

Expanding Trade in Business Services in ASEAN

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Authors:

Center for the Advancement of Trade Integration and Facilitation
Center for Strategic and International Studies
Institute for International Trade
Thailand Development Research Institute

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EXECUTIVE SUMMARY

In spite of the rapid growth of business services sector in ASEAN, there exist formidable barriers to their trade and growth. Trade-inhibiting policies and domestic regulations in five business services sectors, namely accountancy, architectural, legal, computer and related services and management consulting, abound but applied in different forms and degrees by the member countries. These barriers belong to one of the following types:

- Restrictions that impede or limit the relationship between an international firm and domestic affiliate, e.g. limits on foreign ownership, involvement of foreigners in local firm management, use of international firm or network name
- Restrictions on movement of professionals into and out of a country for purposes of providing services, e.g. difficulty, delays and red-tape associated with obtaining visas and work permits, restrictions on permanent movement of professionals
- Lack of transparency and unpredictability in regulatory decision-making and rule-making, e.g., non-publication of rules, inconsistent application of rules, absence of appeals process
- Restrictions that relate to the practice of profession, e.g. nationality and residency requirements, restrictions on advertising, marketing and solicitation, limits on size and form of establishment, discriminatory government procurement rules
- Restrictions that prevent foreign professionals from practicing in local market, e.g. non-recognition of foreign professional qualifications, quotas or economic needs tests, requirements on hiring local professionals
- Restrictions related to network infrastructure and conditions of online sales (specific to computer and related services), e.g., limits on bandwidth availability, low network latency, high communications costs, weak enforcement of intellectual property rights

Alternatively, the trade barriers may be analyzed according to the following dimensions:

- Whether it applies equally to foreign and domestic service providers or is discriminatory against the former;
- Whether it poses barriers to establishment or setting presence in the market or to ongoing operations
- Whether it protects incumbent suppliers, hence rent-creating, or impairs the efficiency of production by raising the costs of service delivery

An index, dubbed Restrictiveness Index in Business Services (RIBS), was constructed to represent the degree of trade restrictiveness of a sector in an economy and allow for cross-country and cross-sector comparison of trade restrictions. The values of RIBS are generally in the high range for legal and accountancy services, middle range for architectural services, and low range for computer and related services and management consulting. More significantly, the following were found on the nature of trade barriers in the five sectors:

- More than half of the restrictiveness indices are accounted for by barriers that are discriminatory to foreign suppliers.
- Discrimination is high even in sectors that are unregulated and where trade restrictions are few, such as the case for management consulting and computer and related services.
- The proportion that barriers to establishment represent in the aggregate index is highest in legal services and lowest in computer and related services, but generally less than half in all five business services.

- Trade restrictions in accountancy, legal and management consulting services (particularly the latter) are more rent-creating than cost-raising, while the opposite is true for architectural and computer and related services.

Despite the adverse impact of these barriers on market competition, price and cost of services, they are perceived to serve some social and economic objectives which makes countries unwilling to remove them. Moreover some member countries admit maintaining the barriers to be able to negotiate for concessions in trade negotiations with other economies.

In light of the foregoing, the following measures are recommended:

- 1) Seek incremental, qualitative improvements in AFAS commitments by encouraging economies to consider adopting one or several of the following measures:
 - Articulate explicitly the economic and social motivation for the policies such as those of nationality and residency requirements;
 - Replace discriminatory policies with those that cause less distortions;
 - Minimize restrictions on forms of establishment;
 - Make transparent the criteria and procedures for applying economic needs test;
 - Relax absolute prohibition on foreigners from forming partnership with local professionals;
 - Stipulate the core activities in the sector that are objects of regulation and exempt from regulation non-core activities; and
 - Provide for transparent and consistent framework for accepting professionals with foreign qualifications; and
 - Review and consider adjustments in policies where the social and economic motivations are ambiguous.
- 2) Monitor changes in commitments and actual market reforms using index measures such as RIBS
- 3) Separate policies on temporary service providers from the normal immigration procedures and negotiate for trade-friendly policies on permanent movement of professionals.
- 4) Consider a shift from 'positive list' to "negative-list' approach of negotiating trade liberalization commitments
- 5) Improve transparency and predictability of domestic regulations and use international standards to achieve harmonization
- 6) Vigorously pursue Mutual Recognition Agreements (MRAs) in all regulated professional sectors, but push for reciprocity arrangements in the interim
- 7) Increase awareness in AFAS by mobilizing professional associations in the region and making them more actively involved in negotiation