

## LIBERALISATION OF THE SERVICE SECTOR – MOVING FORWARD

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The recent announcement of government that certain sectors of the economy are going to be liberalised and the statement by the Minister of Health, that doctors should be prepared for competition from other countries, has once again raised concerns among many in the profession. Liberalisation while it poses a threat to a few, it offers opportunities to others to develop and grow. The last two decades has not only seen a tremendous movement of technology across borders but also the movement of patients from their neighbourhood clinics to far away places to seek medical treatment.

The Prime Minister, Dato' Seri Mohd Najib bin Hj Tun Abdul Razak announced the liberalising of the economy in 27 service sub-sectors with immediate effect. These include the health and social services, tourism services, transport, business and the computer industry and related services. The sub-sectors of Health and Social services listed for this liberalisation include:

- All veterinary Services, Welfare services delivered through residential institutions to the elderly and the handicapped,
- Welfare services delivered through residential institutions to children and Child day-care services.

Datuk Seri Najib, who is also Finance Minister, also stated that the 30 per cent Bumiputera quota on equity ownership in these sectors have been removed and said the move would attract more investment and bring in more professionals and technology, besides strengthening competitiveness in the sectors.

The services sector is an important component of the national economy, contributing 55 per cent to the gross domestic product last year. Of this, 47.6 per cent was contributed by non-government services. He said the sector accounted for 57 per cent of total employment in the country. The government, he added, would intensify the tapping of the full potential of the services sector as a new growth area in the economy to raise its contribution to 60 per cent of GDP as targeted in the Third Industrial Master Plan. Najib said the government would be progressively undertaking liberalisation of other services sub-sectors on an ongoing basis.

The liberalisation of the services sector is being pursued with the view of creating a conducive environment to attract investments, technology and create higher-value employment opportunities. The initiatives will not adversely affect the domestic services industry as the government will continue to support the industry in capacity-building and in the opening up of export markets. It was also part of Kuala Lumpur's commitment towards an Asean agreement in liberalising the sector.

“The ASEAN Economic Community aim is the realisation of the end-goal of economic integration as outlined in the ASEAN Vision 2020, to create a stable, prosperous and highly competitive ASEAN economic region in which **there is a free flow of goods, services**, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020.” (Bali Concord II, October 2003. Integration in services is one of the important elements in building the **ASEAN Economic Community (AEC)**, as envisaged by the ASEAN Heads of States/Governments in this Declaration of **Bali Concord II**. Following the achievement of the **ASEAN Free Trade Area (AFTA)** in reducing tariffs for trade in goods down to 0~5% level for almost all goods

traded within the region, liberalisation of trade in services is one of the next critical initiatives in ASEAN economic integration.

In fact, the decision of the subsequent 11th ASEAN Summit in December 2005 to accelerate the liberalisation of trade in all services sectors by 2015, with flexibility affirms the seriousness of ASEAN to further integrate its services sectors and deepen its economic integration. While services has long played a vital role in economic development, international arrangement for cross-border trade in services is relatively new compared to that of trade in goods. The **General Agreement on Trade in Services (GATS)**, the first multilateral agreement on this subject, was only concluded in 1994 along with the conclusion of the **Uruguay Round** of trade negotiations. Nonetheless, ASEAN has been prompt in responding to this development as it concluded the **ASEAN Framework Agreement on Services (AFAS)** about a year later. Following the signing of AFAS, ASEAN immediately proceeded with embarking rounds of negotiations to open up trade in services among its Member Countries. The following sections explain the state of play of trade in services in ASEAN and how the region moves forward in integrating its trade in services.

### **ASEAN FRAMEWORK AGREEMENT ON SERVICES**

Services are a sizeable and continuously expanding component of GDP in ASEAN economies. On average, an ASEAN country generates about 40~50% of its **Gross Domestic Product (GDP)** from the services sectors. Recognising the growing importance of working towards freer flow of trade in services within ASEAN, the **ASEAN Economic Ministers (AEM)** signed the **ASEAN Framework Agreement on Services (AFAS)** on 15 December 1995 during the 5th ASEAN Summit in Bangkok, Thailand. The AFAS aim to:

- Enhance cooperation in services amongst Member States in order to improve the efficiency, competitiveness and distribution of their service suppliers within and outside ASEAN.
- Eliminate substantially restrictions to trade in services amongst Member States.
- Liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the GATS with the aim to realising a free trade area in services.

It provides the broad guidelines for ASEAN Member Countries to progressively improve **market access** and ensure equal **national treatment** for services suppliers among ASEAN countries. All AFAS rules are consistent with international rules for trade in services as provided by the **General Agreement on Trade in Services (GATS)** of the World Trade Organisation (WTO). The objective of AFAS to liberalise services trade towards achieving commitments beyond Member Countries' commitments under GATS, as mentioned above, is referred to as the **GATS-Plus** principle. It means that ASEAN Member Countries shall schedule commitments under AFAS that are better than their GATS commitments or offer new services sectors/sub-sectors that have not been scheduled under GATS.

### **ASEAN INSTITUTIONAL MECHANISM IN TRADE IN SERVICES**

ASEAN integration in services is generally carried out through liberalization processes negotiated under the **Coordinating Committee on Services (CCS)**. The CCS was established in January 1996, and reports to the **ASEAN economic Ministers (AEM)** through the **Senior Economic Officials Meeting (SEOM)**. There are currently six sectoral working groups under the CCS: business services, construction, healthcare, maritime transport, telecommunication and IT services, and tourism sectoral working groups. There is also one caucus on education services. Despite the grouping, ASEAN Member Countries could also schedule liberalisation commitments in other services sectors.

## HOW SERVICES LIBERALISATION ARE NEGOTIATED IN ASEAN

Following the signing of AFAS, officials of ASEAN Member Countries immediately started to embark on the negotiations to achieve the objective of AFAS of creating a freer trade in services within the region. ASEAN started with a three-year cycle of rounds of services negotiation. During the first round (1996 – 1998), ASEAN adopted the GATS-style of **Request and Offer Approach** for its services liberalisation. The process started with exchange of information among ASEAN member Countries on each other's GATS Commitments and services trade regime.

During the second round (1999 – 2001), ASEAN adopted **Common Sub-Sector Approach**. A common sub-sector is defined as a sub-sector where 4 (four) or more countries had made commitments in that sub-sector under GATS and/or previous AFAS package. All Member Countries were requested to make MFN commitments in these identified subsectors. During the third round (2002 – 2004), ASEAN adopted **Modified Common Sub-Sector Approach**. The approach is basically the same as Common Sub-Sector Approach, but the threshold is reduced to 3 (three) or more countries instead of 4 (four) or more. In addition to this approach, ASEAN also started negotiating using **ASEAN Minus X Formula**. Under this approach, two or more countries may proceed with an agreed services sector liberalisation without having to extend the concessions to non-participating countries. Others may join at a later stage or whenever ready. At present, ASEAN has concluded 5 **Packages of Commitments under the AFAS** through 4 rounds of negotiations since 1 January 1996. These packages are signed by the ASEAN Economic Ministers (AEM) and provide for details of how each ASEAN Member Country will liberalise each of the sectors and sub-sectors where commitments are made. Through all these packages of commitments, services industries can expect an increasingly freer trade and improved certainty in conducting international businesses within ASEAN region in various sectors and sub-sectors

### MUTUAL RECOGNITION ARRANGEMENT (MRA)

**Mutual Recognition Arrangements (MRAs)** is the more recent development in ASEAN integration in services in the area of facilitation. An MRA enables professional service providers who are registered or certified in signatory Member Countries to be equally recognised in other signatory Member Countries, hence facilitating the flow of professional services providers in the region.

At present, ASEAN has concluded 7 (seven) MRAs:

- MRA on Engineering Services signed on 9 December 2005 in Kuala Lumpur, Malaysia;
- MRA on Nursing Services signed on 8 December 2006 in Cebu, the Philippines;
- MRA on Architectural Services and Framework Arrangement for the Mutual Recognition of Surveying Qualifications both signed on 19 November 2006 in Singapore. MRA on Medical Practitioners,
- MRA on Dental Practitioners, and MRA Framework on Accountancy Services all signed on 26 February 2009 in Cha-am, Thailand.

### Defining “Trade in Services”: the 4 Modes of Supply

In its most basic form, international trade refers to an economic exchange between residents and non-residents, either firms or persons, and implies gain or loss of foreign exchange. For trade in goods, the concept is relatively straightforward because the producers stay in one country and the goods travel across a border to the consumers in another country. For services, the situation is more complex because in many cases the supplier and the customer need to be in the same location.

There are four possibilities of international provision of services: - known as the “Modes of Supply”

- Mode 1 - The service moves across the border. (or the so-called Cross-Border Supply),
- Mode 2 - The customer moves across the border to receive the service. (Consumption Abroad),
- Mode 3 - The producer moves across the border to provide the service through commercial establishment. (Commercial Presence),
- Mode 4 - The producer moves across the border only temporarily to provide the service. (Movement of Natural Persons)

Health Minister, Datuk Seri Liow Tiong Lai said at least 70% of the equity will be opened to foreign participation and local medical professionals will have to compete with their foreign counterparts when the services sector under the Asean Free Trade Area (AFTA) is opened up by end of the year. This would lead to an increase of foreign professionals, particularly from disciplines which were in demand, those not available locally or facing a shortage, he said. The locals will have a choice of seeking treatment locally instead of having to go overseas. This is also a boost for medical tourism as foreigners will be attracted by good services and affordable rates in Malaysia,” Liow however said that the foreign professionals must be registered with the Malaysian Medical Council (MMC). Admitting that local professionals were initially quite hesitant in accepting the move, Liow said his Ministry, via several briefings with them, managed to convince them that the move was inevitable and that they (local professionals) should be ready and able to compete with their foreign counterparts, many other countries in the world, Malaysia is gearing up to make medical tourism more attractive to foreigners. There are also a lot of requests from foreigners, many whom are Japanese and Koreans and residing in Malaysia, for treatment by doctors or specialists from their country,” Liow said.

Malaysia’s medical related commitments under the ASEAN Framework Agreement on Services (AFAS) include specialised medical services which has no limitation on market access under Mode 1 or Mode 2. Mode 1 refers to cross border supply – non resident service suppliers to supply services cross border into another member’s territory, e.g. Teleradiology. Mode 2 refers to consumption abroad – freedom for residents to purchase services in the territory of another member, e.g. Health Tourism. With reference to private hospitals, it is only allowed through a locally incorporated joint venture with Malaysian individuals or corporations. Foreign equity is limited to 49% (70% by 2010). Currently foreign equity is allowed at 51% for ASEAN and 40% for the rest of the world. A minimum of 100 beds and the establishment of feeder clinics are not allowed. Only two foreign specialists per organisation are allowed (Malaysia’s horizontal commitment across all sectors).

In the early years of discussion Malaysia has agreed to allow the entry of foreign specialist in which the country was short. This sub-specialties in which they can work is restricted to 14 namely, forensic medicine, nuclear medicine, geriatrics, microvascular surgery, neurosurgery, cardiothoracic surgery, plastic surgery, immunology, oncology, traumatology, anesthesiology, intensive care specialist, child psychiatry and physical medicine. These foreign professionals can only practice in hospitals of at least 50 beds, and change of practice location requires approval. The setting up of individual or joint group practice is not permitted. Only two foreign specialists is allowed per organisation (Malaysia’s horizontal commitment across all sectors). (*Source: MOH*)

Liberalising trade in services in ASEAN is not simple. International trade in services is a relatively new development as compared to trade in goods and it is inherently different from goods trade: it is intangible, is governed through complex rules and regulations, and its cross-border trade can be provided through different modes of supply. Services cover very diverse and large number of sectors and sub-sectors, they are under the purview of numerous government agencies and ministries, and some of them may not have (or probably even need) regulatory framework in place. Healthcare is an even more unique service facing tremendous challenges as it is being transformed to ‘another service industry’ with all it’s connotations.

Furthermore, international services trade volume of ASEAN Member Countries may vary significantly between one and another. Despite all these challenges, being cognisant of rapid international trade developments, including the intensifying pace of FTA/CEP negotiations with ASEAN's Dialogue Partners, ASEAN is committed to work towards higher degree of integration and cooperation in the area of services among its Member Countries. A number of packages of liberalisation commitments had been scheduled, MRAs had been concluded, and a number of other works are well underway. These negotiations and legislation have been conducted over many years with minimal lukewarm input from the stakeholders of healthcare delivery. As implementation is not far away it is now prudent that we play a proactive role in order to ensure an orderly development of healthcare in the country and the region which will benefit the people and the profession.