of Using Foreign Manpower” (RPTKA)
- Decision of Minister of Manpower and Transmigration, Republic of Indonesia, Number Kep-20/Men/III/2004: About procedure to obtain Employing Foreign Workers Permit (IMTA)
- Regulation of the Minister of Manpower and Transmigration, Republic of Indonesia, Number Per-07/Men/III/2006: About Simplification of Procedure to Obtain Employing Foreign Workers Permit (IMTA)
- Regulation of the Minister of Manpower and Transmigration, Republic of Indonesia, Number Per-07/Men/IV/2006: About Changes in the Regulation of the Minister of

Manpower and Transmigration Number Per-07/Men/III/2006 about Simplification of Procedure to Obtain Employing Foreign Workers Permit (IMTA)

- Some regulations and practices: Law no.13/2004 on Labor, chapter VIII article 42-29 regulates the use of foreign workers with implementing regulation such as Presidential and Ministry Decree

**Cambodia:** Foreign employee quota should not exceed 10% of total employees, otherwise a special approval from Ministry of Labor and Vocational Training is needed (source: Cambodia Labor Law)

***(b) Constitutional Provision Reserving Jobs for Nationals***

**Philippines:** As a general rule, the RP Constitution reserves the practice of licensed professions to RP citizens save in cases prescribed by law. These include engineering (specific engineering sectors); medicine and allied professions (specifics including medicine, medical technology, dentistry, midwifery, nursing etc); accountancy; architecture. Philippine law (RA 8182) also requires that preference be given the RP citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed Feb 1998 (RA 8555) gives the RP President the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Although the constitutional language states that “the practice of all professions in the Philippines shall be limited to Filipino citizens”, this statement is immediately followed by “save in cases prescribed by law”.

The Philippines constitution is not a strict legal barrier to the participation of foreign professionals. Most of the laws regulating professions contain reciprocity provisions. There are 45 laws governing the practice of specific professions, and 40 contain “reciprocity” provisions allowing foreigners to practice their profession in the Philippines, provided their countries of origin also allow Filipinos to practice these. However, the provisions are administratively difficult to satisfy and very few foreign professionals apply to the Professional Regulatory Commission (PRC) other than for temporary permits. In addition, a Supreme Court rule limits the practice of law to Philippine nationals ---5 laws regulating criminologists, environmental planners, foresters, pharmacists, and radio and x-ray technologists state the profession is restricted to Philippine nationals and contain no reciprocity provisions. It could also be argued that, with Filipino professionals leaving the country in great numbers for higher paying jobs abroad, few foreign professionals are likely to work in low-paying professions in the Philippines, even if the restrictive practices are relaxed.

**Malaysia:** Quotas and preference given to locals (indigenous and non-indigenous Malaysians); professions and sectors with numerical caps on foreign employment --- no more than 30% in any particular sector

***(c) Visa Requirements, Employment Passes and Permits:***

Employment discrimination against foreign professionals and skilled workers usually take the form of domestic regulations on qualifications and licensing requirements and procedures, nationality requirements, and economic needs and labor market tests. The extreme of discrimination is where constitutional provisions and practices reserve employment only to nationals unless there are waivers. In such a situation, professional recognitions provided by MRAs can only play a secondary role and does not provide automatic market access. These deviations from national treatment are usually embodied in the requirements and conditions for issue of employment visas, passes and permits.

Market access faces difficulties in getting visas, including visa fee, cumbersome and lengthy visa processing. While ASEAN countries have implemented visa-free rule for social visits among themselves, business and employment visas are required for foreign businesses and professionals seeking employment. Visa costs include fees for single and multiple visas, complexity of the application procedure and processing time. In addition countries require foreigners to be issued with employment passes or employment permits. The inward movement of professionals seem to be most restrictive in Indonesia, Cambodia, Laos and Myanmar, which require an employer hiring a foreigner to ensure that some capacity-building and skills-transfer activities are conducted so as to eventually replace the foreigner with a local staff member.

**Brunei:** Regulations and procedures on recruitment of foreign workers are based on the following conditions --- employer must be legally registered in Brunei; before recruiting foreign employees, employers must have a labor license issued by Commission of Labor; approval of Employment Visa (unless for countries with visa exemption) and Employment Pass must first be obtained from Director of Immigration by the employer for every foreign employee to be employed.

The Employment Pass is valid for up to 2 years. Those issued Employment Pass with validity of over 3 months are required to register for Brunei Identity Card, whose validity is based on the Employment Pass held and extendable on extension of Employment Pass. Foreign employees are required to return to their countries of origin upon completion of their 2-year employment contract.

**Cambodia:** All foreign workers and businessmen must obtain Business Visa, which serves as the employment pass valid for 1-month and extendable to 1-year. Business visa does not serve as employment permit until the work permit is issued. After the applicant is confirmed employment by employer, must go through the process to apply for work permit from the Ministry of Labor and Vocational Training. The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit.

Criteria used for issuing employment passes and permits: no foreigner can work unless possesses a work permit and an employment card issued by Ministry of Labor. These

foreigners must also have a legal work permit; have legally entered Cambodia; possess a valid passport; possess a valid residency permit; be fit for their job and have no contagious diseases. These conditions must be determined by a Prakas (ministerial order) from the Ministry of Health with the approval of the Ministry of Labor.

There is a quota of 10% of total employees, applicable to all sectors ---office staff 3%, specialist 6%, labor worker 1%. Acceptance of international qualifications and qualifications from certain countries and education institutions. For medical professionals - --WHO countries

**Indonesia:** Foreign managerial and expert personnel are allowed in positions that cannot yet be filled by Indonesian nationals. There are incentives on employment and stay of foreign workers for companies with export ratio of at least 85%. 3 requirements must be met by all foreigners seeking employment ---a minimum 5-year educational or job experience relevant to the position sought, a willingness to state that the foreign professional will relinquish his position to nationals, and a capacity to communicate in the Indonesian language. Bureaucratic procedures which underlie processing of work permits and visa applications include cumbersome documentation requirements seeking to protect domestic professionals from foreign competition, and to ensure rapid replacement of foreign workers with nationals through regulation.

To employ foreign workers, a company must submit a Plan of Using Foreign Manpower (**RPTKA**) to Ministry of Manpower and Transmigration. The company must

ask for visa recommendation from Director of Provision and Use of Manpower and bring the recommendation to the Ministry of Law and Human Rights. After obtaining the approval letter of granting a visa, the company must submit request for Employing Foreign Workers Permit (IMTA) to Ministry of Manpower and Transmigration and have it signed.

- Requirements for RPKTA (Manpower Plan) to be legalized: Requires information on business license from the competent authority; validation certificate for the company as a legal entity with legal status; company's domicile from the local government; organization structure of company; copy of the letter of appointment of Indonesian as co-worker of foreign expatriate; copy of proof of reporting employment condition on the basis of Law No.7 of 1981 on the Report Obligatory in companies that are still valid.
- Information asked in the RPTKA form: identity of the employer of the foreign worker (TKA); position and/or status of foreign worker in the structure of the company's organization chart; TKA's amount of wages to be paid; job description and job requirements of TKA; work sites; TKA's usage period; appointment of an Indonesian citizen manpower employed as a companion of TKA; plan of educational program and training of Indonesian workers. The RPTKA should be submitted to BKPM to secure visas within 3 months from the date of approval
- Requirements for a visa recommendation: copy of the decision letter of RPTKA validation; passport copy of TKA to be employed; curriculum vita of TKA to be employed; copy of diploma and/or description of work experience of TKA to be employed; copy of letter of appointment of an Indonesian worker as the TKA's

companion. The visa extension for a foreign expatriate, to be issued by the immigration office, is based on extension of working permit issued by Regional Investment Coordinating Board concerned.

- Requirements of obtaining Employment Foreign Workers Permit (IMTA): copy of employment agreement; proof of payment of compensation fund of using TKA through the Bank appointed by the Minister (the compensation fund is USD100/month as Fund for Improving Skill and Expertise DPKK).
- Criteria used for issuing passes and permits: Education, professional qualifications; skills accreditation requirements; relevant work experience requirements; salary offered by prospective employer as indicator of level of skills and relevant work experience. Duration of the foreign expatriate's term to work in Indonesia is subject to government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. No quota or numerical cap by sector or profession.
  - Qualifications criteria for medical doctors: registration letter issued by medical board/council in native country; certificate/letter of good standing from medical board/council in native country; CV which includes person's identity, education, experience and medical publications; legalized medical certificate, proof of undertaking adaptation program if necessary; copy of competency certificate; health examination letter by registered medical doctors in Indonesia; signed letter of doctors' oath; signed letter of professional ethics; work permit from



immigration office; Indonesian language graduation certificate and proof of registration payment from a bank.

- Qualification criteria for nurses: education certificates, copy of competency certificate, proof of undertaking adaptation program, health examination letter by registered medical doctors in Indonesia, signed letter of professional ethnics and recommendation from professional organisation in native country.
- Qualification criteria for accountant: state register number for accountant, valid certificate of public accounting examination from IAPI (Ikatan Akuntan Public Indonesia) or in case the certificate dated more than 3 years, certificate of attending continuing accounting professional education for at least 60 credit units during the last 2 years, experience in general audit practice for at least 1000 working hours during the last 5 years and at least 500 working hours of those leading and/or supervising general audit which is legalized by the head of partners in the public accountant office, Indonesian ID card to prove local domicile, tax registration number (NPWP), its public accountant licence has never been revoked previously. In addition, there is mandatory membership of IAPI.

**Laos:** Foreign investors shall give priority to Laos citizens in recruiting and hiring. They have the right to employ skilled and expert foreign personnel when necessary. Foreign

investors have the obligation to upgrade the skills of their Lao employees. Under the Decree on Business Law Annex III, certain professions are closed to foreign workers.

All foreign investors and foreign employees must obtain work visas and work permits. The chief barriers to the entry of foreign professionals are cumbersome entry and work permit procedures, with exorbitant visa fees, processing delays in obtaining a work permit and multiple registration formalities. Different types of employment passes and permits, with application forms obtainable from the Department of Domestic and Foreign Investment Promotion. There are no numerical quotas.

**Malaysia:** Immigration processing time of several months often proves to be too long for prospective job seekers. Visa processing delays is often the reason for their acceptance of an alternative destination. Employment pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years. There are different types of employment passes and permits for professionals, academics and managers.

- A company with foreign paid-up-capital of less than US\$2 million will be considered for expatriate posts on the basis of the following: First, key posts can be considered where the foreign-paid-up capital is at least RM500,000; this figure is only a guideline and the number of key posts allowed depends on the merits of each case. Second, for executive posts which require professional qualification and practical experience, expatriates may be employed up to a max period of 19 years,

subject to condition that Malaysians are trained to eventually take over the posts. Third, for non-executive posts which require technical skills and experience, expatriates may be employed up to max period of 5 years, subject to condition that Malaysians are trained to eventually take over the posts. Fourth, employment of other foreign workers is allowed in construction, plantation, services (domestic maids, restaurants, hotel industry, trainers and instructors) and manufacturing sectors. Fifth, the Foreign Workers Division of Immigration Department is the approving authority for the employment of foreign workers belonging to the skilled, semi-skilled and unskilled categories (i.e. excludes expatriates under the management, professional, and technical/supervisory categories). Sixth, approval is based on the merits of each case and subject to conditions that will be determined from time to time. An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed. Seventh, to ensure that foreign labor is employed only when necessary, an annual levy on foreign workers is imposed. The levy rate on foreign workers in the manufacturing, services and construction sectors are RM125 pm and workers in the agricultural sector are RM30pm. Eighth, foreign workers (expatriates) who pay income tax are exempt from paying the worker levy

- Quota or numerical caps for each profession/sector ---not more than 30% in any particular sector
- Restrictions on employment of nationals from certain countries---no diplomatic relations with Israel.

- Criteria used for issuing passes and permits ---contract of employment with a minimum period of 2 years' education and professional qualifications; skills accreditation requirements; relevant work experience requirements; salary offered by prospective employer as indicator of level of skills and relevant work experience.
- Preference given to education and qualifications from first world countries in the British Commonwealth, North American and EU.

**Myanmar:** The chief barriers to the entry of foreign professionals are cumbersome entry and work permit procedures, with exorbitant visa fees, processing delays in obtaining a work permit and multiple registration formalities. Employment preference is given to citizens provided that MIC may, if necessary, allow the appointment of foreign experts and technicians by enterprises formed under the Permit issued by MIC. An economic organization formed under a Permit shall make arrangements for local and foreign training so as to ensure its local personnel proficiency in their work and promotion to higher ranks of services

***Philippines:***

The following are the more common types of work visas:

- *Multiple entry special visa:* for foreign personnel of offshore banking units of foreign banks duly licensed by RP Central Bank to operate as such. These foreign

personnel shall be issued multiple entry special visa (under Presidential Decree No. 1034) valid for 1-year; foreign personnel of regional or area HQ of MNCs that are officially recognised by the RP government. These foreign nationals, their spouses and unmarried minor children accompanying them, may be issued multiple entry special visas valid for 3-years. The holder of this visa is exempted from obtaining an alien employment permit from DOLE as condition for working in RP.

- *Special non-immigrant or 47(a)(2) visa*: for entry of foreign personnel employed in supervisory, technical or advisory positions in EPZ enterprises, BOI-registered enterprises, and Special Government Projects. The visa is generally valid for an initial period of 1-year and renewable from year to year.
- *Pre-arranged employment of 9(g) visa*: for a foreigner who will be occupying an executive, technical, managerial or highly confidential position in a local company, or who is proceeding to RP to engage in any lawful occupation where a bona-fide employer-employee relationship exists. The visa is granted for a period co-terminus with the AEP, which is in turn granted for a period discretionary to the DOLE, usually based on duration of the assignment of the foreigner.
- *Treaty Trader's or Investor's visa*: for a national of the US, Germany or Japan, countries with which RP has concluded a reciprocal agreement for admission of treaty traders or investors. Company applying for the visa must be majority-owned by US, German or Japanese interests and the nationality of the foreigner and majority of the shareholders of the company must be the same. The foreigner must be employed in a supervisory or executive capacity, and the visa may be extended

to the foreigner's spouse and unmarried children. The visa is generally valid for 1-year subject to extension.

- *Subic Free Port Zone Work Visa and Clark Special Economic Zone Work Visa* : A foreign national who possesses executive or highly technical skills which no RP citizen within the Subic Free Port Zone and Clark Special Economic Zone possesses.
- *SIRV for investors in tourist-related projects and tourist establishments*: A foreigner who invests an amount of at least US\$50,000 in a qualified tourist-related project or tourism establishment, as determined by a government committee.
- *Special visa for employment generation (SVEG)*: The SVEG is granted to a foreigner with controlling interests in an entity/firm/partnership/corporation that establishes/expands/

rehabilitates a business activity/investment/enterprise/industry that enables the proportional employment of at least 10 fulltime/regular Filipinos on a long-term basis in the Philippines. Foreigners exercising managerial functions in an entity/firm/ partnership/corporation that has the power to hire/dismiss/promote employees may apply for SVEG. Foreigners with other investments in the Philippines consisting of real estate, shares of stock or bonds, insurance, mutual plans, estate funds, and local or foreign currency time deposits may avail themselves of the SVEG .....

Foreigners cannot be employed in areas where there is willing and able local personnel. The engagement of foreign persons is regulated through the provision in the amended

Philippines Labor Code on employment permit of non-resident aliens ---it states that “any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor and Employment (DOLE)”.

- The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien desired. No alien disqualified under the Anti-Dummy Law, can intervene in the management, operation, or control of the business reserved to Filipino except when said alien is a technical personnel whose employment is specifically authorized by the Philippines President upon recommendation of the department head concerned.
- Regarding the practice of licensed profession, foreigners may be allowed to practice in the Philippines provided the same treatment is accorded to Filipino professionals in the alien’s home country under the principle of reciprocity.
- BOI-registered companies may employ foreign nationals for supervisory, technical or advisory positions for a period not exceeding 5 years from its registration, extendable for limited periods at the discretion of the BOI. Majority foreign-owned BOI registered companies may employ foreign nationals for President, treasurer, and general manager positions beyond the period of 5 years.

- Subic Bay Freeport enterprises may employ foreign nationals (any positions) upon prior approval of the Subic Bay Metropolitan Authority for a period of 5 years extendable from year to year. Foreign nationals entering into cost operating contracts and service with the government for exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals (any position). Foreign nationals under the Corporation Code may be employed as member of the Board of Directors by election to the Board.

The AEP (Alien Employment Permit) permit fee is P8,000 for 1-year validity plus P3,000 for every additional year of validity up to a maximum of 5 years. An application for AEP shall be filed personally or through their respective employer with the DOLE Regional Office or Field Office having jurisdiction over the intended place of work. Documentary requirements in filing application for AEP ---acceptance of international qualifications from certain countries and educational institutions; bilateral agreements relevant for recruitment of health professionals (for example, with Ireland, Germany, UK, Japan). AEPs issued more than doubled during the decade, with the growth reflecting the demand for foreign labor services to enable the local economy to cope with the fast changing innovations and technological advances in the global market. The bulk are Japanese and Korean nationals in manufacturing, particularly in firms located in the industrial zones, followed by real estate and business activities, and transport storage and communications.

*Singapore* provides largely visa-free entry for business and social visitors, but have 3 types of visas for employment. First, semi-permanent residents with semi-permanent work



passes who are allowed to take any job anywhere in Singapore (valid for 5 years); they can apply for citizenship and face no restrictions in the labour market and can bring their families. Second, foreign professionals with employment passes which are issued only for specific jobs and for a specific duration (valid for 1-5years); although tied to a specific company, Such employment pass holders enjoy limitless opportunities to get their permits extended. Third, short term contract workers with permits usually valid for 2 years (subject to renewal)

Singapore has an elaborate structure of employment passes (EP) for foreign professionals and skilled manpower which are defined by educational/skills qualifications and salaries. Employment passes are valid for up to 5 years and are renewable. There is no foreign worker levy or dependency ceiling quota as with lower-skilled work permit holders. They are also eligible to apply for dependent pass (DP) for spouse and unmarried children and may apply to become Singapore permanent residents or citizens Except for the Q and S pass holders, they may also apply for Long term social visit pass (LTSVP) for parents, parents-in-law, step-children, spouse, handicapped children and unmarried daughters. Employment pass is also tied up with the specific employer, except for the Personalised Employment Pass.

- ***P passes*** are issued to foreigners who hold professional qualifications and seeking to work in a professional, managerial, executive, or specialist capacity. They are generally issued to those with university degrees, or have skills and years of work experience. They are issued on a case-by-case basis to investors and entrepreneurs who can contribute to the Singapore economy as well as to persons of exceptional

ability in the arts, sciences and business. *P1 passes* are issued to applicants with fixed monthly salaries of more than S\$7,000, while *P2 passes* are issued to those with fixed monthly salaries of S\$3,500-S\$7,000. *Q1 passes* are issued to foreigners of lesser but acceptable degrees, professional qualifications and specialist skills with lower fixed monthly salaries of over S\$2,500 but under S\$3500. An Employment Pass (EP) is normally tied to a specific employer and any change of employer requires a fresh application.

- ***Personalized Employment Pass (PEP)***: The PEP is not tied to any employer and holders can take on employment in any sector (with some exceptions) and do not need to re-apply for a new pass when changing jobs and can remain in Singapore for up to 6 months in between jobs. The PEP is non-renewable and is valid for 5 years and is available for certain categories of P1, P2 and Q1 pass holders.
- ***S pass*** was introduced in 2004 for mid-level skilled foreigners whose monthly fixed salary is at least S\$1,800, with other criteria being education qualifications, skills and job type and work experience. The number of S-Pass holders a company can employ is capped at a Dependency Ceiling of 25% of the company's total workforce. S Pass applicants with fixed monthly salaries of more than S\$2500 pm may apply for Dependent Passes for their family members. As with employers of work permit holders, employers of S Pass holders must purchase medical insurance for their employees.
- In January 2008, 2 new categories have been introduced for Professional Visit Passes (PVP) which is valid for 6 months. The original two groups cover

professionals who possess specialised skills such as commissioning new equipments or are involved in business arbitration or mediation services. The new categories are Work Permit (Performance Artiste) which applies to foreign performers wanting to work at nightspots; and Miscellaneous Work Permit (MWP) that applies to key organisers of religious, ethnic and community gatherings and foreign journalists covering events.

**Thailand:** The Investment Promotion Law allows aliens to enter Thailand to investigate investment opportunities or for other matters which might benefit investment. BOI will grant permission to stay in Thailand for not more than 6 months at a time. The Alien Occupation Law requires all aliens working in Thailand to obtain a Work Permit. The Work Permit is subject to renewal or extended visa. A Work Permit is valid for 1 year but extendable.

The number of foreign workers allowed in a company is determined by its registered capital –2 million baht per 1 foreign worker with a max of 10 workers is 3% of the firm's fulltime workforce.

- If the company is registered with BOI, can obtain multiple work permits without needing to increase registered capital, depending on the agreement reached with BOI. However, BOI companies need to be set up with minimum of 1 million baht of registered capital.

- If the company does not have BOI approval and the foreign employee is not married to a Thai national, then 2 million baht of registered capital per work permit holder will be required. If applicant is married to a Thai national, then the required amount of registered capital is 1 million baht.

**Vietnam:** Enterprises with foreign owned capital and parties to a business cooperation contract shall have the right to recruit and employ labor in accordance with business requirements and must give priority to Vietnamese citizens, shall only recruit and employ foreigners for jobs which require a level of technical and management expertise which a Vietnamese citizen cannot satisfy but must train Vietnamese citizens as replacements. Criteria used for issuing passes and permits are education, professional qualifications and relevant work experience.

***Educational and Professional Qualifications, Regulations and Licensing Requirements, Quality Assurance and Language Requirements***

A major challenge is certification of professional qualifications skills across ASEAN countries with different educational systems and standards. MRAs are designed to facilitate mobility of professionals in the regulated or partially regulated occupations. Medical doctors and nurses clearly belong to the first category in all ASEAN countries. IT professionals belong to an unregulated category with no legal requirements for registration or licensing, or even a requirement to comply with professional standards set up by a corresponding professional body.

At the 7<sup>th</sup> ASEAN Summit in November 2001, Leaders mandated the start of negotiations on mutual recognition arrangements (MRAs) to facilitate the flow of professional services under AFAS. An MRA enables professional service providers registered/certified in its signatory countries to be equally recognized in other signatory countries. ASEAN has concluded MRAs on:

1. Engineering services, signed in December 2005
2. Nursing services, signed in December 2006
3. Architectural services, signed in November 2007
4. Framework for surveying qualifications, signed in November 2007
5. Medical practitioners, signed in February 2009
6. Dental practitioners, signed in February 2009
7. Accountancy services, signed in February 2009
8. Common competency standard for tourism professionals is being developed.

Quality assurance refers to pre-employment requirements, health and security clearance, personal and professional references. These are normally required by receiving countries and prospective employers.

Language proficiency (in the national language of receiving country) is usually required in certain professions, such as medical, nursing, teaching and legal to ensure efficient delivery of service and protect consumers. It acts as a serious barrier to skilled labor mobility. In

countries where English is one of the state languages and a language of instruction in the tertiary system (Singapore and Philippines) the mobility of healthcare and teaching professionals is greatly facilitated. Likewise, prospects of working abroad for healthcare professionals from Myanmar are greatly facilitated by their English language skills. On the other hand, lack of English language skills is a major impediment to international mobility of Indonesian and Thai professionals. Entry into Japan of healthcare professionals under various bilateral EPAs with ASEAN countries requires that the foreign nurses undergo appropriate language training before they qualify for a Japanese license/registration.

## **5. CONCLUSION**

“Free flows of skilled labor” is a goal of the AEC to be realized by 2015. In allowing for movement of skilled labor, according to the prevailing regulations of the receiving country, ASEAN is working to:

- Facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labor who are engaged in cross-border trade and investment related activities.
- Facilitate the free flow of services, particularly, develop core competencies and qualifications for job/occupational skills required in the priority service sectors by 2009 and in other services sectors by 2015. This entails completing MRAs for major professional services, including Priority Integration Services (PIS) sectors of e-commerce, healthcare, air travel, tourism and logistics by 2008; developing core competencies (concordance of skills and qualifications) for job/occupational skills required in PIS by

2009; developing core competencies (concordance of skills and qualifications) for job/occupational skills in all service sectors by 2015.

- Enhance cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region.
- Strengthen the research capabilities of each ASEAN Member Country in terms of promoting skills, job placements and developing labor market information networks among ASEAN Member Countries

Skilled labor mobility is essential for effective implementation of services liberalization and FDI liberalization as well as a goal in itself for deeper ASEAN economic integration. Further, as more ASEAN countries strive to move up the technological ladder, liberalizing trade in goods and services and in FDI is not enough, and a larger pool of professional and skilled manpower becomes necessary. Until such time when domestic educational and training institutions are able to supply the necessary high level manpower, countries will have to depend on “foreign talents”. Even with adequate domestic supply there is still a need for foreign talents, as they will provide the competition, stimulation and synergy to improve the quantity, quality and productivity of domestic talents. Some countries, particularly Singapore and to a lesser extent Malaysia, are regarding foreign talent as an upgrading and competitive tool and to enhance their roles as education and medical hubs, and have active policies to promote inflows of foreign professionals and skilled manpower. Most ASEAN countries,

however, have yet to move away from policies, regulations and practices that aimed at protecting domestic professionals and skilled workers from foreign competition.

Effective cooperation among the ASEAN University Network in terms of mobility of students and staff remain limited, reflecting the sharp differences in curricula and standards among the institutions, lack of ASEAN “role models” and the limited financial resources for student and staff exchange. Cooperation and exchange tend to be with universities and institutions from the advanced countries of North America, Western Europe, Australia and Japan rather than intra-ASEAN. It does not help that the medium of instruction in the ASEAN countries is usually the national language. A greater use of the English language as a medium of instruction would facilitate student and staff exchanges among ASEAN countries, and in the process gain wider recognition of ASEAN academic and professional qualifications. Institutions should redouble their efforts to achieve cooperation and integration in education and adopt policies across countries that will facilitate the exchange of students and staff, and eventually the mobility of skilled workers. It would be useful if ASEAN adopted concerted approaches to improve the efficacy of their education and training institutions in providing the necessary skills for the labor market.

MRAs appear to be the main tool for skilled labor mobility in ASEAN. However, negotiating for recognition is a complex and time-consuming process given the wide differences in development levels among ASEAN countries. Effective implementation of these MRAs pose even further problems.



Negotiating bilateral MRAs might be easier to achieve and implement.

Negotiations of MRAs cannot be equated with market access and effective intra-ASEAN skills mobility. There are many domestic regulations and practices that impede such mobility. These include constitutional provisions reserving such jobs for nationals; requirements and procedures for employment visas and employment passes and permits; sectors and occupations closed to or with numerical caps on foreign professionals and skilled manpower; economic and labor market tests to justify the need for employment of foreigners and requirement by employers to have them replaced by locals within a stipulated period; lack of recognition of foreign professional education, training and experience; licensing regulations of professional associations; and language proficiency requirements.

It would be hard to envision a single market and production base without the free flow of skilled labor to deliver on services and FDI liberalization. Countries should try to remove, as far as possible, impediments to free flow of skilled labor. More information exchange and transparency and simplifying visa and employment pass applications would help.

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ERIA Country Research Teams' inputs

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## Appendix;

Table 1: Conditions for approval of foreign employees

<b>Brunei</b>	Regulations and procedures on recruitment of foreign workers, ranging from laborers to executive managers, except for clerical and related workers, drivers, securities and related workers where locals are available are based on the following conditions: 1st, employer must be legally registered in Brunei 2nd, before recruiting foreign employees, employers must have a labor licence issued by Commissioner of Labor 3rd, approval of Employment Visa and Employment Pass must first be obtained from Director of Immigration by the employer for every foreign employee to be employed
<b>Indonesia</b>	Foreign managerial and expert personnel in positions cannot yet be filled by Indonesian nationals are allowed. There are incentives regarding employment and stay of foreign workers for companies with export ratio of at least 85%
<b>Laos</b>	Foreign investors shall give priority to Lao citizens in recruiting and hiring. They have the right to employ skilled and expert foreign personnel when necessary. Foreign investors have the obligation to upgrade the skills of their Lao employees. Under the Degree on Business Law Annex III, certain professions are closed to foreign workers.
<b>Malaysia</b>	A company with foreign paid-up capital of less than US\$2 million will be considered for expatriate posts on the basis of the following: 1st, key posts can be considered where the foreign paid-up capital is at least RM500,000. This figure, however, is only a guideline and the number of key posts allowed depends on the merits of each case. 2nd, for executive posts which require professional qualification and practical experience, expatriates may be employed up to max period of 10 years, subject to condition that Malaysians are trained to eventually take over the posts. 3rd, for non-executive posts which require technical skills and experience, expatriates may be employed up to max period of 5 years, subject to condition that Malaysians are trained to eventually take over the posts. 4th, employment of other foreign workers is allowed in construction, plantation, service (domestic maids, restaurants, hotel industry, trainers and instructors) and manufacturing sectors. 5th the Foreign Workers Division of Immigration Department is the approving authority for the employment of foreign workers belonging to the skilled, semi-skilled and unskilled categories (ie does not include expatriates under the management, professional and technical/supervisory categories). 6th, approval is based on the merits of each case and subject to conditions that will be determined from time to time. An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed. 7th, to ensure that foreign labor is employed only when necessary, an annual levy on foreign workers is imposed. The levy rate on foreign workers in the manufacturing, services and construction sectors are RM125 pm and workers in the agricultural sector are RM30 pm. 8th, however, foreign workers (expatriates) who pay income tax are exempt from paying levy.
<b>Myanmar</b>	In appointing personnel in an organisation formed under the Permit issued by MIC, preference shall be given to citizens, provided that the MIC may, if necessary, allow the appointment of experts/technicians from abroad. An economic organisation formed under a Permit shall make arrangements for local and foreign training so as to ensure its local and foreign training so as to ensure its local personnel proficiency in their work and promotion to higher ranks of services.
<b>Philippines</b>	Foreigners cannot be employed in areas where there is willing and able local personnel. No alien disqualified under the Anti-Dummy Law, can intervene in the management, operation, or control of the business reserved to Filipino except when said alien is a technical personnel whose employment is specifically authorized by the Philippines President upon recommendation of the department head concerned. Regarding the practice of licensed profession, foreigners may be allowed to practice in the Philippines provided the same treatment is accorded to Filipino professionals in the alien's home country under the principle of reciprocity. BOI-registered companies may employ foreign nationals for supervisory, technical or advisory positions for a period not exceeding 5 years from its registration, extendible for limited periods at the discretion of the BOI. Majority foreign-owned BOI-registered companies may employ foreign nationals for President, treasurer, and general manager positions beyond the period of 5 years. Subic Bay Freeport enterprises may employ foreign nationals (any positions) upon prior approval of the Subic Bay Metropolitan Authority for a period of 5 years extendible from year to year. Foreign nationals entering into coal operating contracts and service with the government for exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals (any positions) Foreign nationals under the Corporation Code may be employed as member of the Board of Directors by election to the Board
<b>Thailand</b>	Under the Investment Promotion Law, aliens are allowed to enter Thailand to investigate investment opportunities, or for other matters which might benefit investment. BOI will grant permission to stay in Thailand for not more than 6 months at a time. A promoted company will be allowed by BOI to bring in foreign personnel as skilled technicians/experts together with their families. Duration of 1 year at a time for the work permit will be allowed except for positions which have been approved to work in the promoted company for more than 2 years. However, BOI encourage the employment of Thai nationals as managers/technicians. BOI has set up a One-stop Centre to handle all aspects of visa extensions and issuance of work permits, including work permit extensions, issuance of re-entry permits and changes in type of visa to non-immigrant. The office expected to be able to process extensions of visas and work permits within 3 hours, assuming all necessary supporting documents are provided.
<b>Vietnam</b>	Enterprises with foreign owned capital and parties to a business cooperation contract shall have the right to recruit and employ labor in accordance with business requirements and must give priority to Vietnamese citizens, shall only recruit and employ foreigners for jobs which require a level of technical and management expertise which a Vietnamese citizen cannot satisfy but must train Vietnamese citizens as

Source: ASEAN Secretariat website - Employment of Foreign Workers

Table 1 (Continued): Conditions for approval of foreign employees

	<b>2. Work Permit</b>
<b>Brunei</b>	<p>Foreigners entering Brunei to take up employment require Employment Pass, valid for up to 2 years.</p> <p>Foreigners from countries without visa exemptions with Brunei must obtain Employment Visa before entry.</p> <p>Foreign employees who are issued with Employment Pass with validity of over 3 months are required to register for Brunei Identity Card, whose validity is based on the Employment Pass held and extendable on extension of Employment Pass.</p> <p>Foreign employees are required to return to their countries of origin upon completion of their 2 year employment contract</p>
<b>Indonesia</b>	<p>Duration of the foreign expatriate's term to work in Indonesia is subject to government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. The visa extension for a foreign expatriate is based on extension of working permit issued by Regional Investment Coordinating Board concerned. Extension of the visa will be issued by the immigration office.</p> <p>The RPTKA or Manpower Plan should be submitted to BKPM to secure visas within 3 months starting from the date of approval.</p>
<b>Laos</b>	All foreign investors and foreign employees must obtain work visas and work permits
<b>Malaysia</b>	Employment Pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years.
<b>Myanmar</b>	Allowed for foreign experts and technicians employed by the enterprises formed under the Permit issued by MIC.
<b>Philippines</b>	Working visas are required
<b>Singapore</b>	<p>Foreigners (excluding PRs) who intends to work in Singapore are required to obtain employment passes issued under Regulation 9 of the Immigration Regulations. The minimum salary level for an Employment Pass is more than S\$2000. Foreigners whose monthly salary are below that should apply for R passes or 2-year work permits. All applications must be sponsored by a Singapore-based company.</p> <p>P passes are for those who hold administrative, professional and managerial jobs, entrepreneurs and investors and specialist talent (world class artistes and musicians)</p> <p>Q passes are for skilled workers and technicians</p> <p>R passes are for semi-skilled and unskilled workers with 2-year work permits</p> <p>Professional visit passes are for foreigners engaged in short-term professional assignments.</p> <p>Business or social visit passes for foreigners entering Singapore to attend business negotiations/discussions and required to apply for Business Visit Passes.</p>
<b>Thailand</b>	The Alien Occupation Law required all aliens working in Thailand to obtain a Work Permit prior to starting work. The Work Permit is subject to renewal or extended visa. A Work Permit is valid for 1 year but extendable.
<b>Vietnam</b>	<p>Work permit granted by Ministry of Labor, Invalid and Social Affairs, based on approval of the Investment Licensing body.</p> <p>Duration of Work Permit shall not exceed 3 years</p>

Source: ASEAN Secretariat website - Employment of Foreign Workers

Table 2: Employment passes and work permits

<b>Brunei</b>	Foreigners entering Brunei to take up employment require Employment Pass, valid for up to 2 years. Foreigners from countries without visa exemptions with Brunei must obtain Employment Visa before entry. Foreign employees who are issued with Employment Pass with validity of over 3 months are required to register for Brunei Identity Card, whose validity is based on the Employment Pass held and extendable on extension of Employment Pass. Foreign employees are required to return to their countries upon completion of their 2-year employment contract.
<b>Indonesia</b>	Duration of the foreign expatriate's term to work in Indonesia is subject to government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. The visa extension for a foreign expatriate is based on extension of working permit issued by Regional Investment Coordinating Board concerned. Extension of the visa will be issued by the immigration office. The RPTKA (Manpower Plan) should be submitted to BKPM to secure visas within 3 months.
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<b>Myanmar</b>	Allowed for foreign experts and technicians employed by the enterprises formed under the Permit issued by MIC.
<b>Philippines</b>	Working visas are required
<b>Singapore</b>	Foreigners (excluding PRs) who intends to work in Singapore are required to obtain employment passes issued under Regulation 9 of the Immigration Regulations. The minimum salary level for an Employment Pass is more than S\$2000. Foreigners with salaries below that should apply for R passes or 2-year work permits. All applications must be sponsored by a Singapore-based company. P passes are for those who hold administrative, professional and managerial jobs, entrepreneurs and investors and specialist talent (world class artistes and musicians) Q passes are for skilled workers and technicians R passes are for semi-skilled and unskilled workers with 2-year work permits Professional visit passes are for foreigners engaged in short-term professional assignments. Business or social visit passes for foreigners entering Singapore to attend business negotiations/discussions and required to apply for Business Visit Passes.
<b>Thailand</b>	The Alien Occupation Law required all aliens working in Thailand to obtain a Work Permit prior to starting work. The Work Permit is subject to renewal or extended visa. A Work Permit is valid for 1 year but extendable.
<b>Vietnam</b>	Work permit granted by Ministry of Labor, Invalid and Social Affairs, based on approval of the Investment Licensing body. Duration of work permit shall not exceed 3 years

Source: ASEAN Secretariat website - Employment of Foreign Workers; Singapore Ministry of Manpower website on Singapore

Table 3: Survey on inward skilled labor mobility

Questions:	Burundi	Cambodia	Indonesia	Laos	Malaysia	Morocco	Philippines	Singapore	Thailand	Vietnam
<b>1. General policy/regulatory framework</b>										
a. No policy										
b. Some regulations and practices	x		x	x			x	x	x	x
c. Very restrictive										
d. Fairly restrictive										
e. Fairly open		x			x	x				
f. Very open										
<b>2. General policy/attitude on brain drain and reverse brain drain</b>										
a. Bonding of government scholarships		x	x	x	x	x		x		x
b. Carrots to retain professionals					x					
c. Appeal to nationalism					x					
d. Financial/job incentives for returnees					x					
e. Others	x						x		x	
f. No policy										
<b>4. Reasons for opening up to foreign professionals</b>										
a. Short term measure to meet short term shortages	x	x		x	x			x		x
b. Facilitate structural/industrial upgrading						x	x	x		
c. Effect liberalisation of services and FDI		x		x		x				
d. Commitments under GATS and FTAs			x	x						
e. Others										
<b>5. Perceived shortage of professional manpower</b>										
a. Medical	x		x	x	x			x		
b. Dental			x	x	x					
c. Nursing	x							x		
d. Accountancy	x		x					x		
e. Legal								x	x	
f. Financial										
g. Engineering		x								
h. IT	x	x	x		x			x		
i. Surveying		x								
j. Others							x	x		
<b>6. Measures to attract foreign professional manpower</b>										
a. Better salaries and expatriate packages	x	x		x	x			x		
b. National treatment				x				x		
c. Better quality of life	x	x					x	x		
d. Offer of permanent residence and citizenship								x		
e. Others							x		x	
<b>7. Policy and regulatory restrictions on employment of foreign professionals</b>										
a. Constitutional provision reserving such jobs for nationals					x		x			
b. Professions/sectors closed to foreign employment					x		x			
c. Professions/sectors with numerical caps on foreigners		x			x					
d. Difficulties of getting employment visa	x									
i. Visa fee			x				x			
ii. Cumbersome and lengthy visa processing	x		x				x			
iii. Qualifications criteria and verification process	x		x		x			x		x
iv. Language requirement	x		x		x			x		x
v. Ethical and character referees and checks			x					x		
e. Restrictions on entry of spouse and dependent children			x							
f. Restrictions on employment of foreigners from some countries										
g. Acceptance of qualifications from certain countries	x	x			x		x	x		
h. Others									x	
<b>8. Employment pass and work permit requirements</b>	x	x	x	x	x		x	x	x	x

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4a: Measures on inward skilled labor mobility- Brunei

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward:</b>	Policy depends on the profession	Regulations to ensure that the qualifications are accredited and from a recognised professional body	Yes for all foreign workers	Sector and occupation caps very much determined by market needs		ASEAN, in particular Malaysia, Indonesia, Philippines and Thailand	Qualifications have to be accredited by Ministry of Health for doctors and nurses and approved by Brunei Medical Board. For accountants, qualifications must be accredited by Brunei Institute of Public Accounts and Ministry of Finance		

Source: Tabulations of questionnaire survey to ERIA country research teams



Table 4b: Measures on inward skilled labor mobility- Cambodia

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>		1. Law on Investment  2. Law on Taxation  3. Cambodia Employment and Labor Law	Business visa, valid for 1-visit and 1-month, extendable	Must have work permit to work (business visa not enough). 2 kinds of requirements: (1) Stay permit and (2) Work permit with max 1-year and cost USD100. No employment passes for border areas	Allowed to remit abroad in foreign currency after paying appropriate tax. Less than 182 days stay (non-resident) subject to 20% tax. For more than 182 days stay (resident) progressive tax payable up 20%	None	Doctors and nurses: from WHO countries	none	Article 18 of Law on Investment - obligation to provide adequate and consistent training to local employees; promotion of Cambodian staff to senior positions made over time, but enforcement not strong

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4c: Measures on inward skilled labor mobility- Laos

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>	Yes	Labor law	Certificate of employment	FDI  No sector/occupation caps	None	In practice, preference for	Yes	Yes	Yes

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4d: Measures on inward skilled labor mobility- Malaysia

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>		see attached	see attached	see attached	see attached	For public sector-3rd world Commonwealth, South Asia, Indonesia, Egypt. For private sector-- 1st world Commonwealth, North America, EU, Ireland	Subject to recognition by government and relevant professional bodies. Preference given to 1st world Commonwealth, North American and EU countries	see attached	see attached

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4e: Measures on inward skilled labor mobility- Myanmar

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>	Fairly open policy	1. Dept of Labor performs registration for foreign professionals given permission to work by the Myanmar Investment Commission. 2. Foreign professionals shall abide by immigration rules, regulations and procedures	Foreign professionals must meet requirements of Ministry concerned	Foreign professionals allowed to work with permission of MIC. No specific caps by sector/occupation/firm	None	None	Subject to concerned agencies and departments and ministries	None	Training locals are subject to related firms

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4f: Measures on inward skilled labor mobility- Philippines

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>	Generally, the RP constitution reserves the practice of licenced professions to citizens. RA8182 also requires that preference be given to citizens in the hiring of consultants and other professionals necessary for implementation of projects funded by foreign assistance. However, RA8555 provides for Presidential waiver.	See list	See List	1. Multiple entry special visa; 2. Special non-immigrant 47a2 visa; 3. Pre-arranged employment 9g visa; 4. Treaty Trader's or Investor's visa; 5. Subic Bay FPZ work visa; 6. Clark SEZ work visa; 1. Special resident retiree's visa; 2. Special investor's resident visa; 3. SIRV for investors in tourist-related projects; 4. Subic FPZ residency visas for retirees; 5. Special visa for employment generation.  There are no provisions on caps/quotas --hiring foreigners depends on the needs of the company provided the non-availability of competent and able person in RP	Gross income received by foreign employed in the following entities is subject to 15% tax --- regional or area HQ or regional operating HQ established in RP by MNC; offshore banking units; service contractors or subcontractors in petroleum operations.  Alien expat of regional or area HQ enjoys duty-free importation of personal and household effects except motor vehicle	MRA among ASEAN members.	See List	Employment of foreign professional will only be allowed after determination of non-availability of RP citizen competent, able and willing to perform the same services. The labor market test is one main barrier for trade in services, especially in education sector where foreign professionals may be allowed to teach	DOLE requires employers of foreign nationals to provide an Understudy Training Programme and to designate at least 2 Filipino understudies. The functions of these employees must be deemed permanent, and they must require skills or expertise that are scarce in RP.
<b>Outward</b>	RP government promotes, facilitates and regulates movement abroad of Filipino professionals through POEA, with labor attaches abroad gathering intelligence on employment opportunities to facilitate overseas employment. The RP government gives preference to overseas employment of higher skilled worker categories and facilitates their movement through POEA and accreditation through TESDA. Government seeks a selective promotion of overseas employment.			An Overseas Employment Certificate (OEC) is a requirement under POEA Rules and Regulations to help ensure that OFWs are properly documented and protected. No quotas under JPEPA for IT and medical workers	RP citizens working abroad generally considered non-resident and exempt from RP income tax on income earned abroad.	POEA has list of restricted markets and skills where deployment of Filipino workers are prohibited	Qualification criteria depends on needs of hiring countries		

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4g: Measures on inward skilled labor mobility- Singapore

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>	Yes	Yes		P1,P2,Q1,S No caps	see List	None	Yes	None	None

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4h: Measures on inward skilled labor mobility- Thailand

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>		1. Immigration Act 1979. 2. Alien Employment Act 2008. 3. Board of Investment	Must apply for non-immigrant type B visa (business visa). Period of stay not to exceed 1-year and extendable on yearly basis.	Under Alien Employment Act, work permit required, although foreigner may have a non-immigrant visa. Work permit is job-specific and geographic-specific, validity not exceeding 2 years except for BOI promotion. Renewal of work permit not exceeding 2-years each time, with total length of 4-years unless otherwise prescribed by Ministry  No sector/occupation/firm caps	None	None	see list	None	None

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4i: Measures on inward skilled labor mobility- Vietnam

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
<b>Inward</b>	Yes	Must have employment permit if work for more than 3 months. For head of foreign firms no employment permit needed	None	For some professions	None	None	With higher education	None	None

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 5: Movement of natural persons in Singapore FTAs

<b>Singapore-New Zealand</b>	<p>Movement of Business Persons: For intra-corporate transferees the following conditions apply:</p> <ul style="list-style-type: none"> <li>a. Executives and senior managers, an initial stay of up to 3 years in NZ</li> <li>b. Specialist and/or senior personnel, an initial stay of up to 3 years</li> <li>c. Specialist personnel, an initial stay of up to 3 years</li> <li>d. Installers and servicers, for periods of stay not exceeding 3 months in any 12 month period</li> <li>e. For business visitors, a period/periods not exceeding 3 months in any 12 month period</li> </ul>
<b>Singapore-Australia</b>	<p>Movement of Business Persons: This chapter covers 2 major categories of business persons directly involved in cross-border trade and investments through the following commitments:</p> <ul style="list-style-type: none"> <li>a. Business visitors will be permitted to enter and engage in business activities within Australia for a period of 3</li> <li>b. Intra-corporate transferees including managers, executives and specialists within organisations will be permitted to stay and work in Australia for a committed period of up to 14 years.</li> </ul> <p>Both parties agreed to confer the same benefits on both citizens and PRs of the other country under this chapter. Both countries have committed that neither country shall require labor market testing, labor certification tests or other similar procedures as a condition for temporary entry of business persons</p>
<b>Singapore-Japan</b>	<p>Movement of Business Persons: There may be limitations on the treatment accorded under this Part to natural persons who are PRs of Singapore, where Japan adopts measures pursuant to its domestic laws and regulations</p> <p>The Chapter will facilitate the movement of 4 major categories of business persons:</p> <ul style="list-style-type: none"> <li>a. Business visitors such as salespersons, will be permitted to enter and operate in Japan for a period of 90 days.</li> <li>b. Intra-corporate transferees will be permitted to stay and work in Japan for as long as they are required by their companies.</li> <li>c. Investors will be permitted to stay in Japan in order to establish and maintain their investments</li> <li>d. Engineers can enter Japan to service their contracts with companies in Japan</li> </ul>
<b>Singapore-EFTA</b>	<p>Natural persons covered by a Party's specific commitments shall be allowed to supply the service in accordance with the terms of those commitments. This shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence of employment on a permanent basis.</p> <p>This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in a manner so as to nullify or impair the benefits accruing to a Party under the terms of the specific commitment</p>
<b>Singapore-US</b>	<p>Movement of Business Persons: Only Singapore citizens will gain benefits from the Movement of Natural Persons chapter for the USSFTA. All of the categories for business persons need not to be subject to labor certification tests. Business visitors to the US do not have to apply for a visa because of the Visa Waiver Program.</p> <p>The H1-b1 visa is a specially created category under the USSFTA. It benefits Singapore professionals in that it can be renewed yearly with no upper time limit. The H1-b1 visa is subject to a quota of 5400 H1-b1 visas per year for Singapore. As it is specifically allotted to Singapore citizens, there is no competition with other nationals.</p> <p>Whilst the H1-b visa is subject to a labour market test, this is not required under the H1-b1 visa. Hence the US employer does not need to prove that no other American can take the job that the Singaporean is applying for.</p> <p>The business visitors could extend their visit up to 90 days. Intra-corporate transferees with L1A and L1B visas are allowed up to an initial period of 1-3 years, an extension up to a max of 7 years may be allowed. However, the total term must not exceed 8 years.</p> <p>Traders with E1 or E2 visas are allowed a 2-year maximum stay period</p>

Table 5 (Continued): Movement of natural persons in Singapore FTAs

<b>Singapore-Korea</b>	<p>Movement of Business Persons: The Chapter lays out the terms and extent to which citizens and PRs of one country can enter into the other country for the purpose of doing business. It will facilitate the movement of 4 major categories of business persons:</p> <ul style="list-style-type: none"> <li>a. Service sellers</li> <li>b. Short-term service suppliers</li> <li>c. Traders and investors who are managers, executives or specialists;</li> <li>d. Intra-corporate transferees who are employed as managers, executives, or specialists</li> </ul>
<b>Singapore-India</b>	<p>Movement of Business Persons: Business visitors going into India for negotiation of deals, market exploration may apply for a multiple journey visa up to a validity period of 5 years provided the relevant terms and conditions apply. (Note: one criterion imposed is that applicable measures concerning the protection of public health and national security may limit the period of visa eg from 5 years to at most 2 years.</p> <p>Short term service suppliers who are going into India to provide a specific service (without a commercial preference can stay for up to 90 days in single visa with possible extension for a further 90 days</p> <p>Intra-corporate transferees refers to personnel from businesses operating in both countries and requires the transfer of personnel like managers, technical expertise between the 2 establishments. They can apply for a visa with validity period up to 2 years with possible extgensions of up to 3 years at a time.</p> <p>Professionals can also apply for a visa period of up to 1 year. The annex provides a list of 127 specific occupations</p>
<b>Singapore-China</b>	<p>Movement of Business Persons: This Chapter facilitates easier temporary entry for 3 categories of business persons from Singapore into China. They include:</p> <ul style="list-style-type: none"> <li>a. Business visitors -- periods of stay up to a maximum of 6 months</li> <li>b. Intra-corporate transferees --shall be granted a long term stay permit as stipulated in the terms of contracts concerned or an initial stay of 3 years, whichever is shorter.</li> <li>c. Contractual service suppliers: In eligible sectors will be granted entry for up to 1 year, or+B22 the length of contract, which is shorter. The services provided are only limited to Accounting services, Medical and dental services, Architectural services, Engineering services, Urban planning services, Computer and related services, Construction and related engineering services, education and tourism</li> </ul>
<b>Singapore-Panama</b>	<p>Movement of Business Persons: Intra-corporate transferees for an initial period of up to 2 years may be given. It may be extended for periods of up to 3 years at a time for a total term not exceeding 8 years</p> <p>Neither Party shall require labour market testing, labour certification tests, or other procedures of similar effect as a condition for temporary entry in respect of natural persons on whom the benefits of this Annex are conferred.</p>

## CHAPTER 5

### Quantifying the Benefits of Trade Facilitation in ASEAN

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*This chapter assesses the performance and progress of the ASEAN economies in trade facilitation, and the effect of improved trade facilitation on the region's manufacturing trade with a focus on port efficiency, customs environment, regulatory environment and service sector infrastructure. Under a scenario of raising the below-average countries halfway to the global average, ASEAN's trade is estimated to increase by \$99 billion, three-quarters of which comes from the region's own improvements. Also, regulatory reforms, for example, enhancing transparency of trade-related regulations and ensuring law-abiding operations of the regulatory authorities, are found to be most effective.*



## **1. Introduction**

Trade facilitation is becoming an increasingly important driving factor in trade expansion, as tariffs and major non-tariff barriers such as import quotas and voluntary export restraint have substantially dropped in the last three decades (ADB and UNESCAP 2009). Trade facilitation implies trade liberalization, through reduction of the trade costs associated with unnecessarily complex customs and border procedures, and inefficient transit arrangements (ADB and UNESCAP 2009).

Many developing countries have substantially liberalized trade in goods and services, but those reforms have been mostly in the area of tariffs. Some countries are still unsuccessful in reforms in a broader area of trade barriers. Trade facilitation is believed to have a growth promotion effect, not only by increasing trade flows but also because policy reforms and infrastructure development may help spur the internal economic growth of the country.

Thus, trade facilitation is becoming an important area of focus as a measure of trade liberalization. ASEAN initiated their concerted effort toward a free trade area in 1992, and the member economies have liberalized intra-regional trade substantially until recently particularly in the area of tariff reduction. Further commitment to trade liberalization was proposed within ASEAN in relation to their new goal of establishing an ASEAN Economic Community (AEC). This is specifically intended to establish a single market and production base, a competitive economic region, equitable economic development and integration into the global economy. Reducing transaction costs associated with trade and other economic interchange is one of the primary goals of economic integration in ASEAN

(Lee and Plummer, 2011). The ASEAN Economic Community Blueprint<sup>1</sup> states specific focus related to trade facilitation, namely, (1) developing simple, harmonized and standardized trade and customs processes, procedures and related information flows, (2) integration of customs structures and e-customs system, and (3) establishing developing national single windows as well as an integrated ASEAN single window, among others (Layton, 2007).

ASEAN comprises a diverse set of countries, in terms of their level of trade facilitation, ranging from countries that are far behind the global average to Singapore which is one of the world's best. Those countries which lag behind are also not active in international trade and are characterized by low income. This highlights the importance of countries catching-up in the process of economic integration, and in the regional economic growth of ASEAN.

The complexities in regard to non-tariff measures in general, and the lack of a precise definition of trade facilitation, have, however, made it difficult to quantify the benefits of trade facilitation reform and, thus, to provide targets for each country. This report tries to evaluate the extent of trade facilitation of countries worldwide, by constructing relevant indices as an effort to quantify the level of trade facilitation according to Wilson, Mann and Otsuki (2005), but with a greater time period coverage (2004-2008) and more countries (99 countries). A particular focus is given to the ASEAN member countries. Performance of the ASEAN countries is investigated over time, and is compared with the other developing regions, as well as with the OECD countries. As the next step, a regression analysis is used to estimate the effect of trade facilitation on trade flows, by using a gravity model, and a

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<sup>1</sup> "ASEAN Economic Community Blueprint" <http://www.aseansec.org/21083.pdf>.

simulation analysis is conducted to demonstrate gains from trade facilitation reforms.

This chapter is organized as follows. Section 2 investigates the trade profile of the ASEAN region. Section 3 explains our approach to measuring trade facilitation, and evaluates regions and individual countries in terms of their level of trade facilitation. Section 4 explains the empirical model to be used to estimate the effect of trade facilitation on trade flows. Section 5 conducts simulations of trade gains under alternative scenarios. Section 6 provides conclusions and policy implications.

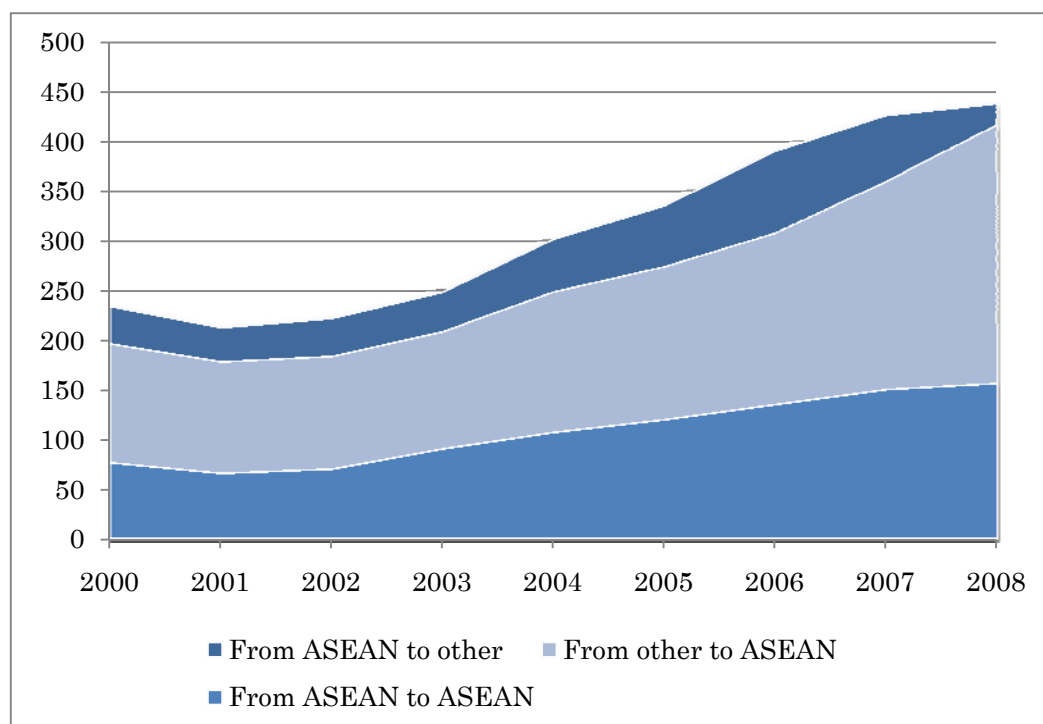
## **2. Trade profile of the ASEAN region**

Figure 1 indicates that ASEAN's manufacturing trade nearly doubled from 2000 to 2008. Intra-regional trade in ASEAN accounted for approximately one-third of its total trade in 2000. This implies that the ASEAN region relies for its trade, predominantly exports, on the countries outside ASEAN. The share of its exports to countries outside the region grew very rapidly, to account for approximately three quarters of its total trade. The growth in ASEAN's intra-regional trade was positive but relatively slow. This perhaps implies that the potential for growth in intra-regional trade has not been fully exploited.

The decline of tariffs in the ASEAN countries can partly account for ASEAN's trade expansion in the 2000s. But, improved trade facilitation also may have contributed to the trade expansion. For example, the number of days needed for an import decreased dramatically in Cambodia from 55 days in 2005 to 30 days in 2009 according to the World Trade Indicators of the World Bank. We will investigate the trends of trade facilitation in

ASEAN in more detail in Section 3.

**Figure 1. ASEAN's intra- and inter-regional trade in manufactured goods 2000-2008**  
(billion USD)



Source: Author's calculation based on UN Comtrade database.

### **3. Evaluating performance of ASEAN in trade facilitation**

There is no clear definition of trade facilitation, since it varies depending on the extent of measures to be included. In a broader sense, it covers all the measures that affect the movement of goods between buyers and sellers, along the entire international supply chain (ADB and UNESCAP, 2009). In a narrow sense, trade facilitation simply addresses the logistics of moving goods through ports or at customs checkpoints at national borders. A

broader framework for understanding trade facilitation includes a number of inter-related measures or factors, such as port reform and modernization, streamlining regulatory requirements and harmonizing standards, as well as customs regimes. For example, OECD adopts a broad definition i.e. “the simplification and harmonization of international trade procedures including the activities, practices and formalities involved in collecting, presenting, communicating and processing data, and other information required for the movement of goods in international trade”. Wilson, Mann and Otsuki (2005) provided multiple indices to measure a country’s performance in trade facilitation, following the broader definition. We follow the broader definition of trade facilitation in our analysis of its effect.

### **3.1. Constructing the Indicators of Trade Facilitation**

Based on a broader definition of trade facilitation, there are various measures and measurement approaches proposed in the literature. The class of direct measurements includes; time needed for customs clearance, need for irregular payment at customs, and shipping charges. These types of measures are likely to be direct and specific. Indirect measurements include those derived from the gap between the domestic and international prices of goods, including the tariff equivalent of non-tariff barriers. Indirect measurements- frequently indices- are typically abstract and unit free, and, sometimes, qualitative rather than quantitative.

The time needed for customs clearance is a frequently used measurement of trade

facilitation. The World Bank's "Doing Business" reports present a variety of measurements of trade facilitation based on cross-country firm surveys. These include days to clear customs, port and terminal handling, and number of inspections for imports. Fink, Mattoo and Neagu (2002) use the share of liner transport charges in import values of a particular good as their measure of maritime transport cost. In the World Bank "Technical Barriers to Trade" survey, product redesign costs and other costs incurred in complying with foreign standards, are directly collected from surveyed firms in developing countries.

The Asia-Pacific Economic Cooperation forum (APEC) (1999) has proposed the use of the amount of reduction of unit import prices as a measure of trade cost reduction. Similarly, a tariff equivalent has often been mentioned as a measure of insufficient trade facilitation, more generally of non-tariff barriers. A tariff equivalent is useful when one is unable to identify individual influencing factors, since it represents the effect of all influencing factors. The drawback is that it is difficult to isolate the effects of individual factors. More sophisticated approaches try to identify the degree to which particular barriers, such as technical regulations, contribute to the total tariff equivalent (Kee, Nicita and Olarreaga, 2006).

Wilson, Mann and Otsuki (WMO, hereafter) (2003) developed indicators to measure four areas of trade facilitation, namely; port efficiency, customs environment, regulatory environment and E-business usage, for APEC member economies. WMO (2005) extended this study to cover 75 countries, with a minor modification of the indexed inputs of E-business usage and a name-change to "service sector infrastructure". APEC (2004) applied the gravity model framework of WMO (2003) to estimate the impact of trade facilitation and

tariff reduction on trade in 15 APEC member countries. Walkenhorst and Yasui (2003) also constructed an index of border process quality, and an index of time for border clearance. It was made up of sub-indices, namely, customs efficiency, hidden import barriers, administrative integrity and trade facilitation commitments. Index approaches allow utilization of qualitative information as well as quantitative data, and thus make comparison possible between different types of data. Layton (2007) developed logistic performance index and sub-components such as documents required to export and import, and customs clearance time, for the ASEAN and OECD countries. Hollweg and Wong (2009) also developed various logistics restrictiveness indices for the ASEAN + 6 countries, including the barriers to trade and investment in the areas of customs procedures and maritime/aviation/road transport.

Each class of measures has advantages and disadvantages. The direct measures allow a relatively straightforward interpretation of how specific trade costs affect bilateral trade, as there is no or little data manipulation. Such measures, however, capture only very specific aspects of trade facilitation. The indirect measures are useful in measuring the aggregate effects of various barriers, but it is difficult or impossible to isolate each effect. The indexed measures reflect various distinct aspects of trade facilitation, and the possibility of data manipulation leaves researchers a certain flexibility to construct data from different sources. The drawback of these measures is, however, that interpretation is quite arbitrary. Therefore, their association with policy goals is not always straightforward.

Quantitative measures are useful in understanding to what extent developing countries lag behind in each area of trade facilitation. The World Bank report (2006) provides

evidence that addresses this point. While the total time taken to import was 14 days on average in OECD countries and 28 days in East Asia and the Pacific, it took 47 days in South Asia. Trade in Africa took the longest time -59 days on average- to make an import. Typical regulations in Sub-Saharan Africa required 18 signatures from domestic regulatory agencies as compared to 3 signatures in OECD countries and 7 signatures in East Asia and the Pacific. On average it still takes 3 times as many days, nearly twice as many documents and 6 times as many signatures to trade in a poor country as it does in rich countries.

In this report we update the trade facilitation indicators developed for a single time-period in WMO (2005) to include more countries (99 countries) and a longer time (from 2004-2008). Our trade facilitation indicators are;

- Port efficiency for each country  $J$  is the average of two indexed inputs from the Global Competitiveness Report (GCR):
  - Port facilities and inland waterways (integers from 1 (poorest) to 7 (best))
  - Air transport (integers from 1 (poorest) to 7 (best))
- Regulatory environment for each country  $J$  is constructed as the average of indexed inputs from the World Competitiveness Yearbook (WCY) and World Bank Governance Indicators (WBGI):
  - Transparency of government policy is satisfactory (WCY)
  - Control of corruption (WBGI)
- Customs environment for each country  $J$  is constructed from an indexed input from GCR:



- Hidden import barriers (integers from 1 (poorest) to 7 (best))
- Service sector infrastructure for each country  $J$  is from the Global Information Technology Report (GITR):
  - Effect of internet on business (integers from 1 (poorest) to 7 (best)) .

First, we normalize each input into the range from 1 to 7 in order to be consistent with the range used in GCR and GITR because the majority (four out of the six) of the raw data come from these reports.

An “indexed input” for economy  $J$  ( $J = 1, 2, \dots, N$ ):

$$\bar{H}_J = 1 + 6 * \frac{H_J - \min H_J}{\max H_J - \min H_J} ,$$

where the numeral denotes the “raw” data for economy  $J$  such as “air transport”. In the case of two inputs (port efficiency and regulatory environment), we take an average of the two inputs.

### 3.2. Performance of the ASEAN countries in trade facilitation

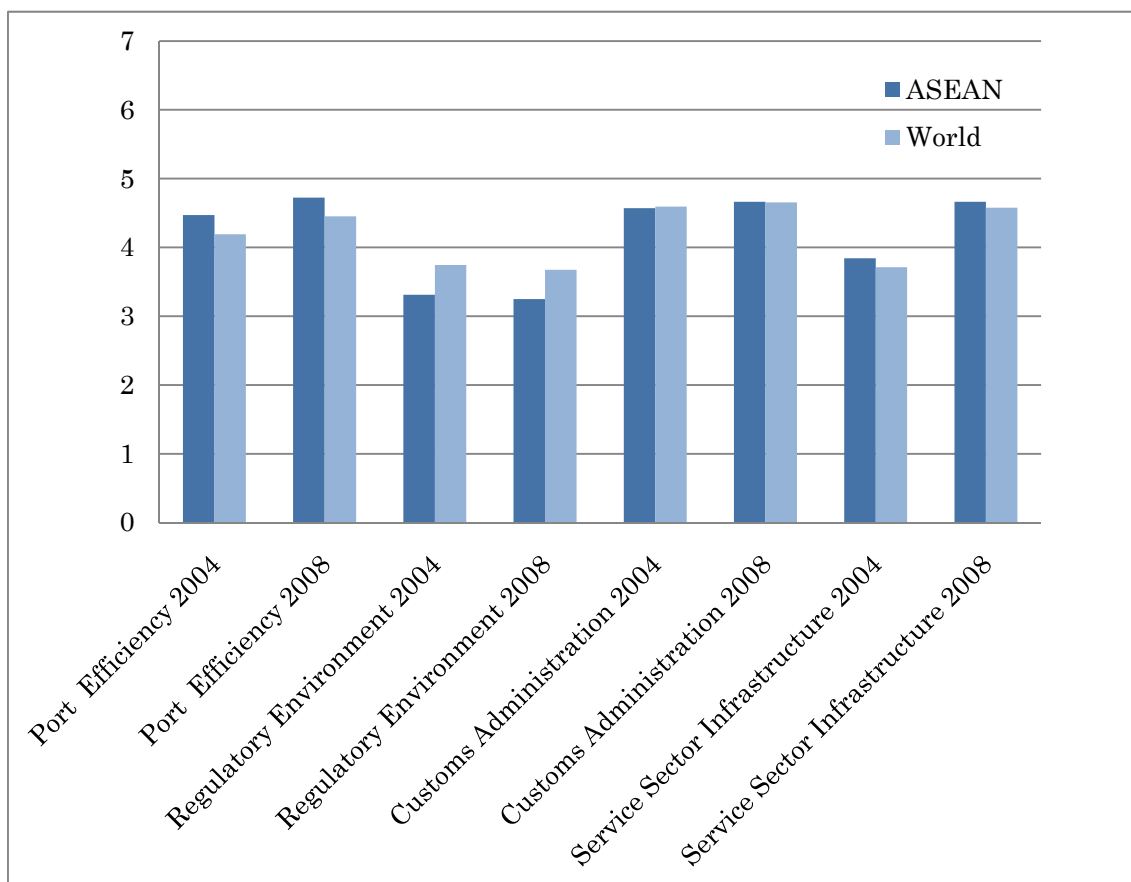
Table 1 shows the descriptive statistics of the indexed indices and the aggregated indices. Figure 2 shows the average index scores of the ASEAN countries and the world average; they are quite similar. This is perhaps because ASEAN includes countries with diverse stages of development. The highly developed countries such as Singapore seem to keep the average performance of the ASEAN higher than the developing regions as a whole.

**Table 1. Descriptive statistics of the trade facilitation indicators**

Category	Indexed Inputs	Mean	Std. Dev.	Min	Max
<b>Port Efficiency</b>	Water transport facilities	3.955	1.355	1.100	6.900
	Air transport facilities	4.607	1.164	1.700	6.900
	Aggregated index	4.287	1.201	1.450	6.900
<b>Regulatory</b>	Transparency of government policies	3.797	1.724	1.000	7.000
<b>Environment</b>	Control of corruption	3.742	1.244	1.000	7.000
	Aggregated index	3.693	1.267	1.075	6.913
<b>Customs Environment</b>	Prevalence of trade barriers (inverse)	4.596	0.848	2.100	6.700
<b>Service Sector</b>	Extent of Business Internet Use	4.098	1.003	1.790	6.410
<b>Infrastructure</b>					

Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

**Figure 2. Four trade facilitation indicators of ASEAN and the world in 2004 and 2008**



Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

Figures 3a-3d depict average index scores across regions from 2004 to 2008. Overall, the performance of the ASEAN is relatively better than other developing regions. Port efficiency of the ASEAN or the East Asia and Pacific region (EAP) is the second largest among the developing regions. The EAP average is slightly lower than the ASEAN average. The score is still far below the OECD average, but the ASEAN's score is slightly increasing over time, indicating that it is catching up with the OECD.

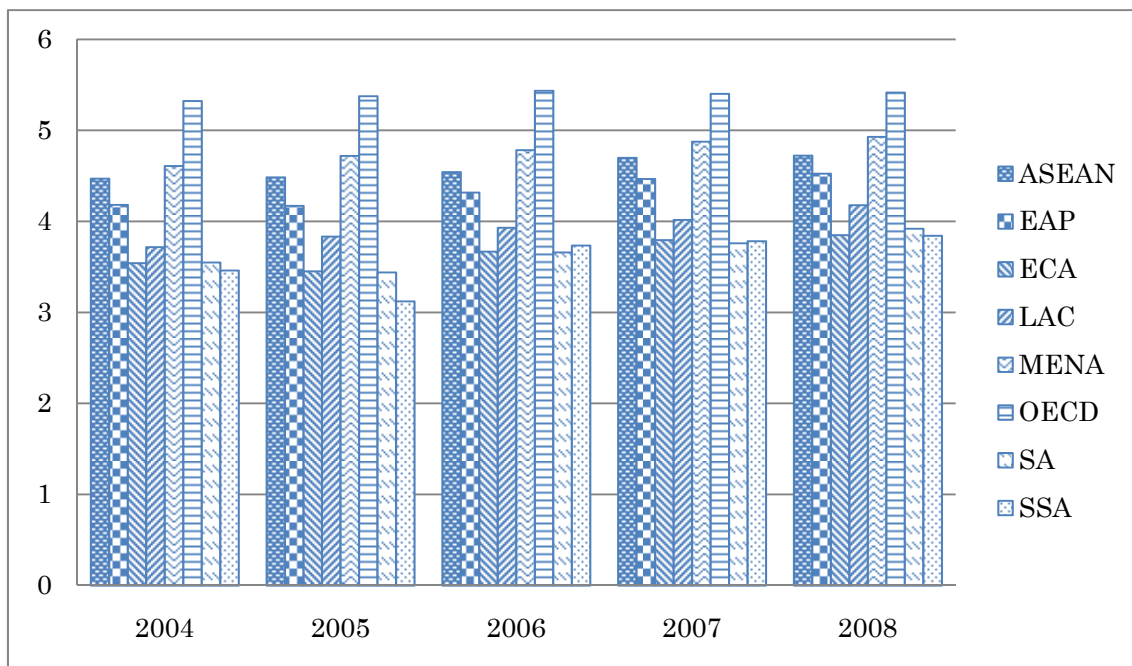
The regulatory environment indicator of the ASEAN or EAP is close to LAC (Latin America and Caribbean) and ECA (Europe and Central Asia), and far lower than MENA (Middle East and North Africa). Its average scores are also not significantly higher than the

region with the lowest score. The variation of customs environment scores is quite small across the regions. The ASEAN's score is also a little lower than that of MENA in most periods. Growth is slightly positive overall but not monotonic. The relative position of the regions in regard to regulatory environment is almost unchanged over time. This implies that the ASEAN did not experience distinguishable improvement relative to the other regions. Yet one needs caution in interpreting the score of regulatory environment, as the scores of regulatory environment are almost unchanged over time. This is mainly because "control of corruption", one of the inputs to this indicator, is normalized such that the mean is constant over time.

In customs environment, the ASEAN or EAP is the second highest next to MENA among the developing regions. It exhibits positive but very small improvement from 2004 to 2008. The gap from the OECD and MENA is still significant in 2008. The difference between the developing regions is not large in this category of trade facilitation.

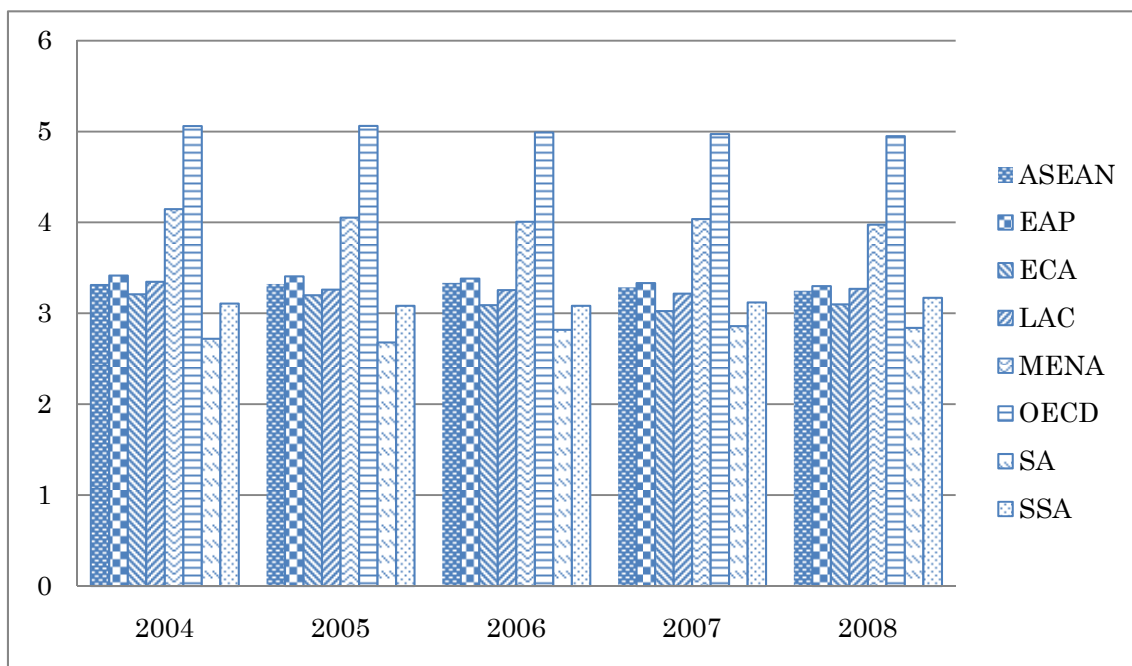
In service sector infrastructure, the ASEAN or EAP is the highest among the developing regions. The gap from the OECD is large, but this region shows a rapid improvement toward 2008. However, the other developing regions grew rapidly as well, with some regions exhibiting even higher growth rates.

**Figure 3a. Port efficiency by region 2004-2008**



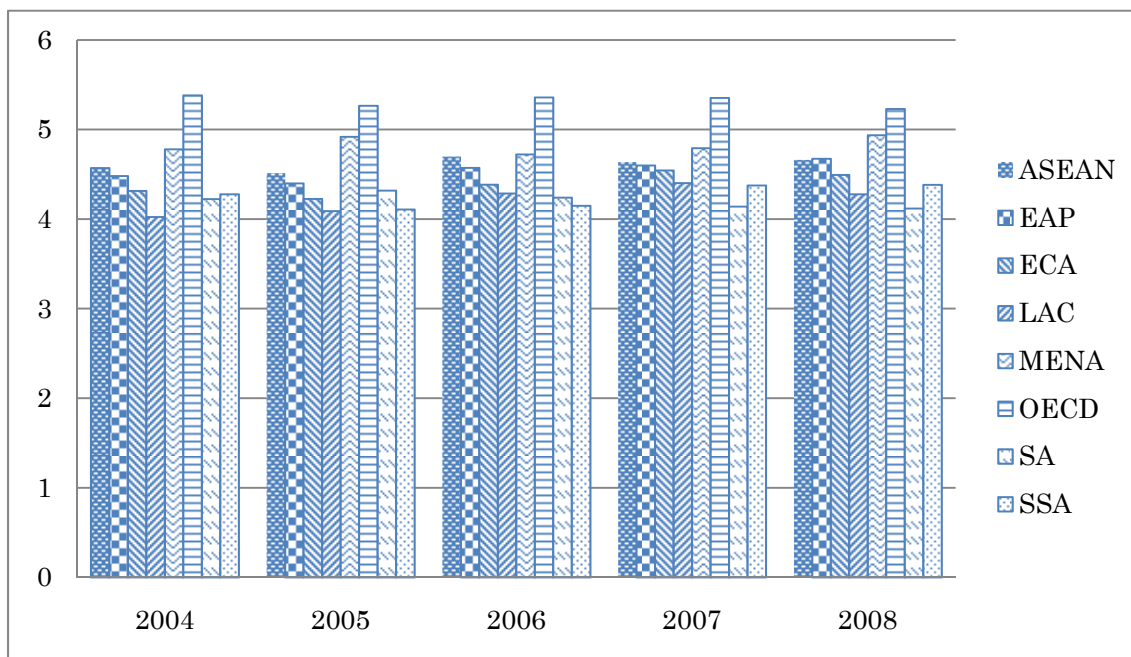
Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

**Figure 3b. Regulatory environment by region 2004-2008**



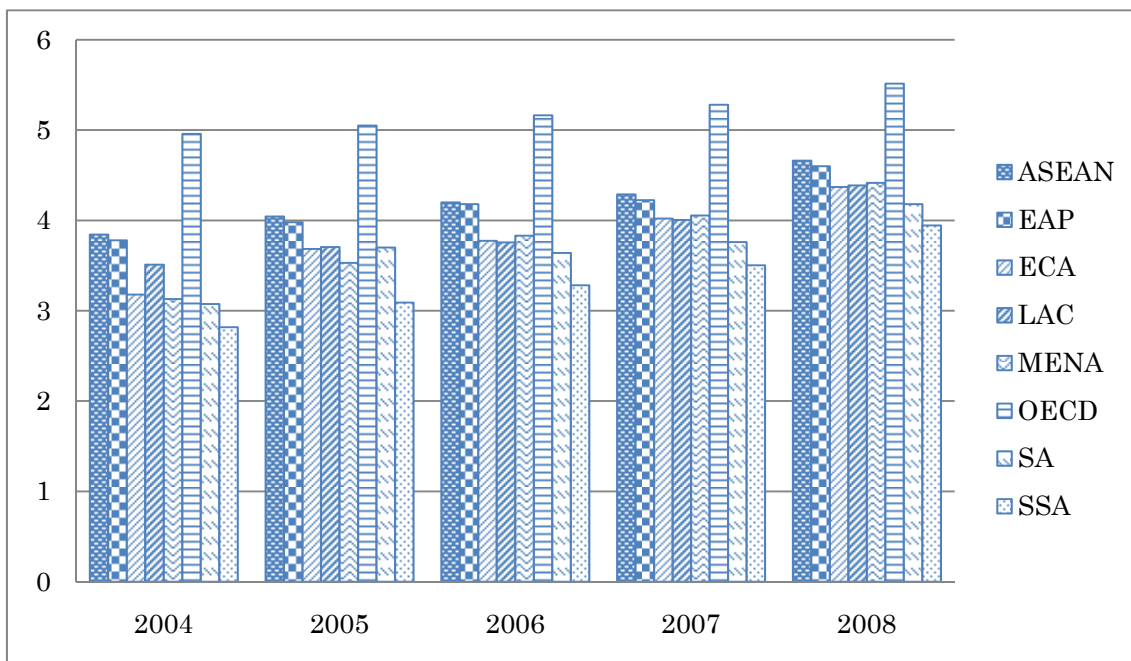
Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

**Figure 3c. Customs environment by region 2004-2008**



Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

**Figure 3d. Service sector infrastructure by region 2004-2008**



Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

Figures 4a-4d present the trade facilitation scores of each of the ASEAN member countries in 2004 and 2008. There are countries in ASEAN that are missing in 2004 or both 2004 and 2008; Brunei is missing in 2004 except Figure 4b and Lao PDR and Myanmar are missing in both years.

In port efficiency, Singapore is 6.9 in both years, and is highest in the sample. The second highest is Malaysia, 5.9 in 2004 and 5.7 in 2008. The third is Thailand which grew substantially from 4.9 in 2004 to 5.3 in 2008. Indonesia is the fourth, having 3.8 in 2004 and 4.1 in 2008. The Philippines was the fifth in 2004, but its score decreased in 2008 from 3.4 to 3.3, making it the lowest. Vietnam and Cambodia which were the lowest, grew from 3.2 to 3.7 and 3.8, respectively. In 2008 ASEAN countries above the global average (4.4) included Singapore, Malaysia, Thailand and Brunei.

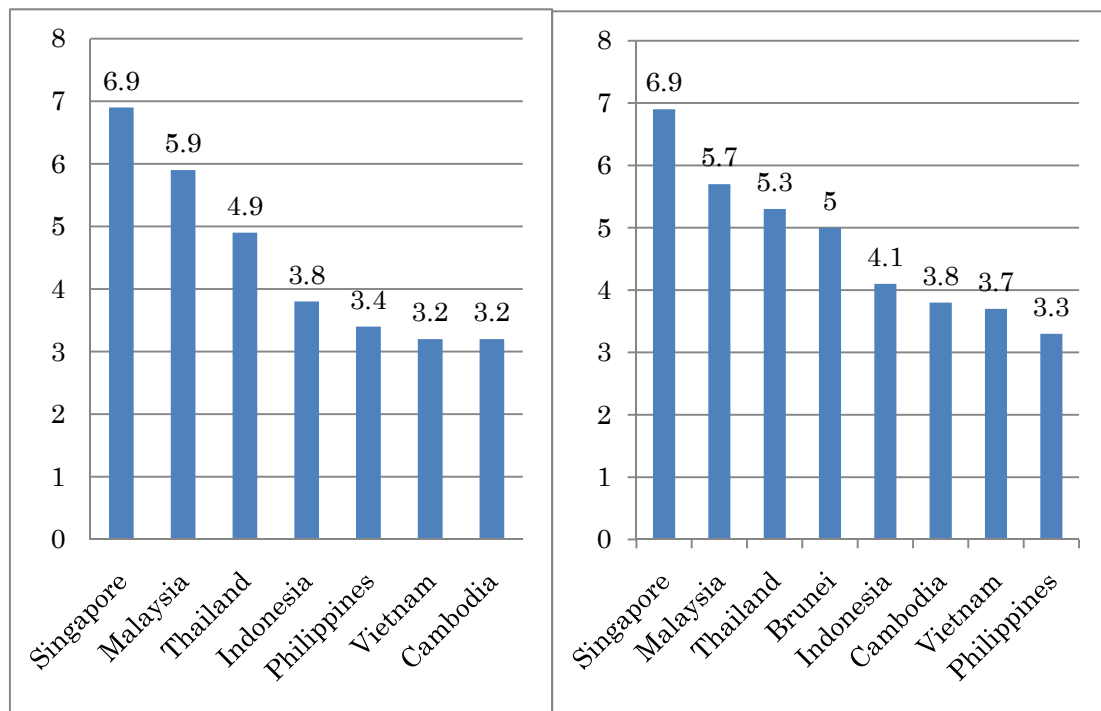
In regulatory environment, Singapore is highest (6.3) in both years, followed by Brunei (4.2 in 2004 and 4.4 in 2008), and Malaysia (3.6 in 2004 and 3.3 in 2008). There is very little change in their scores from 2004 to 2008, and some countries reduced their scores in 2008. Unlike the other categories, all but Singapore and Brunei are below the global average both in 2004 and 2008, indicating substantial inefficiencies in the area of regulatory environment.

In customs environment, Singapore also shows the highest scores in both 2004 and 2008. Malaysia and the Philippines were second and third in 2004, respectively, but became fifth, and sixth, both declining by 0.6 points. Cambodia and Vietnam remained the lowest two, but their scores rose by 0.5 and 0.7, respectively; thus, the gap between the high-score and low-score countries were narrowed. Nevertheless, 6 countries were on or below

the global average, and further improvement is needed for the region as a whole.

In service sector infrastructure, Singapore was top, and Malaysia was the second, in both years. The remaining countries changed ranking; the most outstanding one is Vietnam which moved up to fifth with a score of 4.5 in 2008, from the lowest position, with a score of merely 2.2 in 2004. Overall, the ASEAN achieved notable improvement from 2004 to 2008. Compared to the global average, five countries still fall short in 2008, but only by a small degree.

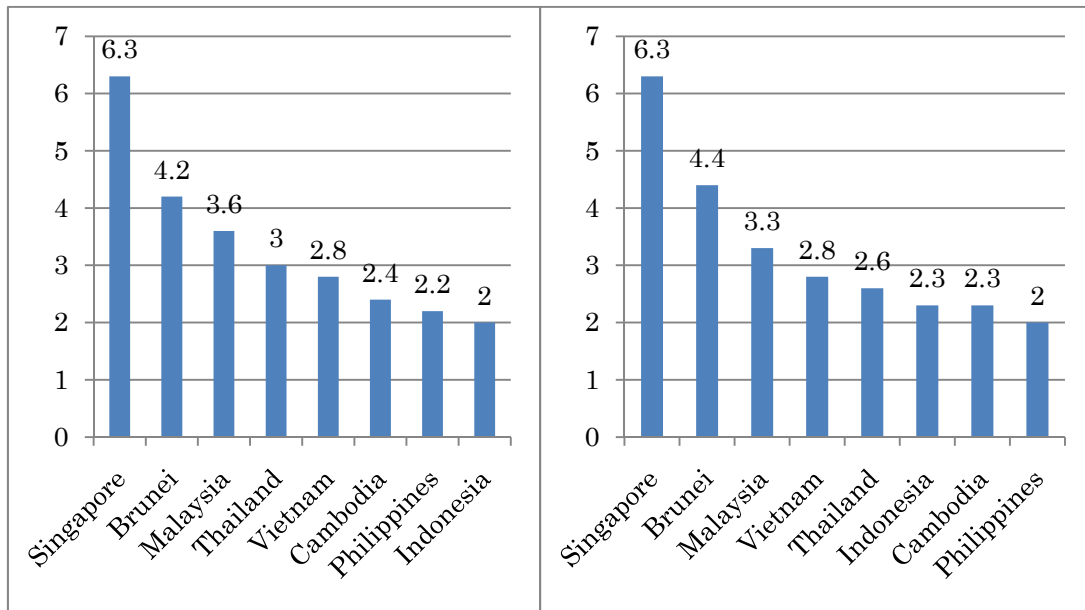
**Figure 4a. Port efficiency of the ASEAN countries in 2004 (left) and 2008 (right)**



Source: Author's calculation based on GCR, GITR, WBGI, and WCY.

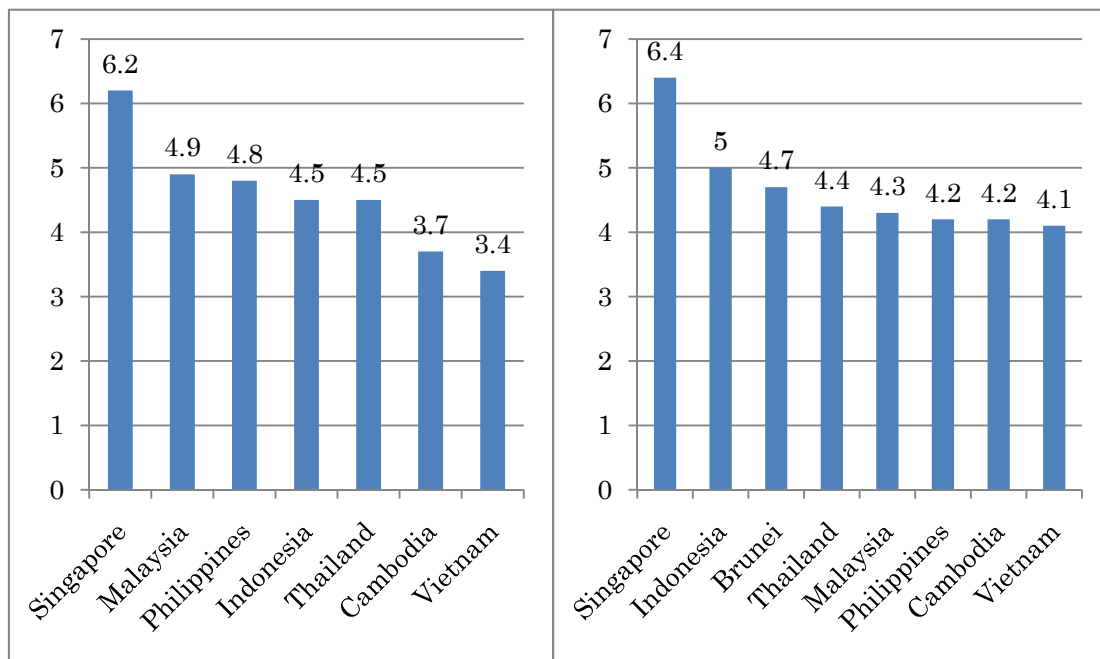


**Figure 4b. Regulatory environment of the ASEAN countries in 2004 (left) and 2008 (right)**



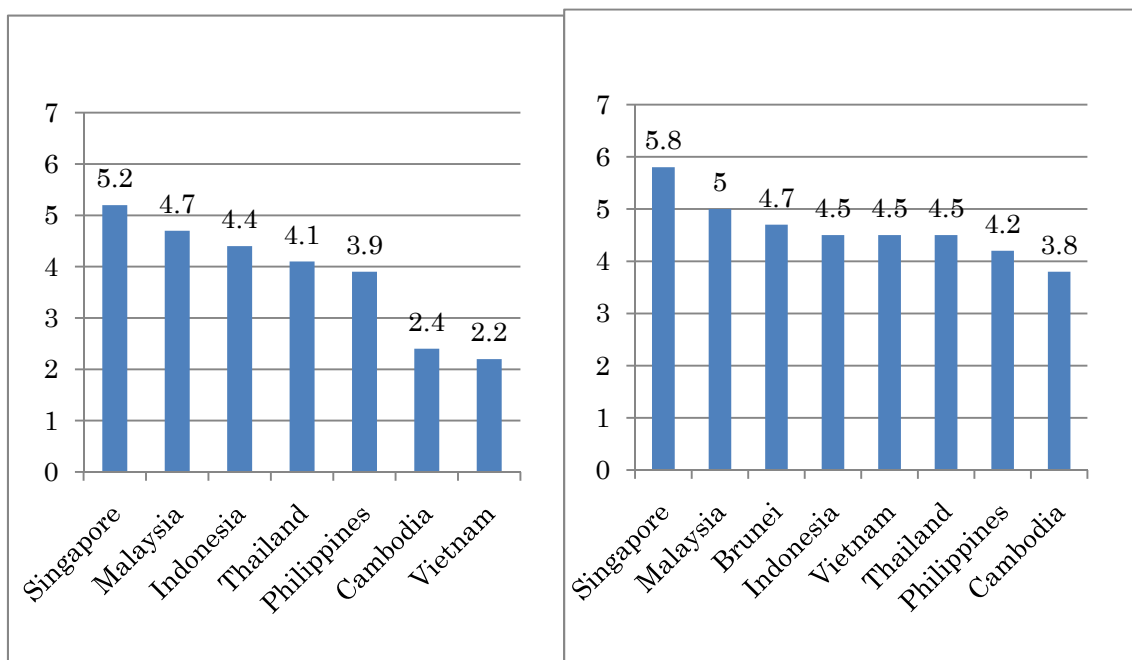
Source: Author's calculation based on GCR, GTR, WBGI, and WCY.

**Figure 4c. Customs environment of the ASEAN countries in 2004 (left) and 2008 (right)**



Source: Author's calculation based on GCR, GTR, WBGI, and WCY.

**Figure 4d. Service sector infrastructure of the ASEAN countries in 2004 (left) and 2008 (right)**



Source: Author’s calculation based on GCR, GITR, WBGI, and WCY.

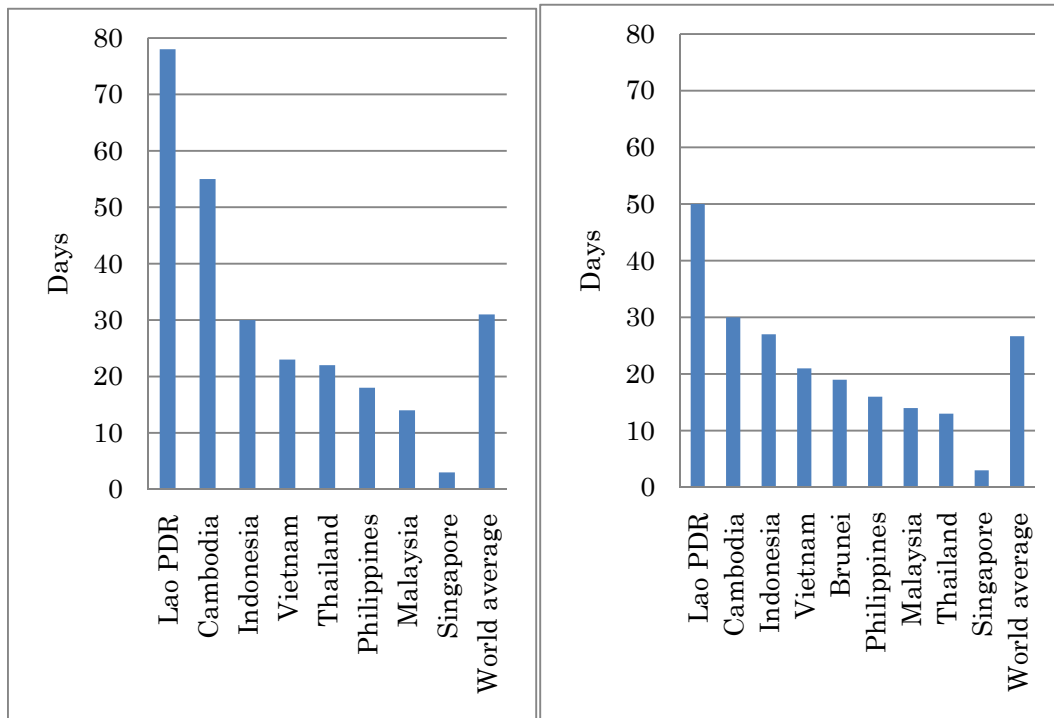
ASEAN countries which are also members of APEC had undertaken efforts to facilitate trade earlier than those which are not (namely, Cambodia, Lao PDR and Myanmar) as APEC had made a commitment to reduce trade-related transaction costs by 5 percent by 2006 according to the Shanghai Accord in 2001 in line with the Bogor Goals. It is generally evident that the early-committers increased their scores in most categories from 2004 to 2008. Also, our observation that Cambodia is the lowest or, at best, the third lowest among the ASEAN countries in our data confirms the superior position of the early-committers.

The above results of the four trade facilitation indicators are largely consistent with

those of Hollweg and Wong (2009). They found that Singapore was rated as one of the least restrictive countries in the world in terms of logistic regulations as barriers to trade. On the other hand, Malaysia, Indonesia, Lao PDR, the Philippines and Vietnam were found to be the most restrictive among ASEAN+6 countries.

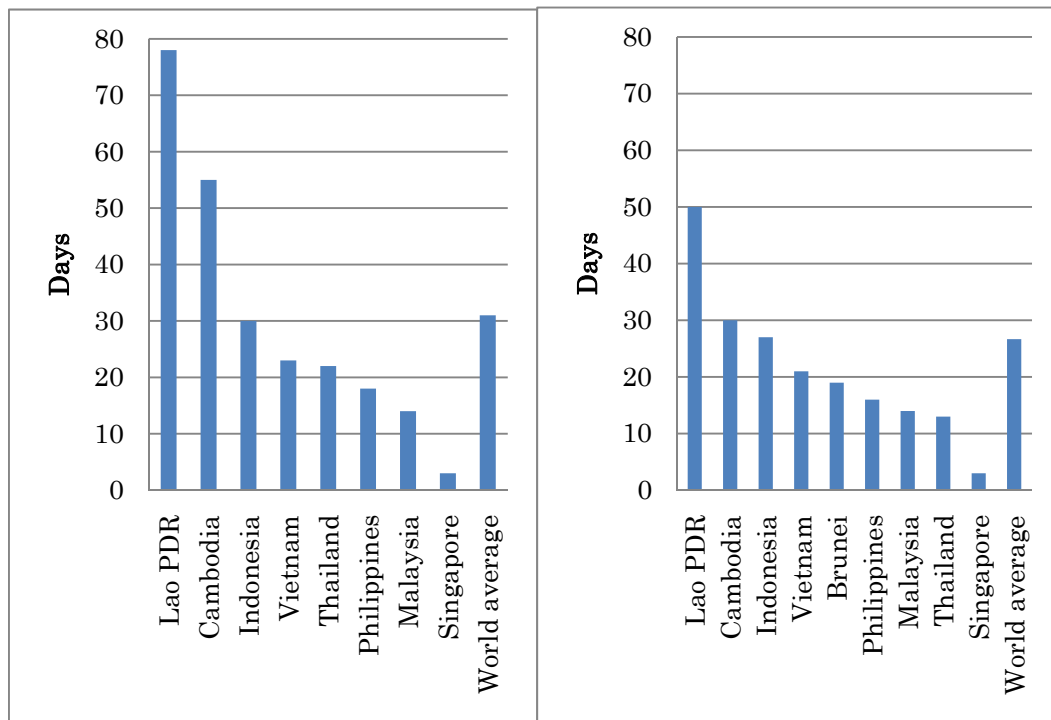
The above results can also be confirmed by investigating performance indicators from other data sources. More direct measures are available from the World Trade Indicators of the World Bank, where information on Lao PDR is also available. Among the indices that are comparable to ours, we investigated data on the number of days required for import, and data on import cost per container in 2005 and 2009. As shown in Figures 5a and 5b, Singapore again exhibits the best performance (the smallest number of days for import, and the lowest import costs, respectively) in both categories and both years, and Malaysia the second in both categories in 2005 while it was the second and the third in the former and the latter categories in 2009, respectively. The ranking and trend among the ASEAN countries is quite close to what we observed earlier. A notable improvement is found in the cases of Lao PDR and Cambodia in the number of days for import while the rest are keeping up with the world in the pace of improvement. On the other hand, import cost is almost unchanged in the ASEAN countries except in Lao PDR whose cost increased dramatically. In a relative sense, the performance of the ASEAN group is slightly better than the world on average, since the cost increased slightly in the world on average. Data for Myanmar is not available in these categories of trade facilitation, but Myanmar tends to lag behind the other ASEAN countries according to Layton's (2007) comparative analysis of the ASEAN countries in logistic performance.

**Figure 5a. The number of days needed for import in ASEAN in 2005 (left) and 2009 (right)**



Source: World Trade Indicators, the World Bank

**Figure 5b. Import costs in ASEAN in 2005 (left) and 2009 (right)**



Source: World Trade Indicators, the World Bank

## **4. The empirical model to estimate the effect of trade facilitation**

### **4.1 Previous studies**

A critical question of direct relevance to trade facilitation in a development context concerns the extent to which factors affecting trade transaction costs matter to trade flows, economic growth or welfare. Quantifying the gains from trade facilitation is complex and challenging, but the typically used methodologies can be categorized into the following two groups; macro-level econometric methods, and computable general equilibrium (CGE) methods.

The macro-level econometric methods attempt to estimate the impact of facilitation by regressing macro-level variables, such as trade flows and economic growth, on factors related to trade facilitation and other controls. In trade flow analysis, gravity models are typically employed. McCallam (1997) estimates the border costs in US- Canada trade, and started the trend of the gravity model application for the estimation of trade (transactions) costs. Variation or elaboration of this application can be found in many studies. Those studies largely try to isolate the trade costs that are unaccounted for by distance as a proxy for transportation costs. WMO (2005) used a simple log-linear gravity model where the trade costs are considered to vary with the above mentioned four trade facilitation indicators.

Using a computable general equilibrium (CGE) method, Walkenhorst and Yasui (2003) estimated the benefit of reducing trade transaction costs, which can be accounted for by time for border clearance and quality of border process. They point out that the potential benefits of trade facilitation vary across countries, sectors, and types of traders.

For instance, the authors find that trade transaction costs (TTCs) range from 1-15 percent of traded goods, depending on the country's pre-trade facilitation condition. Furthermore, border costs for agro-food products are 50 percent higher than those for manufactured products, and TTCs for small/ medium enterprises are 50 percent higher than those for big enterprises.

## 4.2 Gravity model

We follow a standard gravity model, where bilateral trade flow is regressed on GNP and other gravity variables along with the trade facilitation indicators for both importers and exporters.

$$\ln Trade = \mathbf{X}'\boldsymbol{\beta} + \mathbf{z}'\boldsymbol{\gamma} + \varepsilon,$$

where  $\mathbf{X}$  includes regular gravity variables such as GNP and bilateral distance between trading countries, and  $\mathbf{z}$  includes other influencing factors such as free trade agreements (FTAs) and trade facilitation. More specifically, our estimation model is as follows:

$$\begin{aligned} \ln(Trade_{IJ}^t) = & b_1 \ln Port_J + b_2 \ln Customs_I + b_3 \ln Regulatory_J + b_4 \ln Service_J + b_5 \ln Port_I \\ & + b_6 \ln Customs_I + b_7 \ln Regulatory_I + b_8 \ln Service_I + b_9 \ln(GNP_I^t) + b_{10} \ln(GNP_J^t) \\ & + b_{11} \ln(GNPPC_I^t) + b_{12} \ln(GNPPC_J^t) + b_{13} \ln(DIST_{IJ}) + b_{14} D_{Adjacent} + b_{15} D_{FTA} + b_{16} D_{Lang} \\ & + \gamma_P \overline{Port}_t + \gamma_C \overline{Customs}_t + \gamma_R \overline{Regulatory}_t + \gamma_S \overline{Service}_t + e_{IJ}^t, \end{aligned}$$

where  $J$  denotes exporter  $J$  and  $I$  denotes importer  $I$ . The subscript  $t$  denotes time period.  $GNP$  denotes gross national product,  $GNPPC$  denotes per capita GDP, and  $DIST$  denotes bilateral distance between the capital cities of countries  $I$  and  $J$ .  $D_{Adjacent}$ ,  $D_{FTA}$ , and  $D_{Lang}$  denote the dummy variables for two countries being adjacent, two countries being members of at least one common FTA and two countries having a common official language, respectively.  $\overline{Port}_t$  is the global average of the port efficiency indicator in time  $t$ , and the same applies to the rest of the indicators. The inclusion of the average over the cross-section samples is equivalent to including time dummies. They are included in order to see the temporal efficiency change in each indicator; the coefficients can be interpreted as temporal efficiency. The inclusion of cross-section average is equivalent to including time fixed effects, or time dummies, and hence, we will obtain the identical results on the coefficients for the rest of the regressors. However, the above specification is employed because it is useful to know how the marginal effect of raising an indicator changes over time.

When a panel dataset is available, the fixed effects model is a reasonable specification where an  $I$ - $J$  pair is considered to be the cross-sectional unit, because unobservable country-pair-specific effects are controlled. Inclusion of country-pair-fixed effects rather over-controls the variations due to the differing conditions with respect to trade facilitation, the effects of any FTA and other bilateral dummies, which are of our central interest. Therefore, we use the random effects model to estimate the coefficient parameters.

We also estimate an alternative model with interaction terms between trade facilitation indicators and time dummies in order to capture the efficiency change, allowing

for the coefficients of the trade facilitation indicator to vary at each period.

Tables 2 and 3 show the regression results. The major gravity variables have expected signs. Also, the coefficients of the trade facilitation indicators are all positive. They are also all significant, except that for the importer's customs environment indicator. The positive signs imply that trade flow increases as trade facilitation is improved. From the regression model with average index variables, it is found that the coefficient for port efficiency is negative, but those for the other categories are positive. These signs can be interpreted as the direction of efficiency change, with the positive sign being efficiency growth in that category and the negative sign being efficiency regress.



**Table 2. Regression results of the gravity model (random effects model)**

Variables	Model with time dummies	Model with time average
log of exporter GDP	1.426*** (0.0164)	1.426*** (0.0164)
log of exporter GDP per capita	0.0348 (0.0274)	0.0348 (0.0274)
log of importer GDP	0.863*** (0.0152)	0.863*** (0.0152)
log of importer GDP per capita	-0.106*** (0.0258)	-0.106*** (0.0258)
log of exporter's port efficiency	0.851*** (0.113)	0.851*** (0.113)
log of exporter's regulatory environment	0.174* (0.0952)	0.174* (0.0952)
log of exporter's customs environment	0.805*** (0.118)	0.805*** (0.118)
log of exporter's service sector infrastructure	0.435*** (0.107)	0.435*** (0.107)
log of importer's port efficiency	0.325*** (0.0846)	0.325*** (0.0846)
log of importer's regulatory environment	0.411*** (0.0954)	0.411*** (0.0954)
log of importer's customs environment	0.0543 (0.0971)	0.0543 (0.0971)
log of importer's service sector infrastructure	0.170** (0.0857)	0.170** (0.0857)
log of distance	-1.440*** (0.0334)	-1.440*** (0.0334)
FTA dummy	0.233*** (0.0454)	0.233*** (0.0454)
language dummy	0.937*** (0.0852)	0.937*** (0.0852)
adjacency dummy	0.672*** (0.166)	0.672*** (0.166)
2005 dummy	0.0131 (0.0164)	
2006 dummy	-0.0782*** (0.0191)	
2007 dummy	-0.00175 (0.0214)	
2008 dummy	0.0669** (0.0280)	
mean of port efficiency		-0.751*** (0.157)
mean of regulatory environment		1.926*** (0.350)
mean of customs environment		0.975*** (0.216)
mean of service sector infrastructure		0.370*** (0.0510)
constant	-33.35*** (0.554)	-43.26*** (1.799)
Observations	34,861	34,861
Number of id	8,700	8,700

Source: Author's estimation.

Note: The significance levels at 10 per cent, 5 per cent and 1 per cent are denoted by \*, \*\* and \*\*\*, respectively.

Table 3 also shows the results for the model with interaction terms between indicator and time, where only coefficient estimators for trade facilitation indicators are presented. The mixed signs within category indicate a non-monotonic trend of effects of trade facilitation in all categories. Table 4 compares the coefficients across our two models as well as those estimated in WMO (2005). They show similar signs in overall. The results regarding efficiency change between our two models are quite similar.

**Table 3. Regression results of the gravity model with time-indicator interaction terms (random effects model, only coefficients of the indicator variables)**

Indicator Name	Year	Exporter	Importer
Port Efficiency	Base year (2004)	1.008***	0.469***
	2005	-0.185	-0.0802
	2006	-0.111	0.0874
	2007	0.0264	-0.169
	2008	0.0513	-0.194
Regulatory Environment	Base year (2004)	0.271**	0.561***
	2005	-0.189**	-0.171**
	2006	-0.259***	-0.239**
	2007	-0.218**	-0.234**
	2008	-0.180*	-0.204**
Customs Environment	Base year (2004)	0.575***	-0.0741
	2005	0.425***	0.121
	2006	0.847***	0.262*
	2007	0.401***	0.316**
	2008	0.372***	0.221
Service Sector Infrastructure	Base year (2004)	0.377***	-0.00813
	2005	0.294**	0.102
	2006	0.263*	0.112
	2007	0.194	0.207*
	2008	0.439**	0.278*

Source: Author's estimation.

Note: The significance levels at 10 per cent, 5 per cent and 1 per cent are denoted by \*, \*\* and \*\*\*, respectively.

**Table 4. Comparison of estimated coefficients for indicators and their temporary efficiency change**

		WMO (2005)	With time- averaged TF	With time- interacted TF
Port Efficiency	Exporter	0.924***	0.851***	1.008***
	Importer	0.307*	0.325***	0.469***
Regulatory Environment	Exporter	0.620***	0.174*	0.271**
	Importer	0.281*	0.411***	0.561***
Customs Environment	Exporter	n.a.	0.805***	0.575***
	Importer	0.472**	0.0543	-0.0741
Service Sector Infrastructure	Exporter	1.943***	0.435***	0.377***
	Importer	0.729***	0.170**	-0.00813
Efficiency change in Port Efficiency		n.a.	-	Mixed
Efficiency change in Regulatory Environment		n.a.	+	Largely -
Efficiency change in Customs Environment		n.a.	+	Largely +
Efficiency change in Service Sector Infrastructure		n.a.	+	Largely +
Number of countries		75	99	99
Number of years		2	5	5

Source: WMO (2005) and author's estimation.

## **5. Simulation analysis – gains from trade facilitation reforms in the world and the ASEAN countries**

The gravity model allows us to examine how much trade among the countries in the sample might increase from improved trade facilitation. We will examine scenarios that focus on improved port efficiency, improved customs environments, improved service sector infrastructure, and improvements in regulatory environments. Thus, we can inform stakeholders on which specific trade facilitation initiatives might have the greatest potential to increase trade.

We base our policy simulation on the estimated coefficients in the model in Table 2. For the simulation of alternative trade facilitation improvements, we first examine the formula with all countries improving trade facilitation by 5 percent. Then we examine the formula which brings the *below-average* countries in the group *half-way* to the global average (approximated by the average for the entire set of countries). Since each economy has a specific value for each trade facilitation indicator, each country that is below-average on that indicator will improve by a different amount so as to climb half-way to the average.

The countries for which we will simulate an improvement in trade facilitation will differ for each trade facilitation indicator. However, because trade facilitation links exporters and importers, all economies enjoy an increase in trade between each other, even when only some have an improvement in their trade facilitation indicator. Having the coefficients for both importers' and exporters' trade facilitation measures enables us to simulate the change in trade flow from different perspectives: i.e. the country itself and the region or world as a whole.

From the standpoint of a specific country, improvement in, for example, port efficiency should increase both its own imports and exports. The same can be expected for regulatory environment, and service sector infrastructure, as well as customs on the import side. But, a country will export more not only because of its own reforms, but also because of reforms undertaken by its trading partners as importers. Thus export gains are the sum of the simulated effect on exports of unilateral domestic reform and of import reforms undertaken by the country's trading partners. On the import side, a country's imports increase first on account of its unilateral domestic reforms, and secondarily on account of the reforms

undertaken by its trading partners as exporters. Examining the relative gains to trade from unilateral reforms as compared to partner’s reforms, and on exports vs. imports, and across trade facilitation indicators, offers three dimensions of potential insight to policymakers, donors, and the private sector.

### 5.1. A 5% improvement

Table 5 presents the result of a 5% improvement of trade facilitation indicators. The trade gains in percentage are simply equal to 5% times the coefficient of the indicator of interest. Therefore, the magnitude of the percent change is in the same order as the coefficients. The total gains from an improvement in all indicators at the same time are \$1,634 billion, or 16%. The total gains from exporters, improvement are \$1,148 billion, or 11%, whereas those from importers’ improvement is \$487 billion, or 4.8%.

**Table 5. Result of simulation: a collective 5% improvement of trade facilitation (million USD)**

Indicator	Exporter's change		Importer's change		Total	
	value	% change	value	% change	value	% change
Port Efficiency	431,362	4.26	164,823	1.63	596,186	5.88
Regulatory Environment	88,140	0.87	208,073	2.05	296,214	2.92
Customs Environment	408,018	4.03	27,498	0.27	435,516	4.30
Service Sector Infrastructure	220,390	2.17	86,196	0.85	306,586	3.02
Total	1,147,911	11.32	486,590	4.80	1,634,502	16.12

Source: Author’s estimation.

## 5.2. The below-average countries halfway to the global average

The total gain to the world in terms of trade value is found to be \$716.4 billion. Table 6 shows that gains from reforms are greatest (\$387.9 billion) in regulatory environment followed by the port efficiency category (\$199.6 billions). The gain from customs improvement is \$104.3 billion and that from service improvement is \$24.6 billion. The gains to a country increase either by its own trade in facilitation improvement or by its partners' improvement in trade facilitation.

Figure 6 shows gains from ASEAN's own improvement in trade facilitation and its partners' improvement. The increase in ASEAN's intra-regional trade from its own improvement is quite small. The gain in its trade with the rest of the world from ASEAN's own improvement is three times greater than that from ASEAN's intra-regional trade gains. The gain is about halved if only the rest of the world improves trade facilitation. Thus, ASEAN's aggressive improvement would pay off to the region even though the rest of the world does not make any improvement.

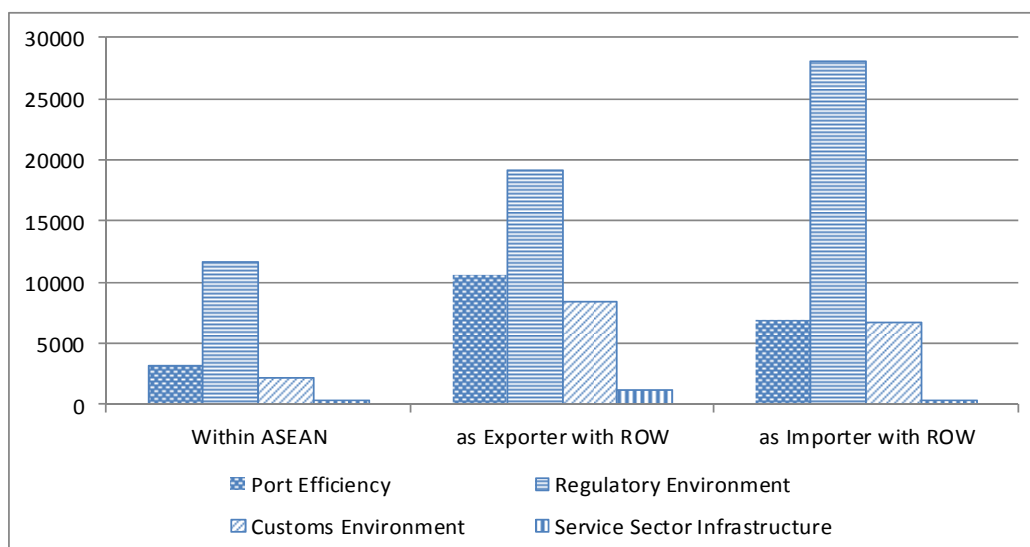
**Table 6. Result of simulation: the below-average countries halfway to the global average**

(million USD)

Indicator	Exporter's change		Importer's change		Total	
	value	% change	value	% change	value	% change
Port Efficiency	132,392	1.31	67,247	0.66	199,639	1.97
Regulatory Environment	120,436	1.19	267,425	2.64	387,861	3.83
Customs Environment	95,925	0.95	8,412	0.08	104,337	1.03
Service Sector Infrastructure	14,057	0.14	10,553	0.10	24,610	0.24
Total	362,809	3.58	353,637	3.49	716,446	7.07

Source: Author's estimation.

**Figure 6. Trade gains from ASEAN’s own effort v.s. partners’ efforts (million USD)**

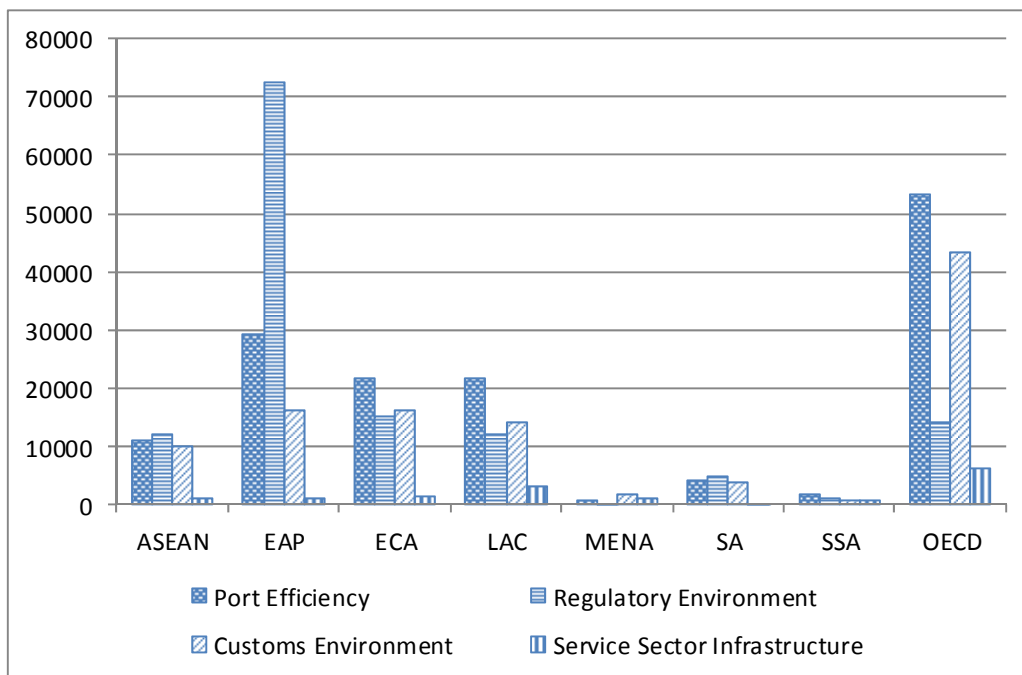


Source: Author’s estimation.

Figures 7 and 7b show total trade gains in each region from the exporters’ and importers’ perspectives respectively. In Figure 7a, ASEAN’s exports are estimated to increase by approximately \$34 billion. Gains are around \$10 billion in the port, regulatory and customs categories, but only \$1 billion in the service category. The gains from service improvement tend to be small both because the elasticity of trade with respect to the service sector infrastructure indicator is small, and because most ASEAN countries have been successful in their performance in service sector infrastructure improvement. The ASEAN region’s estimated total gain is generally greater than MENA, SA and SSA and smaller than EAP, and LAC.

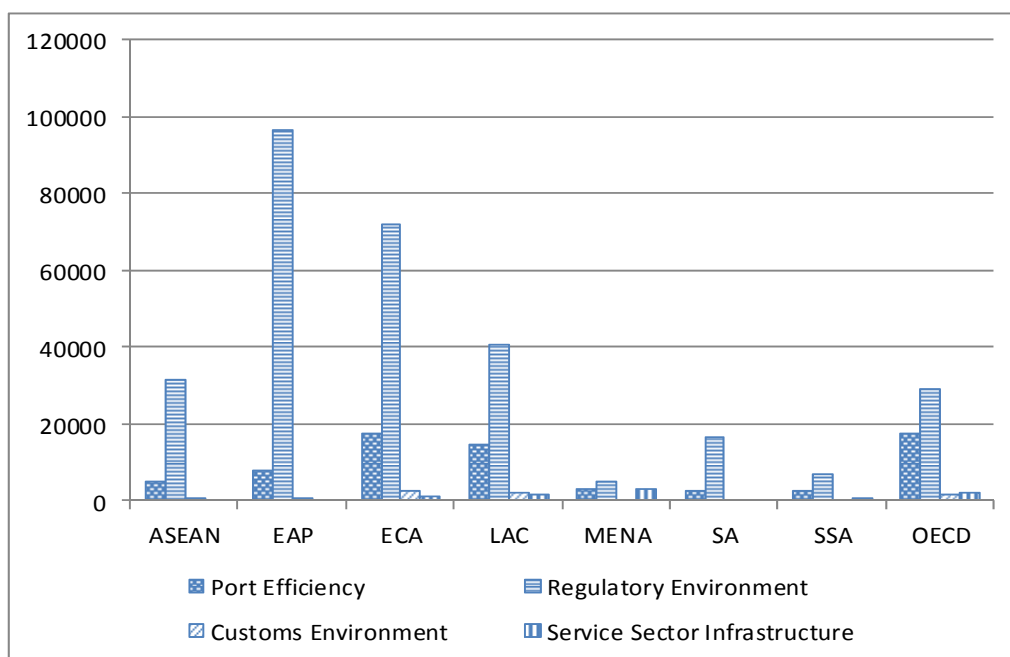
Figure 7b shows that gains are greatest in ASEAN in the regulatory environment category; it is approximately \$30 billion. On the other hand, the gains are much smaller in the other categories.

**Figure 7a. Trade gains as exporter by region (million USD)**



Source: Author's estimation.

**Figure 7b. Trade gains as importer by region (million USD)**



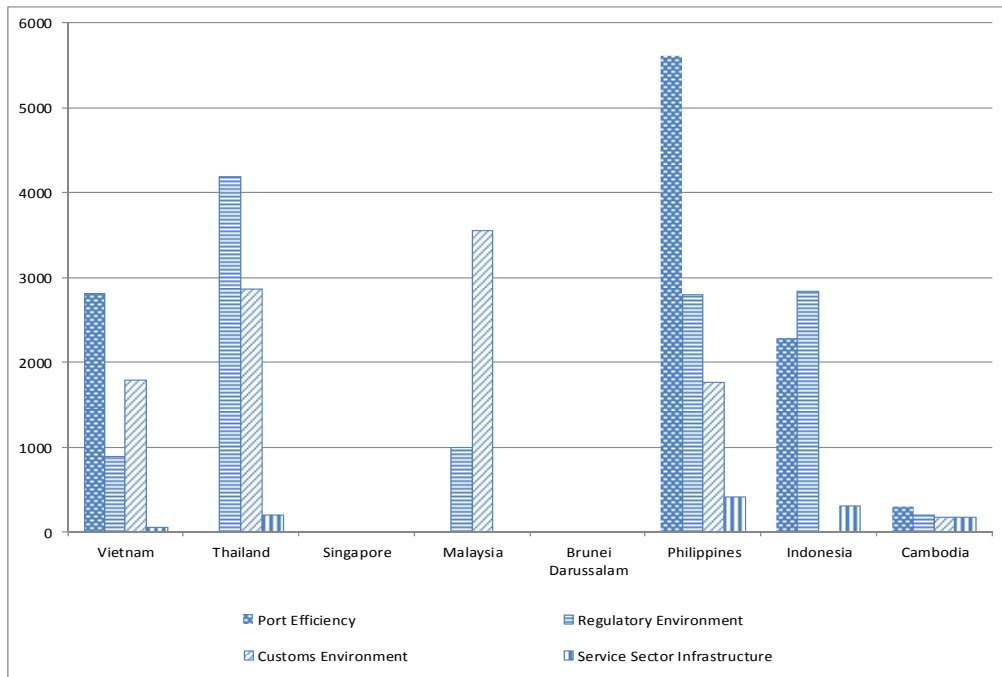
Source: Author's estimation.



Figure 8a shows trade gains in ASEAN as an exporter, arising from its own improvement in trade facilitation. In terms of trade value, the Philippines gains most from its own improvement, in particular \$5.6 billion from its improvements in ports. Thailand gains \$4.2 billion from its improvement in its regulatory environment. Thailand gains \$4.2 billion from its improvement in its regulatory environment. Malaysia gains \$3.8 billion from its improvement in its customs environment. In percentage terms, the Philippines' gain is the largest (13.9%) from port improvement, followed by improvement in its regulatory environment (8.5%). Cambodia also gains 7.2% from port improvements. Thus, different countries gain from their own improvements in different categories of trade facilitation. The countries with high trade facilitation scores have less or zero estimated gain, simply because they improve only slightly or not at all under the current formula.

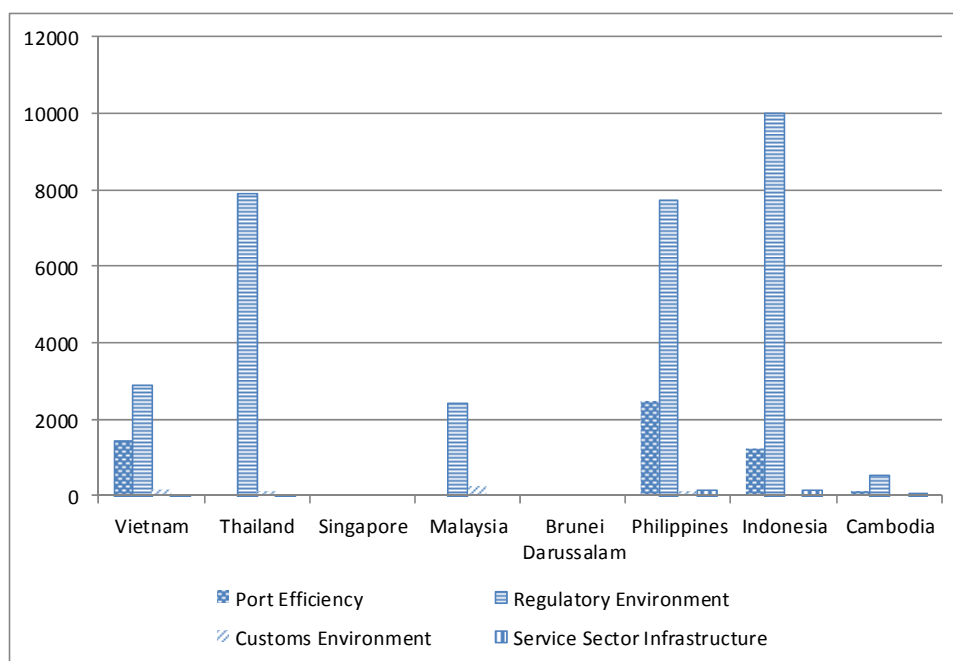
**Figure 8a. Trade gains of the ASEAN countries as exporter by own improvement (million USD)**

Source: Author's estimation.



**Figure 8b. Trade gains of the ASEAN countries as importer by own improvement**

**(million USD)**



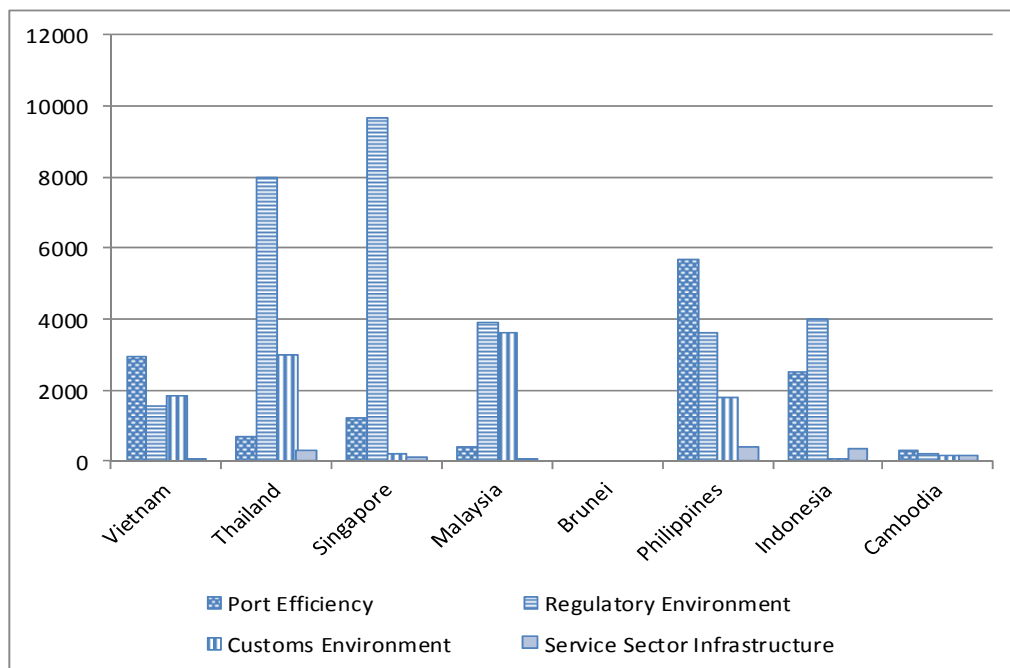
Source: Author's estimation.

Figure 8b shows trade gains in ASEAN as an importer from its own improvement in trade facilitation. Overall, trade gains are large from the group's own improvements in its regulatory environment. In terms of trade value, Indonesia, the Philippines and Thailand enjoy large gains. In percentage terms, the Philippines' gain from improvement in its regulatory environment is the greatest (16.1%), followed by Indonesia (11.8%).

Figures 9a-9b show trade gains as exporter and importer, respectively, from both own and partners' improvements in trade facilitation. According to Figure 9a, Singapore's gain as exporter from improvement in its regulatory environment is the greatest (\$9.6 billion), followed by Thailand (\$7.9 billion). Given that Singapore and Thailand themselves do not make an improvement under the current scenario, this result is mainly because of the large

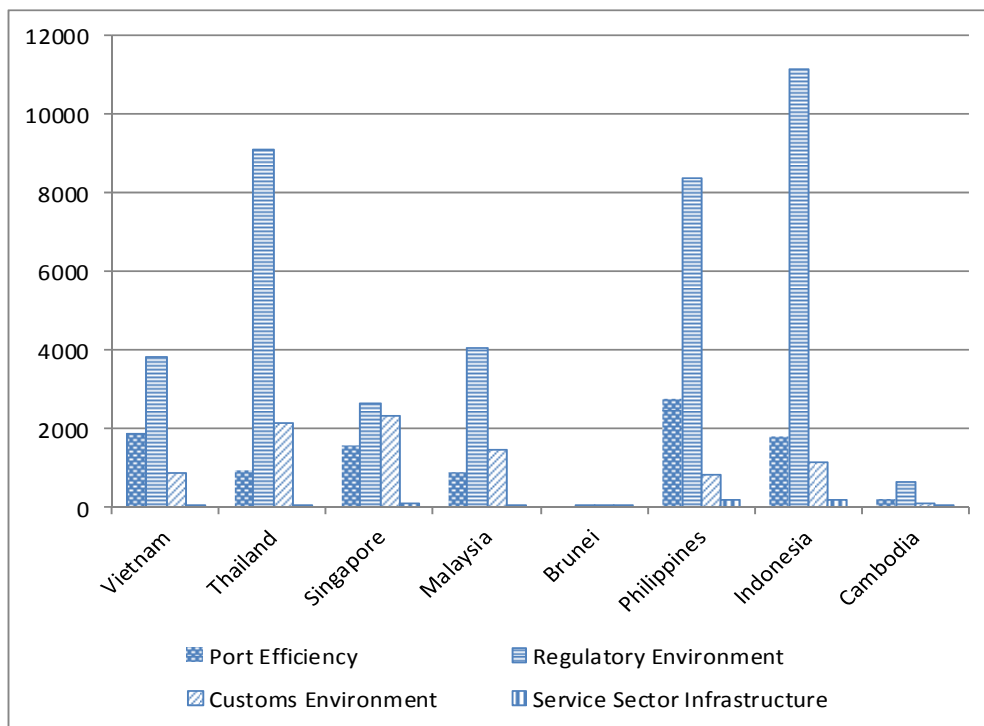
trade gains from improvement of their major trading partners, most importantly Malaysia and China, whose regulatory environment scores are lower than the global average. It should be noted, however, that their trade gains are measured in terms of trade value, and that they are not necessarily the largest in terms of percentage. For example, Singapore’s gain in percentage is only 4.2%. In percentage, the Philippines’ gain from port improvement is the greatest (14%), followed by its gain from improvement in its regulatory environment (9%). According to Figure 9b, Indonesia’s gain is the greatest (\$14.2 billion), followed by Thailand (\$12.2 billion) and Philippines (\$12.2 billion), and their gains in percentage are also high. Those countries gain dominantly from improvement in regulatory environment. From the fact that their regulatory environment scores were far lower than the global average, those countries are expected to gain substantially from their own improvement.

**Figure 9a. Trade gains of the ASEAN countries as exporter by global improvement (million USD)**



Source: Author’s estimation.

**Figure 9b. Trade gains of the ASEAN countries as importer by global improvement (million USD)**



Source: Author's estimation.

In summary, the results suggest that the ASEAN countries can gain in trade both from their own improvement of trade facilitation as well as from their partners' improvement. The most prominent trade gain is witnessed from improvement in regulatory environments, whereas not much gain is expected from improvement in service sector infrastructure. A crucial shortfall is that Lao PDR and Myanmar are not included in our analysis. According to the other studies, performance of those countries in trade facilitation is similar to or poorer than the lowest-ranked countries in our analysis. Thus, those countries are likely to gain substantially from their own improvement in trade facilitation under the formula used for the simulation analysis while contribution of their efforts to trade expansion in ASEAN as a whole will be limited due to their relatively small share of trade flow in the region's trade.

## 6. Conclusions

This chapter develops measures of trade facilitation, in line with Wilson, Mann and Otsuki's (2005) indicators, using data that are more up to date, and with a broader country coverage. It investigates their changes over time and their variation across countries and regions, with particular focus on the ASEAN economies. We consider four categories of trade facilitation – port efficiency, the customs environment, the regulatory environment and service sector infrastructure. The chapter then estimates the effect of trade facilitation on trade flows of manufactured goods using a gravity model. Catching-up by countries with relatively poor performance in terms of trade facilitation is found to increase trade substantially, through both import and export channels.

The major findings are as follows:

- ASEAN countries' performance in trade facilitation is diverse. Singapore, Malaysia and Brunei are far better than the global average in all categories, whereas the Philippines, Vietnam and Cambodia fall behind the global average in most categories.
- When compared with other regions, ASEAN's average performance is better than most developing regions. It is close to that of Europe, Central Asia and Latin America and the Caribbean, but is behind the Middle East and North Africa.
- There is slight improvement in ASEAN's score over time in port efficiency, and a remarkable improvement in service sector infrastructure.
- The gravity model estimation supports the positive effect of all the four trade facilitation indicators on bilateral trade flows, and indicates that the effect of

improvement in the regulatory environment is greatest. The efficiency change is detected in the categories of customs environment, regulatory environment, and service sector infrastructure.

- A simulation analysis is conducted under a scenario that brings below-average countries halfway to the global average with respect to each of the four trade facilitation categories. The improvement goal is set halfway to the global average for the below-average countries, whereas the above-average countries are left unchanged. Trade gain arises 1) when a country improves trade facilitation by its own efforts, or 2) when its trading partner improves trade facilitation. The greater is the gain 1) the greater is the estimated elasticity or, 2) the smaller its original score is (thus the higher is the target level is), or 3) the smaller is its partners' original score.
- The total global trade gain is estimated to be \$716 billion. The gain from improvement is greatest (\$387 billion) in the regulatory environment category, followed by port efficiency (\$199 billions). The gain from improvement in customs efficiency is \$104 billion and that from improvement in service sector infrastructure is \$25 billion.
- ASEAN's total gain is estimated to be \$99 billion. About 75% of the gain comes from the region's own improvement, which encourages aggressive commitment to investment in trade facilitation.
- Within ASEAN, Vietnam, Cambodia and the Philippines tend to experience a greater percentage increase in their trade flows as a result of their own efforts, thus

supporting the idea of capacity building in countries with relatively poor performance. Yet, countries with no change in trade facilitation can still enjoy trade gains from their partners' improvements. For example, Singapore can gain nearly \$10 billion from its partners' improvements in their regulatory environments.

Thus, capacity building in the below-average countries is found to be particularly effective in promoting intra-ASEAN trade, and its trade with the rest of the world. Thus, the current focus of the ASEAN in trade facilitation is proved to be rewarding, particularly under the current situation where there is limited room for further tariff reduction. It is recommended that ASEAN focus primarily on regulatory reforms concerning trade through making policies more transparent and ensuring effective and law-abiding operations of the regulatory authorities, in order to realize the returns to their effort rapidly, and on fostering capacity building in the member countries that lag behind in terms of trade facilitation.

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## CHAPTER 6

### **Background Data for Constructing Quantitative Measures**

*This chapter consists of the list of the tables of the background data to develop the quantitative measures presented in previous chapters. The quantitative measures on free flow of services (Chapter 2) and free flow of investment (Chapter 3) are based on the background data compiled by a team of researchers led by Dr. Philippa Dee and Dr. Shujiro Urata respectively, with close collaboration with country study members from research institutes in each ASEAN member country. All tables are downloadable from the website of ERIA (<http://www.eria.org>).*

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