REGIONAL TRADING ARRANGEMENTS: Stocktake and Next Steps
Trade Policy Forum
Bangkok, June 12-13, 2001

LIBERALIZATION OF TRADE IN SERVICES: East Asia and the Western Hemisphere

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INTRODUCTION

Since the mid-1990s, a growing interest in promoting services trade liberalization has gone beyond the multilateral level to result in the conclusion of a number of sub-regional agreements on services in East Asia and in the Western Hemisphere. In East Asia members of ASEAN concluded the ASEAN Framework Agreement on Services (AFAS), while Australia and New Zealand have concluded the Closer Economic Relations Agreement (CER) covering services trade. In the Western Hemisphere, no less than fourteen agreements on trade in services have been concluded by countries at the sub-regional level since 1994, a list of which is found in Annex I. Thirty-four countries in the Western Hemisphere have also been engaged in hemispheric-wide negotiations towards the conclusion of the Free Trade Area of the Americas (FTAA) in which services comprises an integral part. And most recently, economies from each region are either negotiating or discussing the conclusion of trans-Pacific free trade agreements covering services as well (for example, the U.S. and Singapore).

In all cases the sub-regional agreements attempt to meet the same two objectives as those of the WTO General Agreement on Trade in Services (GATS), namely to provide a framework of rules and disciplines governing trade in services, as well as a means within which liberalization of services trade can take place. Elements for inclusion in a service agreement relate to: scope and coverage; liberalizing principles; and depth of commitments. The types of rules and disciplines that are included in each agreement determine how effective it will be with respect to guiding and shaping the policies of members. The speed and extent of liberalization is defined by the choice of a specific negotiating modality.

Two major approaches toward the liberalization of trade in services have been manifest at the sub-regional level: the "positive list," or "bottom-up," approach; and the "negative list," or "top-down," approach. The negotiating modality adopted by the

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sub-regional agreements is based on one of these two approaches, or a slight variant. Whereas ASEAN and MERCOSUR have adopted a positive list approach quite similar to the GATS, the majority of sub-regional agreements in the Western Hemisphere (NAFTA and all of the subsequent NAFTA-type agreements) have opted for the negative list approach.

The first approach (or "bottom-up") is based upon positive listing, whereby members to an agreement list national treatment and market access commitments specifying the type of conditions under which foreign service suppliers can enter a given market or the type of treatment that will be granted to services or service suppliers in sectors included in the schedules of commitments. The specific commitments may be modified and withdrawn after a certain period of time, subject to negotiating appropriate compensation. Liberalization is to be progressively achieved through rounds of negotiations among members to an agreement. Commitments are undertaken for each service sector or activity and, once listed, are considered to be binding.

The alternative approach ("top-down") is based upon negative listing, whereby all service sectors and measures are to be liberalized unless otherwise specified in annexes containing reservations, or nonconforming measures. This is the so-called "list-or-lose" technique. Any exceptions to sectoral coverage and to non-discriminatory treatment must be specified in the annexes. The non-conforming measures in the annexes may either be in the form of permanent exceptions or may be subject to future liberalization through consultations or periodic negotiations. Under this approach, the concept of "market access" does not appear as a separate article in the services agreement but is addressed under disciplines related to non-discriminatory quantitative restrictions as well as through a guaranteed national treatment provision applying to discriminatory measures. This approach ensures transparency through listing any measure not in conformity with these disciplines.

How effective have the various sub-regional agreements (SRAs) already concluded been at liberalizing services trade? It is often taken for granted that regional agreements must be an effective tool for promoting services liberalization, since many of them have been quite successful in promoting liberalization of trade in goods through the elimination of tariffs among members. But rarely is the question asked to what extent it is possible in actual practice to carry out services liberalization in a preferential context, given the type of barriers that are present in the services area.

This paper attempts to provide a first step in this direction by carrying out a critical, though necessarily incomplete, review of the degree of liberalization that has actually been achieved by some of the sub-regional agreements that have been concluded in the services area – ASEAN, NAFTA, and Chile/Mexico. The paper then suggests some further questions that these agreements raise for governments.

Certain sub-regional agreements on services have by now been in existence for five years or more, and it should be possible to assess their impact, even if preliminarily.

Assessing the liberalizing content of regional agreements on services is, however, a complex and challenging question. Liberalization of services trade must be evaluated quite differently from that of trade in goods. Rather than comparing tariff levels before and after the formation of a preferential trading arrangement, in the case of services it is the degree of application of the national treatment principle, or the extent to which discriminatory treatment has been removed among members (with respect to discriminatory measures) that must be compared with the type of treatment that is accorded service providers from non-member countries.

Given the lack of statistical data on services trade at the disaggregated sectoral level and the non-tariff nature of the regulatory barriers in place for services, the best (and only) way to carry out such a comparative analysis is through the examination of the content of the commitments made at the regional level as compared with the commitments made at the multilateral level under the GATS (in the case of arrangements adopting a "positive list" approach). Or, in the case of arrangements adopting a "negative list" approach, it is necessary to examine the content of the annexes containing the lists of reservations with commitments made in these sectors at the multilateral level under the GATS. Although these two methods are not exactly identical, they will provide in fact a symmetrical picture of the areas of existing restrictions and/or reservations applied to foreign service providers by members of a given regional arrangement as compared to the treatment they apply among themselves.

Assessing the margin of preference of the regional arrangement through a comparison of the content of the regional commitments with those made at the multilateral level (or with the type of national or non-discriminatory treatment offered to service providers from countries outside of the preferential arrangement as compared to the treatment granted to service providers from within the preferential arrangement) is challenging. Of critical importance, such an exercise has not yet been carried out by trade policy analysts. Therefore the real economic value of regional arrangements for services trade has not been assessed. (Note: This is of course independent of the political value and of the "signaling" value that such agreements might and often do have for foreign investors.)

Key questions for countries wishing to promote services liberalization through regional arrangements are therefore the following:

- Is a regional agreement an effective means for encouraging services
- trade in practice?
- Can a regional agreement provide a credible margin of preference for services providers from within the region, and if so, in what sectors and/or areas?

This paper attempts to make a first step in the direction of analyzing the liberalizing content of the ASEAN agreement on trade in services and of three sub-regional agreements in the Western Hemisphere in which Mexico is a signatory (NAFTA, the Northern Triangle, and Chile/Mexico). In the case of ASEAN, the analysis focuses on an analysis of the members' schedule of specific services commitments and how those

compare to what the same ASEAN members have committed at the multilateral level under the GATS. For sub-regional agreements in the Western Hemisphere, the paper analyzes the liberalizing content of the provisions of the agreements in a comparative fashion and then moves to compare the degree of liberalization at the multilateral and subregional levels of these agreements through reviewing Mexico's lists of reservations in NAFTA, Chile-Mexico and the Northern Triangle.

Lastly, the paper discusses the status of services negotiations in the FTAA process, ongoing since these negotiations were launched by Heads of State of countries in the Western Hemisphere at the Second Summit of the Americas in Santiago de Chile in April 1998.

SERVICES LIBERALIZATION IN ASEAN

The ASEAN Framework Agreement on Services (AFAS) was born out of the ASEAN Bangkok Summit in 1995, where a decision was made that ASEAN will launch negotiations in trade in seven service sectors namely, banking, tourism, air transportation, maritime transportation, telecommunications, construction and professional services. It was believed that regional negotiations would solicit bolder commitments from member countries than those made in GATS where the number of parties involved is much greater and the interests much more diverse. The GATS framework was used as the basis for negotiations in AFAS. Member countries opt positive list approach (or bottom-up approach) to liberalize services trade and are to place requests and offers on liberalizing their respective service sectors.

The positive list approach emphasizes progressive liberalization of services trade through the undertaking of commitments regarding market access, the treatment of foreign service suppliers in specific service sectors, or both. Additional liberalization in sectors where commitments are not initially undertaken is to be carried out through periodic rounds of negotiations. The positive list, bottom-up approach is the one that was agreed and carried forward during the Uruguay Round of Multilateral Trade Negotiations and is now in place at the multilateral level under the WTO General Agreement on Trade in Services, or GATS, in effect since January 1995.

The negotiation scheme based on the request-and-offer format did not prove effective, however, simply because most member countries were unwilling to open up their markets. Rather, they were hoping to benefit from prying open member countries' service markets, while protecting their own as much as possible. They, therefore, strategically held back their offers in the hope of being able to better bargain with other members. This is evident in the "Initial Package of Commitments" made in December 1997, where commitments made were rather trivial and concentrated only in the tourism sector, where most member countries display a comparative advantage. Few commitments were made in key sectors such as finance and telecommunications. In light of the clearly unsatisfactory initial offers, an additional requirement was made

that commitments made in AFAS should, at the least, be more advanced than those made in GATS.

The GATS-plus requirement did much help to improve member countries' offers that became the Final Package of Commitments made in September 1998. Other factors were also responsible. The spread of electronic commerce such as electronic banking and on-line accounting, consulting, insurance services also force member countries to open up their service industries with little choice or risk falling behind in the global information revolution. Nevertheless, the Final Package of Commitments was far from being "bold" as had been anticipated by the Coordinating Committee on Services (CCS). The following section will examine the nature of these commitments in greater details in key sectors, namely, telecommunications, maritime transport, air transport and tourism.

Commitments ASEAN – 5 countries made in AFAS as compared with GATS

Despite the GATS-plus requirement, however, actual commitments made in AFAS are only marginally better than those made in GATS. And in some particular sector, such as telecommunications, commitments in AFAS are clearly inferior than those made in, reflecting members' lack of genuine commitment to open up their service markets to their neighbors. Graphs a, b, c and d in Annex II compare the ASEAN –5 commitments made in AFAS to those made in GATS in four service sectors namely, telecommunications, air transport, maritime transport and tourism. Member countries' commitments in each sector are commented below.

Comparison of Commitments in GATS and in AFAS

In the telecommunication sector, the difference made in GATS and in AFAS is most glaring. As can be seen in graph a, with the exception of the Philippines, ASEAN members made less progressive commitments in AFAS than in GATS. The discrepancies between commitments made in GATS and AFAS in the telecommunications sector shown in the graph were made even wider with more advanced commitments made in GATS under the Agreement on Basic Telecommunications signed in 1997. Singapore made the most advanced commitments both to liberalize overseas call market in the year 2000 and to allow foreign ownership in local telecom businesses. Malaysia and the Philippines, both of which have already opened up local market in 1995, guaranteed market access in the international service sub-sector beginning in January 1998 but did not commit to allowing foreign control of local telecom businesses. Thailand and Indonesia are obvious laggards. Indonesia committed to open up its overseas call market in 2005, while Thailand only committed to revise its commitments in 2006.

Since the ABT is based on a reciprocal rather than on a MFN basis, ASEAN member countries that have not opened up their markets are not entitled to benefit from market

liberalization as a result of the agreement. For example, Thailand and Indonesia will not be guaranteed access to international service markets in Malaysia, the Philippines and Singapore since both countries have not yet opened up their own markets. Yet, European countries, the US, and other non-ASEAN countries that have already opened up their markets will be able to access these markets.

Maritime transport service appears to be the only sector where commitments in AFAS are clearly more advanced than those made in GATS as can bee seen in Graph c. This may be the case simply because the commitments in GATS are minimal as negotiation in 1994 failed miserably. The collapse of the negotiation in Maritime transport in the GATS was marked by the withdrawal of the United States from the negotiation, citing "unsatisfactory commitments" made by other members as the reason. The other reason for more advanced commitment in AFAS is simply that there is little competition among ASEAN countries in the maritime sector. Singapore is by far the only leader in the region with the size of its fleet more than doubled that of the Philippines, which has the second largest fleet. With not much to protect, member countries are able to make more advanced commitment. However, as can be seen from graph c, Singapore made the least commitment. This would confirm that ASEAN members continue to give priority to protecting their own industry, even a relatively competitive one.

As for the air transport service, the Philippines and Thailand made most advanced commitments both in GATS and less advanced ones in AFAS, while the remaining three members made very little commitments in GATS, but additional ones in AFAS (see graph b). This would appear to indicate that both Philippines and Thailand do not particularly favor regional liberalization in this industry. The picture is very much similar in the tourism sector. Here, Malaysia and the Philippines made most advanced commitment in GATS but again, less advanced ones in AFAS.

To conclude, it appears to be the case that bolder and more far-reaching commitments have been made in GATS rather than under the AFAS, and that the liberalizing content of commitments members made in GATS have been often watered down, rather than furthered in AFAS. The following section concentrates on the attitude of various ASEAN members.

ASEAN Member Country's Attitude toward Commitments in AFAS

Among the ASEAN-5 countries, Singapore has the most liberal and competitive service sector and is therefore, constantly prodding other members to make progressive liberalization in their respective service sectors. But it does not seem to be taking the existing negotiation framework seriously. As can be seen from the schedules of commitments in table 1, Singapore's commitments in both GATS and AFAS are trivial; be they in transportation, telecommunications or tourism despite its relatively liberal regime. On the contrary, it did make bold commitments in GATS in the Agreement on Basic Telecommunications, where negotiations are more clearly focused and the agreement based on a reciprocal rather MFN basis.

Indeed, Singapore appears to prefer more concrete, focused, issue-based negotiations. For example, it has been advocating "regional open sky policy" among ASEAN countries since landing rights is not included in the scope of negotiations in the air transport sector in GATS. Its' attempt was not met with much success since Thailand, the key player as the current regional aviation hub, refuses to sign an open sky agreement with its neighbors in fear of losing its geographical advantage by allowing foreign airlines to pick up passengers from the Bangkok International airport. As a result, Singapore has begun to look outside the region. It signed an "open sky " agreement with the United States in 1997. Malaysia followed suit and signed similar agreement with the United States shortly after.

Judging from the depth and coverage of commitments, the Philippines, appear to be placing most efforts in past negotiations. The Philippines made the most advanced commitments both in the GATS and AFAS in many sectors, in particular in the maritime transport (passenger and freight transportation) and also in air transport (computer reservation system), where it imposed no restrictions on commercial presence.

Thailand did make commitments in many sector and sub-sectors, but most are considered trivial. In key service sectors as those shown in table 1, Thailand committed very little. Moreover, while this fact is not apparent in the schedule of commitments shown in table 1, Thailand is the only ASEAN member that requested for MFN exemptions for almost all service sectors. Thus, its commitments in GATS are not as deep and wide as would appear to be. This reflects the country's preference for selective liberalization.

Similar to Thailand, Malaysia and Indonesia did not make advanced commitments in GATS or AFAS. However, these three countries have far fewer MFN exemptions than does Thailand.

Types of barriers to services trade and investment found in ASEAN countries

Since the service sector remains largely non-traded despite the emergence of the electronic revolution, provision of services continue to rely mainly on foreign direct investment. Thus, barriers to market access and national treatment in services involve some form of investment restrictions, in particular control of foreign equity share in domestic enterprises, type of commercial establishment allowed (branches, subsidiaries or joint ventures), scope of service, and employment of foreign personnel.

To illustrate the type of barriers found in the service sector in the ASEAN region, member countries' schedules of commitments made in both GATS and AFAS in four key service sub-sectors chosen from each of the four service sectors examined in this study are illustrated in Table 1. These include the hotel sub-sector from the tourism sector, the international service sub-sector from the telecommunications sector, the

passenger and freight transportation sub-sector from the maritime transport sector and the computer reservation system sub-sector from the air transport sub-sector.

The most common type of restriction found is the cap on foreign equity share, which is applicable to almost every service sub-sector examined. The only exceptions shown in Table 1 are the hotel service in the case of Indonesia and passenger and freight sea transportation in the case of the Philippines, where there is not a ceiling on the foreign equity share in local businesses.

The second most common type of restriction is that on the type of commercial establishment that a foreign company is allowed to set up. For example, in case of the passenger and foreign maritime transport, only representative offices may be set up in Indonesia under the GATS. However, in AFAS joint ventures are allowed. Joint ventures are mandatory for establishing a hotel business in Malaysia. Similar restrictions apply to many sub-sectors across different services.

The third most common type of barrier to trade in services found among ASEAN countries involves the movement of natural persons (mode 4). As can be seen from table 1, many ASEAN countries do not commit when it comes to mode 4. For example, in the computer reservation system sub-sector, none of the five members made commitments with regard to employment of foreign personnel. In other service sectors or sub-sectors, employment of foreign nationals is often allowed only in the managerial and specialist positions.

To conclude, many barriers restricting the cross-border flows of capital and labor remain among ASEAN countries. Indeed, such restrictions have served well to protect the commercial well-being of local businesses and preserve employment among local nationals. But such restrictions have contributed to the inefficiency and non-competitiveness of the region's service industries.

Obstacles to service liberalization in ASEAN

It has been six years since the inception of AFAS in 1995 and it must be concluded that very little has been achieved in prying open the service sector in this region. This by no means suggest that ASEAN countries have not made any progress towards liberalizing their service sector, rather, these regional and multilateral negotiations played a trivial or no role at all in encouraging deeper and wider liberalization. Most moves towards liberalization are results of members' own domestic policies. These include Malaysia and the Philippine's decisions to liberalize their telecommunications market in 1995, or Thailand's decision to lift the foreign ownership share in commercial banks in 1998 out of sheer necessity due to the financial crisis.

The lack of progress in the AFAS can be contributed to four key factors namely, the lack of political will and genuine commitment to open up the service market,

weaknesses in the negotiation framework, legal restrictions and institutional limitations.

Most ASEAN countries – with the exception of Singapore – do not have a comparative advantage in many service sectors or activities, with the large exceptions of tourism and mode four, or the movement of natural persons. This is often the case because many service sectors such as telecommunications, transportation and utilities are still dominated by inefficient state owned enterprises or monopolistic private operators. Recognizing the inability of the domestic operators to compete internationally, the government tries to protect these uncompetitive industries from formidable foreign competition. Thus, in the absence of privatization, deregulation and the introduction of free and fair domestic competition, it is hard to imagine how such industries can ever become competitive. If so, the prospect for opening up these markets to foreign, or even regional, competition is certainly bleak.

While protectionist policies pose obvious obstacles to regional liberalization, the inadequacies of the adopted negotiation framework is also responsible for the lack of achievements in AFAS. There has been extensive discussion in the WTO about how the GATS negotiation framework can be made more effective. The current framework does not facilitate progressive liberalization. To begin with, little is known with respect to the extent of liberalization in member countries. The height of the barriers to services trade, unlike tariffs in the case of merchandise trade, are difficult to estimate as they come in many different forms as discussed earlier. As a result, many commitments made in the GATS are in fact inferior to the *status quo*, rendering these commitments trivial. Second, there are neither a targeted level of achievement in liberalization nor a specific target date set for the dismantling the multitude barriers that exist. As a result, unfocused commitments are often marginal and are made in inconsequential service sub-sectors that have little impact on the overall industry. Third, sector specific negotiations are sometimes constrained by horizontal restrictions that are not easily removed. For example, the movement of natural persons is certainly a sensitive issue that involves social and security concerns. Fourth, there is not a clear safeguard measure for developing countries that may be negatively affected by the liberalization than what had been originally anticipated. Finally, concerns were raised about domestic regulations that can pose serious obstacles to market access even when barriers to services trade are lowered.

Several suggestions have been made on how the existing GATS negotiation framework can be improved. To begin with, the status quo of member countries' extent of liberalization need to be properly assessed to ensure that commitments made are not inferior to the *status quo.* This can be done through the Trade Policy Review Mechanism in much the same way as the case for trade in goods. Suggestions have also been made to adopt the negotiation framework employed in the Agreement in Basic Telecommunications, where specific sub-sectors to be negotiated – i.e., basic telecommunications – and the specific date of liberalization are determined. On the other hand, negotiations at the horizontal level – i.e., investment and movement of natural persons – are also crucial for the success in liberalizing these markets.

Besides the lack of members' genuine willingness to liberalize their economies and inadequate negotiation framework, domestic laws and regulations represent another major constraint to successful liberalization. As the service sector is often governed by many sets of rules and regulations, these often pose limitations to the scope of commitments negotiators are able to make. For example, Thailand is marked as the laggard in opening up its telecommunications market with its least progressive commitment made in the Agreement on Basic Telecommunications. But this can be explained by the fact that the existing law dictates state monopolies in the telecommunications sector. Making commitments that are in contradiction with domestic laws would be equivalent to making legal commitments, which is certainly well beyond the scope of the WTO. Therefore, much legal overhauling is required before any bold movements can be expected in the regional as in the multilateral fora.

Finally, unlike the goods sector, the service sector is plagued with complicated domestic rules and regulations that come under the purview of many departments and ministries. For example, in the case of Thailand investment comes under the purview of both the Ministry of Commerce and the Board of Investment under the Office of the Prime Minister. Regulations regarding employment of foreign nationals are set by the Ministry of Labor and Welfare and the Immigration Bureau, which is part of the Royal Thai Police under the Office of the Prime Minister. Sector specific regulations are concerns of the respective ministries. With the multitude of government authorities involved, co-ordination is indeed extremely difficult.

Possible moves to enhance ASEAN services trade liberalization

While protectionist policies will no doubt continue to prevail in this region, but the pressure to liberalize services is growing stronger each day with the advancement in technology that threatens to tear down century-long barriers to services trade. For example, with the development of long-haul aircrafts, it will soon be possible to fly non-stop from the United States or Europe to Singapore. If so, Bangkok will lose its geographical advantage that has served it well in keeping the local airline and airport protected from the onslaught of competition from competing airports such as those in Malaysia and especially Singapore. If so, Thailand may not have much choice in opening up its air transport market before losing its status as the regional hub to Singapore as appears to be the case.

Also, as mentioned earlier, the emergence of electronic commerce will have a deep and wide impact on trade in services. The emergence of the Internet protocol (IP) telephony threatens to wipe out revenues of traditional international service operators. Already, overseas call made through the Internet has snatched away a considerable portion of operators' revenues. Similarly, e-commerce is tearing down all the barriers to a multitude of services including banking, insurance and business services (accounting, legal, managerial advice, etc.), whose transactions can be conducted digitally. It is thus important for ASEAN countries to realize that the days protecting domestic industries are numbered and that they should start thinking about saving the

entire economy, rather than protecting a few interest groups consisting of local operators.

Certain steps could help to facilitate ASEAN member countries in making more meaningful commitments. First, ASEAN seriously lacks information and data on the service sector. In keeping with the suggestion made in the GATS about enhancing the Trade Policy Review Mechanism, the ASEAN Secretariat may consider building a database on the status of key service sectors among member countries. The database could presumably include relevant laws and regulations that can potentially pose barriers to trade in services. In fact, the ASEAN Inter-parliamentary Organization (AIPO) has initiated preliminary studies to "take stock" of various laws governing services trade and investment in this region. This initiation should be continued. ASEAN should also cooperate in making their basic laws and regulations governing services trade and investment more clear, transparent and comparable with one another

Second, considering the importance of the service sector to all national economies and the complexity of the laws and regulations involved, it may be necessary to negotiate services trade and liberalization at the highest level of policy-making body that can initiate the required legislative changes.

Third, with reference to the suggestion made in the GATS, ASEAN is also considering a different negotiation framework that is similar to that used in the negotiation of trade in goods in ASEAN or AFTA. That is, all services will be grouped according to 5 or 7-digit code similar to that used for manufactured products. Target date will be set for a certain percentage of the services to be liberalized taking into account of set target date for an ASEAN Free Trade in Service Area in the year 2020. Also, as is the case in AFTA, services will be divided into two groups: fast track and slow track. Services listed under the fast track will have a shorter time horizon for liberalization. This particular negotiation framework is currently being considered in ASEAN.

An alternative strategy would be to negotiate on specific sub-sectors that are of importance to the ASEAN economy with specific dates set for planned liberalization. Basic principles with regard to the rules and regulations governing the negotiated should also be part of the agreement to ensure effective competition in the market ex-post liberalization. This approach is similar to that used in the Agreement on Basic Telecommunications that proved to be the most successful service negotiation in GATS.

It would also be important for ASEAN to establish a working group for each of the service sector that can undertake in-depth industry study as well as assess and monitor member countries' progress in liberalizing the service sector according to commitments made.

Finally, ASEAN seriously needs a dispute settlement mechanism to ensure that commitment made are not backtracked as seems to be the case in trade in goods.

Without a credible settlement mechanism, commitments will not be as binding as they are designed and intended to be.

SERVICES LIBERALIZATION IN THE WESTERN HEMISPHERE[3]

A strong wind of liberalization has blown over trade in services in the Western Hemisphere. It began in 1994, when the North American Free Trade Agreement (NAFTA) entered into force, followed in 1995 by the first multilateral disciplines on services to become effective under the World Trade Organization. Since then countries in the hemisphere have concluded no fewer than fourteen sub-regional arrangements on trade in services, involving all of the participants in the Free Trade Area of the Americas (FTAA).

The thirty-four countries of the Western Hemisphere participating in the negotiations for the FTAA entered into the third of four negotiating phases this month, as they aim to carry out the mandates given to them by Ministers responsible for Trade at the recent Buenos Aires Ministerial meeting held April 7th. Launched in April 1998 at the second Summit of the Americas in Santiago de Chile, the FTAA negotiations are firmly on course, with a completion date confirmed to be no later than end 2004 and the resulting agreement to be implemented within a year (by December 2005).

Services are squarely within the agenda of the FTAA negotiations, as are the issues of investment, government procurement and competition policy, along with the more traditional market access areas and disciplines. This makes the regional negotiations in the Western Hemisphere the most ambitious policy undertaking in the world trading system at present, given the continuing uncertainty and lack of agreement on an agenda for the prospective new round of multilateral trade negotiations.

Regionalism in the Western Hemisphere

The Western Hemisphere, through its numerous sub-regional agreements, has proved to be an experimental caldron for the elaboration of approaches to services agreements. Broadly, however, all fourteen sub-regional agreements that encompass services have adopted one or the other of the two main modalities to liberalize trade in services.

Within the Western Hemisphere, the Protocol of Montevideo on Trade in Services of MERCOSUR (Common Market of the South), signed in December 1997, has opted to follow a variant of the positive list approach, setting a specific goal of achieving a common market in services through progressive liberalization within a specific

[3] This section is a summarized version of the chapter by Sherry Stephenson on "Services", in the volume edited by Jose Manuel Salazar-Xirinachs and Maryse Robert (2001), *Toward Free Trade in the Americas,* Washington D.C. Brookings Institution Press.

timeframe.[4] Liberalization is to be carried out over a ten-year period and annual rounds of negotiations.[5] In contrast to the GATS preamble,[6] MERCOSUR members have agreed that the ultimate result of their progressive liberalization process will be the complete elimination of all restrictions affecting either services trade or service suppliers in all sectors.

The vast majority of sub-regional agreements in the Western Hemisphere have opted for the negative list or top-down approach. Canada, Mexico, and the United States pioneered this approach in NAFTA. Since NAFTA took effect in January 1994, Mexico has played a pivotal role in extending this liberalization approach and similar types of disciplines to other subregional agreements it has signed with countries in South and Central America.[7] Chile has concluded similar agreements with Canada (in effect since July 5, 1997), and Central America as a whole (signed in October 1999); the Dominican Republic has negotiated NAFTA-type agreements with Central America as a whole and with the Caribbean Community and Common Market (CARICOM).

Members of the Andean Community have chosen a variant of the negative approach, one that is to be carried out over a transition period, namely, the complete elimination of barriers to intraregional trade in services within a five-year period. Decision 439 on Trade in Services, adopted in June 1998, specifies that this process is to begin when comprehensive national inventories of measures affecting trade in services for all members of the Andean Community are finalized. Discriminatory restrictions identified in these inventories are to be lifted gradually through a series of negotiations, ultimately resulting in a common market free of barriers to services trade. A process to harmonize national regulatory regimes in key service sectors is to be conducted in parallel.

CARICOM members finalized Protocol II on Establishment, Services, and Capital covering trade in services and investment in July 1997.[8] The Protocol itself does not specify an approach to services liberalization but envisages removing all existing restrictions on trade in services in the region through a program to be established upon entry into force of the protocol.

The fourteen sub-regional arrangements constitute a set of occasionally overlapping agreements containing various levels of disciplines and obligations. All of these agreements, however, are distinguished by their ambitious objectives that in most

[4] This common market in services is to be achieved within a ten-year period, beginning with the implementation of the Protocol (which had not taken effect as of May 2001).
[5] Schedules of commitments may be modified or withdrawn, subject to negotiating appropriate compensation.
[6] The preamble states the desirability of "the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis. . ."
[7] These include the Group of Three agreement, negotiated between Mexico, Colombia, and Venezuela, and bilateral free trade agreements Mexico has concluded with Bolivia, Chile, Costa Rica, Nicaragua, and the Northern Triangle group, consisting of El Salvador, Guatemala, and Honduras.
[8] It entered into force provisionally in July 1998.

cases go well beyond those defined at the multilateral level. Although the GATS rules and disciplines provide the least common denominator for trade in services in the hemisphere, all of the sub-regional agreements posit a freer services trade environment and generally stronger disciplines than does GATS.[9] This may be either with respect to the wider scope of liberalization they embrace or to the ultimate objectives they envisage. However, the actual liberalization of such agreements as they have played out in practice has not been evaluated in a rigorous or consistent manner, often because the required information to do so is not readily available or has not been made public.

Convergence and Divergence of Services Agreements in the Western Hemisphere

A large number of the subregional agreements on trade in services in the Western Hemisphere, particularly those that have followed the NAFTA model, share many similarities. This section analyzes the major points of convergence and divergence apparent in the approaches to liberalization that these agreements take regarding three criteria: principles; rules and disciplines; and exclusions.

Principles on Trade in Services: MFN, National Treatment, and Transparency

All fourteen subregional agreements contain basic obligations regarding national treatment, and most-favored-nation (MFN) treatment (with an exception of CARICOM Protocol II), which are building blocks to any agreement.[10] MERCOSUR and the Andean Community set out these two principles in an unqualified form (no deviation from the application of the MFN or national treatment principles). Under GATS, as in ASEAN, in contrast, national treatment is not a general obligation but rather the result of specific commitments by each WTO member, and MFN, although a general obligation, can be qualified through time-bound exemptions.[11]

[9] The content of these agreements is summarized in OAS Trade Unit (1999). In contrast to these comprehensive trade agreements, a number of sectoral agreements on services have also been signed, sometimes as formal agreements and other times as more informal cooperation agreements. Some of these sub-regional and bilateral sectoral agreements on services carry with them rules and disciplines, while others are limited to specifying good intentions or cooperative action. Such sectoral stand-alone agreements, by their nature, cannot be considered in the same way as those integration arrangements that contain comprehensive provisions and rules covering all services. See OAS Trade Unit (1998) for information on these stand-along agreements.

[10] The fact that the CARICOM protocol does not contain a provision on MFN treatment means that no CARICOM member is obliged to accord MFN treatment to other CARICOM members for any trade concession granted to non-members.

[11] Under Article II of GATS, the MFN principle can be the object of temporary exceptions with respect to specific service sectors. An annex to GATS Article II specifies the procedures under which such exemptions may be sought and the time period for such exemptions (in principle not more than ten years). The annex subjects MFN exemptions to periodic review and future negotiation. The GATS definition of MFN does not necessarily imply liberal or restrictive conditions of market access; it simply requires that the most favorable treatment given to any service supplier be accorded to all foreign service suppliers equally, in all sectors, and for all modes of supply. National treatment is a principle of a specific nature under GATS resulting from the negotiating process and applies only to those sectors and modes of supply that participants incorporate specifically into their national schedules of commitments.

The free trade agreements that have followed the NAFTA model set out both MFN and national treatment as unconditional principles. Country-specific exceptions (also known as reservations or nonconforming measures) to either of these principles, however, may be taken for services sectors on either a temporary or a permanent basis at federal, provincial or state levels. Besides these two fundamental principles, a basic discipline also exists in the NAFTA-type agreements not to require the establishment of a representative office or branch in a member country's territory as a condition for the cross-border provision of a service ("right of non-establishment.").

All sub-regional arrangements covering trade in services in the Western Hemisphere adhere to the principle of transparency and contain an article to this effect. Like GATS, most agreements (with the exception of CARICOM Protocol II) oblige prompt publication, notification and establishment of contact points or information centers.[12] NAFTA and some NAFTA-type agreements go beyond GATS by taking an innovative step to stipulate the right for parties to comment on proposed changes, to the extent possible.

Rules and Disciplines: Areas of Convergence

Several of the rules and disciplines for trade in services contained in the subregional agreements of the Western Hemisphere are very similar, notwithstanding the different approaches to liberalization chosen by the members to the agreements. These include, among others, domestic regulation, recognition of licenses or certifications obtained in a member country, quantitative restrictions, and denial of benefits.

DOMESTIC REGULATION. Although MERCOSUR envisages a similar provision on domestic regulations as in GATS, neither NAFTA nor the NAFTA-type agreements contain an article on domestic regulation per se in their chapter on trade in services.[13] Rather, the equivalent of the GATS discipline is contained in a more narrowly focused article related to the licensing and certification of professionals, in order to prevent any measure on licensing or certification of nationals of another member country (professional service suppliers only) from constituting an unnecessary barrier to trade.[14]

[12] Upon entry into force, the CARICOM protocol requires notification of existing restrictions on the provision of services and right of establishment by each member to the CARICOM Council for Trade and Economic Development. Protocol II of CARICOM defines right of establishment as the right to engage in any non-wage-earning activities of a commercial, industrial, professional, or handicraft nature and to create and manage economic enterprises within the region.

[13] The GATS recognizes the right of WTO members to regulate services within their territories in order to meet national policy objectives. National laws and regulations, however, must be transparent, administered with due process, and changed or adapted in a predictable manner. Further, such laws and regulations should not be more trade restrictive than is necessary to fulfil a legitimate objective (necessity test). Members must explain the specific objectives intended by their regulations upon request, provide an opportunity for trading partners to comment upon proposed regulations, and give consideration to such comments.

[14] NAFTA-type agreements narrow this requirement to the cross-border supply of a service. They are structured so that the disciplines of the services chapter cover only cross-border trade in services (modes 1 and 2 of service supply, according to the GATS definition), while commercial presence for services (mode 3 of service supply) is covered in a separate chapter on investment that encompasses disciplines

The Andean Community agreement on services likewise does not contain disciplines on domestic regulation per se but partially addresses the issue through an article that binds members not to establish new measures that would increase the degree of nonconformity or fail to comply with the liberalizing commitments contained in the agreement.

RECOGNITION. As in GATS, the subregional agreements on services of the Western Hemisphere encourages recognition but targets more narrowly to professional services providers. All the subregional agreements also oblige to develop a generic blueprint aimed at defining procedures for assisting service professions to achieve mutual recognition of licenses and certifications. The NAFTA-type agreements contain an obligation to abolish nationality or permanent residency requirements in effect for the recognition of diplomas and the granting of licenses for the providers of professional services from other parties within two years of entry into force of the respective agreements.[15] The parties of the agreement between the Dominican Republic and CARICOM are endeavoring to develop a separate chapter on professional services that would achieve mutual recognition of licenses and certifications.

The MERCOSUR agreement on services contains a provision on the recognition of professionals through the development of mutually acceptable standards and criteria to determine the equivalence of licenses, certifications, professional degrees, and accreditations granted by another member country. Members of the Andean Community are in the process of drafting criteria to permit the mutual recognition of licenses, certifications, professional degrees, and accreditations granted in the various member states.

QUANTITATIVE RESTRICTIONS. The focus of an article on non-discriminatory quantitative restrictions varies by the subregional agreements. Mirroring GATS, the MERCOSUR agreement prohibits the introduction of new non-discriminatory quantitative measures on any scheduled commitment and sector.

NAFTA and the NAFTA-type agreements, however, require a listing of quantitative restrictions on services in annexes, with subsequent notification to other parties of a given agreement of any new non-discriminatory quantitative restriction that a party may adopt. Such restrictions are to be lifted through periodic consultation and negotiations.

DENIAL OF BENEFITS. As in GATS, all hemispheric agreements allow a party to deny the benefits of a given agreement to the supply of a service and to a service supplier from or in the territory of a non-member of the agreement. All subregional agreements in

relevant to both goods and services, and the movement of natural persons (mode 4 of service supply) is covered in a separate chapter on the temporary entry for business persons. A business person means "a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities" (see NAFTA, Article 1608).

[15] If the deadline is not met, the other party does not need to respect the obligation. Parties to these agreements are also to consult periodically on the feasibility of such objectives.

the hemisphere (with the exception of MERCOSUR), however, go further than GATS to define a service supplier not only as a legal entity under majority ownership or effective control, but also as one that must conduct substantial business activities or operations in the territory of any of the member countries in order to benefit from a given agreement.

Rules and Disciplines: Areas of Divergence

Major rules and disciplines in which the hemispheric agreements diverge from each other include standard of treatment, treatment of investment, treatment of natural persons, monopoly disciplines, and general safeguards.

STANDARD OF TREATMENT. Some of the NAFTA-type agreements include a "standard of treatment" clause that requires each party to accord service providers of any other party the more favorable of any treatment provided under the principles of MFN and national treatment.[16] Unlike the other subregional agreements, such agreements also contain a ratchet mechanism that ensures that all future liberalization eliminating restrictions on a service sector or discriminatory treatment affecting a service supplier from another party is automatically bound in the agreement.

TREATMENT OF INVESTMENT. One important difference between the approaches to services liberalization by countries in the Western Hemisphere relates to the interplay between services and investment. While agreements such as GATS, MERCOSUR, CARICOM and Andean Community incorporate investment in services as one of the four modes of service delivery (mode 3, or commercial presence), NAFTA and the NAFTA-type agreements adopting the negative approach (with the exception of the Central America-Chile agreement) set out investment rules and disciplines for both goods and services in a separate chapter.[17] These agreements guarantee the free entry of investments of other parties, albeit with country-specific reservations. The Central America-Chile agreement incorporates, in its investment chapter, the bilateral investment treaties each Central American country signed with Chile.

TREATMENT OF NATURAL PERSONS. Treatment of mode 4, movement of natural persons, varies considerably by subregional agreements. In the MERCOSUR agreement, as in GATS, the ability of service suppliers to move within the region on a temporary basis is dependent upon scheduled commitments (at least during the ten-year transition period). The Andean Community agreement requests members to facilitate the free movement and temporary presence of natural or physical persons for the provision of services. CARICOM provides for the temporary movement of persons as service providers solely in conjunction with the establishment of foreign-owned business

[16] The provision appears in NAFTA and in the bilateral agreements Chile has entered into with Canada, Mexico, and Central America. None of the other subregional agreements contain such a provision.
[17] MERCOSUR members also have agreed to separate protocols on investment as well as Andean Community members have. For further information, see M Robert (2001), "Investment" in *Toward Free Trade in the Americas*, edited by J. Salazar-Xirinachs and M. Robert, Washington D.C., Brookings Institution Press.

activities, including management, supervision, and technical staff and their spouses. NAFTA and the NAFTA-type agreements contain obligations that are limited to the temporary movement of business service providers only rather than the movement of natural persons in general, so this mode of service delivery is only partially covered in several agreements.

MONOPOLY DISCIPLINES. Unlike GATT, GATS contains very general disciplines over monopoly practices and exclusive service suppliers.[18] In the Western Hemisphere some agreements contain disciplines on monopoly service providers and others do not.[19] NAFTA, the Group of Three, and several of the bilateral agreements set out disciplines on monopoly practices with respect to both goods and services and extend those disciplines to state-owned enterprises as well. The agreement between the Dominican Republic and CARICOM not only contains a provision on monopoly and exclusive services suppliers, but also envisages the future elaboration of a provision on anti-competitive business practices. The Andean Community has a separate agreement on competition (Decision 285), as does CARICOM (Protocol VIII). The other agreements of the hemisphere neither contain nor envisage anti-competition provisions, although MERCOSUR members are in the process of developing separate protocols on competition policy.

GENERAL SAFEGUARDS. GATS contains an article pertinent to general safeguard action, inspired by a similar article in GATT.[20] In the Western Hemisphere, only the CARICOM agreement includes an operational safeguard article at the time of this writing. Several of the subregional agreements, including NAFTA and MERCOSUR, do not contain a general safeguard article for services trade, while other agreements specify that general safeguards may be applied once future disciplines are developed on the subject.[10]

Exclusions from Services Liberalization in Western Hemisphere SRAs

Certain service sectors have been excluded both from GATS and from the subregional arrangements. One example is the air transport sector, where traffic rights or routing agreements are excluded from GATS as they are from all of the subregional arrangements. Likewise, GATS and all the subregional agreements exclude services provided by government. It should be noted that governmental services are different from government procurement. Governmental services are those provided on a non-commercial basis and that do not compete with those provided by private service suppliers.

[18] These disciplines aim to ensure that monopoly suppliers do not abuse their market position or act in a way inconsistent with the specific commitments undertaken by a WTO member.
[19] For further information, see J. Tavares de Araujo Jr. "Competition Policy", *ibid.*
[20] Article X of GATS allows members to modify or withdraw a specific commitment one year after the commitment enters into force. The country doing so must show the Council on Trade Services that the modification or withdrawal cannot await the lapse of the three-year period provided for in Article XX of GATS.

Nearly all of the subregional agreements exclude subsidies from their coverage (MERCOSUR is the exception), and about half of the agreements exclude government procurement for services. In case of government procurement, NAFTA broke new ground by including government procurement for services, requiring all federal agencies and several state enterprises to open public contracts to service providers in the three NAFTA member countries. Similar provisions are included in the Group of Three and in certain of the bilateral free trade agreements. The Andean Community agreement on services includes government procurement within its scope of application. Financial services are excluded from the agreement between Mexico and Costa Rica, and cross-border financial services are excluded from the agreements signed by Chile with Canada, Mexico, and Central America.

Evaluating the Liberalizing Content of Some Preferential Services Agreements in the Western Hemisphere

Evaluating the liberalizing content of preferential services agreements in the Western Hemisphere has not yet been attempted by policy analysts, though it is a critical question. A few agreements have been in effect now for half a decade. To carry out such an exercise requires the appropriate information, namely a list of scheduled commitments specific to the regional agreement (in the case of MERCOSUR members) so that a similar type of analysis to that in Section II of this paper can be conducted, or alternatively, finalized annexes of reservations to liberalization or those remaining restrictions (in the case of NAFTA and the NAFTA-type agreements).

Unfortunately, for several of the regional services agreements in the Western Hemisphere, this information is either not available, or not easily obtainable. MERCOSUR members have seemingly finalised the first round of their regional services commitments, but these are not readily available in any form. Nor are the regional commitments separated in national service schedules from those of the member's GATS commitments, making it extremely problematic to analyze the margin of regional preference offered in this case.

In the case of NAFTA and NAFTA-type agreements, members to some agreements have finalized lists of reservations at the time of signature and have published these in annexes to the agreements. This is the case for NAFTA, for the Canada-Chile, the Chile-Mexico and the Northern Triangle free trade agreements, and for the Costa Rica-Chile component of the Chile-Central America agreement. In these agreements one or more parties have listed reservations to air, land, and water transport services; communications services; construction services; cultural services; financial services; energy services; professional services; social services; recreation and sport services; and business services. For the other NAFTA-type agreements such lists of reservations have not been published along with the agreement. They have either been subsequently finalized and published in national sources (the Group of Three and the Costa Rica-Mexico agreements), or they have not yet been finalized (Bolivia-Mexico, Mexico-Nicaragua, Central America-Dominican Republic, CARICOM-Dominican

Republic, and the other countries of Central America-Chile). In the latter cases, this makes these preferential agreements much less transparent than they have been designed to be, and also reduces their value for regional service providers.

As a case study for the impact of preferential services liberalization, the authors have examined the coverage and content of Mexico's reservations to three regional agreements to which it is a party, and have compared these with its commitments under the WTO GATS in order to determine if a preferential margin of liberalization exists, and if so, in what areas.

FTAA Negotiations

Services negotiators from Latin America, Canada, the United States, and the Caribbean have been working hard in the regional FTAA context since negotiations were formally launched in April 1998 to agree upon and reach a common understanding of the issues to be included in a services chapter of the hemispheric free trade agreement. They have concurred that the services chapter will have to encompass the following seven issues: scope, sectoral coverage, most-favored nation treatment, national treatment, market access, transparency and denial of benefits. Other important issues identified for possible inclusion in a services chapter include domestic regulation, quantitative restrictions, safeguards, subsidies, monopolies, the treatment of smaller economies and dispute settlement, as well as institutionally related issues. The elaboration of deeper sectoral disciplines, where relevant, is also under consideration.

The three major challenges facing the FTAA service negotiators are: the choice of an architecture to build the services agreement; the decision on what liberalizing approach or modality to follow for market access negotiations; and how to solve the current overlap in the negotiations between the services and the investment negotiating groups. All three critical decisions must be taken during this current negotiating phase, or before August 2002. This is because Trade Ministers in the hemisphere have mandated that recommendations on methods and modalities for market access negotiations for services (and for goods and investment as well) be made by the respective negotiating groups no later than April 1st 2002 in order to begin the actual negotiations no later than mid-May 2002. However, many of the rules and disciplines will be linked to the choice of a negotiating approach. This means effectively that the pressure is on FTAA negotiators to produce the skeleton agreement of rules and disciplines for services and select a liberalizing modality over the coming year.

To meet this double challenge services negotiators have several tools at hand. The first is the experience that they have gained through participation in the WTO GATS. The second is the vast array of regional experience that has been evidenced over the past decade in the services area in the Western Hemisphere where no less than fourteen sub-regional integration agreements covering trade in services have been signed since the NAFTA deepened interest in this process in 1994. The Americas has actually been

an enormous boiling pot of innovations in the services area with agreements of a variety of different sorts having been negotiated, though several of which have yet to be fully implemented.

A decision on how the four modes of service supply will be dealt with in the context of a hemispheric free trade agreement will determine both the architecture of the agreement and the scope of the services chapter. As stated earlier, a key difference between existing sub-regional agreements in the Western Hemisphere is how they deal with investment and with other areas such as government procurement, monopolies and restrictive business practices, technical regulations, dispute settlement and temporary movement of business persons whose disciplines are pertinent not only to services but to goods (and intellectual property) as well. NAFTA and the NAFTA-type agreements contain disciplines to deal with these areas that are set out in separate chapters pertaining to both goods and services in an integral manner. Other regional arrangements have elaborated parallel agreements on these areas or have separated out the disciplines for goods and for services, keeping all four modes of supply within the services chapter rather than allowing the services component of investment (mode 3), temporary movement of persons (mode 4), procurement and competition policy to be covered by the respective chapters in these areas. The resulting architecture of agreements under these two alternatives is quite different. This choice also has implications for coherence and comprehensiveness of a future FTAA agreement.

A decision on the negative list ('top down') or the positive list ('bottom up') approach will determine the liberalizing modality. In spite of misconceptions to the contrary, the choice of the architecture for a services chapter (and an integration agreement) is a separate one from the decision on how to carry out the actual liberalization process that is much more of a mechanical issue. The approach to liberalization followed by regional services agreements in the hemisphere has varied, with NAFTA, the Andean Community, and the numerous NAFTA-type bilateral agreements signed by Mexico and Chile with each other and with other Latin American countries (and Chile with Canada as well) having adopted the first option, to the Mercosur members having opted for the second option. Although this could be viewed as a more technical question, nonetheless the choice of a liberalizing modality will have serious implications for a hemispheric services agreement, particularly as concerns the greater or lesser transparency that such a choice carries for service providers.

The choice of a negotiating modality must be analyzed together with the final objectives of an agreement as the latter can be a major factor in determining the degree of long-run services liberalization. Final objectives in existing regional integration agreements vary widely, with the Andean Community, Mercosur and CARICOM positing a complete removal of all discrimination in national treatment for services and service providers among members, contrasting to the NAFTA-type agreements that allow for residual restrictions to be maintained in the form of non-conforming measures or reservations to full national treatment, some of which may be subject to future liberalization and others not. The treatment of domestic regulation also varies

considerably, with the Andean Community members targeting regulatory harmonization for key service sectors, a goal the other agreements do not attempt.

Thus FTAA negotiators have much to draw upon in their tool box in order to craft a services agreement. Their choices will also be informed by political decisions such as how ambitious and how transparent they wish for an agreement to be. The FTAA has the potential of being a "WTO GATS-plus" agreement and it should be, in order to comply with the guidelines set out in GATS Article V and to reflect both the number of participants and the economic importance of the Western Hemisphere as a regional grouping, as well as to justify the enormous effort being put into the ongoing negotiations. How to ensure that this happens and in what form will be the challenge of the Western Hemisphere services negotiators over the coming fourteen months.

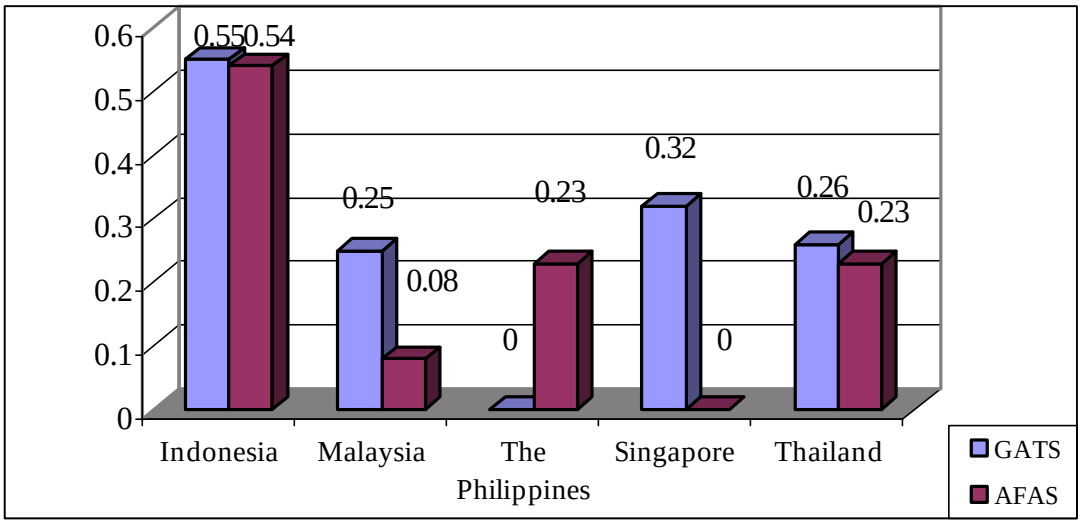
Table 1 Commitments made in Key Service Sectors in GATS and AFAS

Country	Type of restrictions			
	Tourism (Hotel)		Telecommunications (International Services)	
	GATS	AFAS	GATS	AFAS
Indonesia	Limitation on the size of the area of operation	Double the size of the area	Joint venture required Foreign equity capped at 25%	No commitments
	Restrictions on employment of foreign personnel except for managers and specialists	Same as in GATS	Restrictions on employment of foreign personnel except for managers and specialists Number of foreign natural persons limited to under 20 in joint ventures	No commitments
Malaysia	- Foreign ownership restrictions - Joint venture with Malaysian control is required - No commitments made for employment of foreign nationals	Same as in GATS	No commitments	No commitments
Philippines	- Foreign ownership capped at 40% - Restrictions on type of position and length of stay of foreign employees. A letter of guaranteed issued by a state organizations is also required.	Same as in GATS	No commitments	No commitments
Singapore	- Mode 3- No commitments - Mode 4 – as in horizontal restrictions	Same as in GATS No commitments	Number of new operators not exceeding 2 Foreign equity is capped	No commitments
Thailand	No commitments	No commitments	No commitments	No commitments

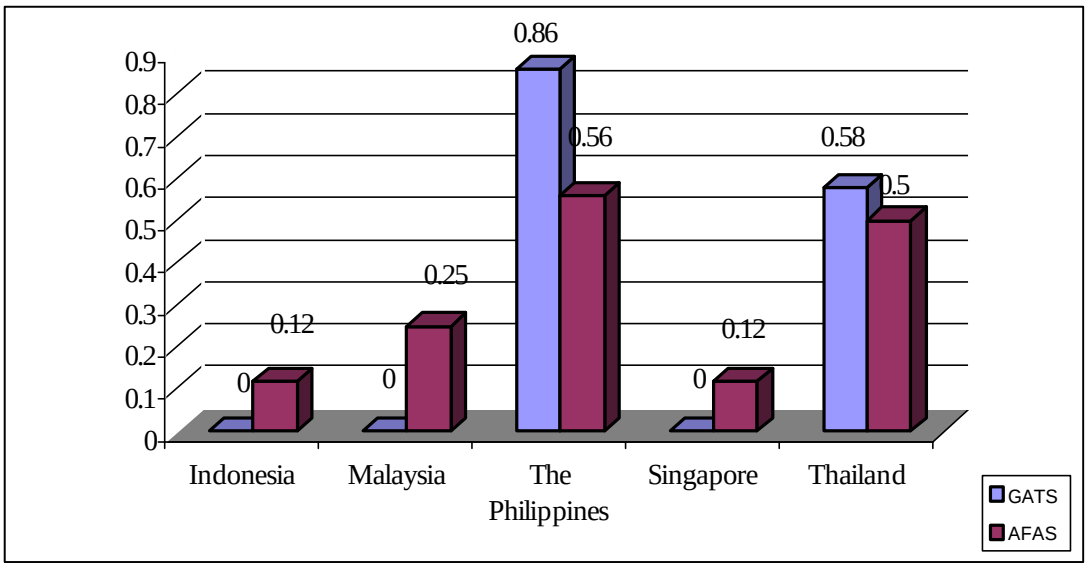
Country	Type of restrictions			
	Maritime Transport (passenger and cargo transportation excluding cabotage)		Air transport (Computer Reservation System)	
	GATS	AFAS	GATS	AFAS
Indonesia	Foreign entities can be set up only as representative office	Joint venture is allowed with foreign equity not exceeding 60%	No commitments	Foreign entity not allowed.
	Restrictions on employment of foreign personnel except for managers and specialists Fee for issuance of work permit is applied.	same as in GATS		
Malaysia	- Foreign ownership restrictions - Type of legal entity is restricted. - Type of ship is required - Ship must be registered in Malaysia - Restrictions on employment of foreign personnel except for managers, specialists and business negotiators	Same as in AGTS	No commitments	Foreign entity not allowed.
Philippines	No restrictions	Same in GATS	No commitments	No restrictions except in the case that operator wished to set up won telecommunications network. Foreign nationals are not allowed into this particular business
Singapore	No commitments	No commitments	No commitments	Same as in GATS

Country	Type of restrictions			
	Maritime Transport (passenger and cargo transportation excluding cabotage)		Air transport (Computer Reservation System)	
	GATS	AFAS	GATS	AFAS
Thailand	- Fleet raising Thai flag is not allowed - Foreign equity restrictions - Type of legal entity restrictions - Foreign crew not allowed. - Only transfer of staff at the managerial and specialist level allowed.	Same as in GATS	No commitments	Foreign entities and persons are not allowed into this particular business

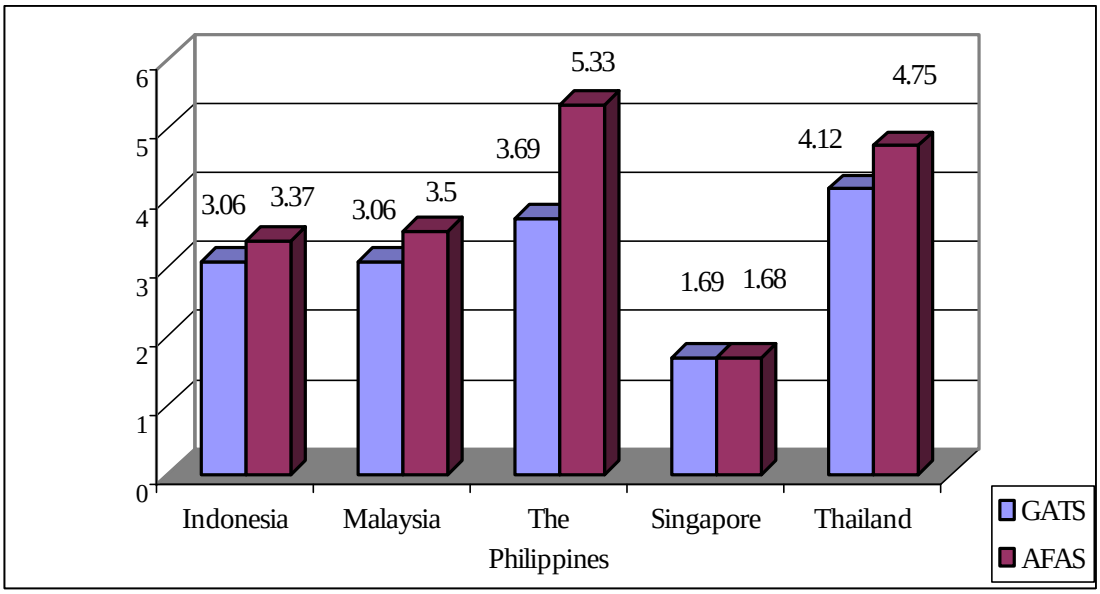
Graph a: Telecommunications



Graph b: Air Transportation

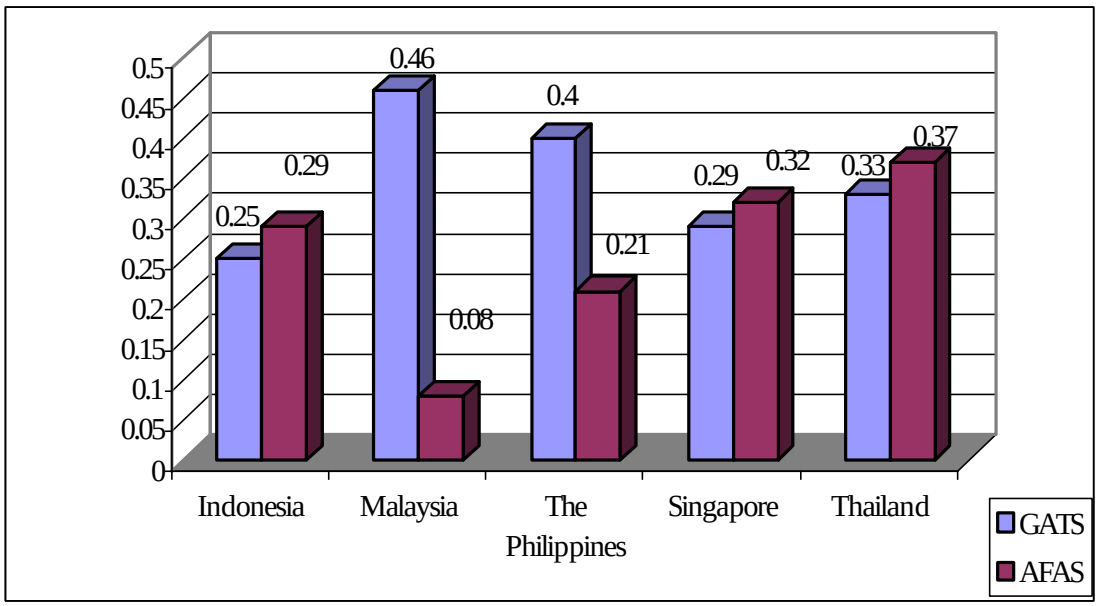


Graph c: Maritime Transportation



Source: TDRI Report (in Thai), A Study of ASEAN Laws to Promote Greater Cooperation and Liberalization in Trade in Services and Investment, September 2000.

Graph D: Tourism



Source: ASEAN Secretariat