

Expanding Trade in Business Services in ASEAN

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ABSTRACT

This study identifies and evaluates policies and domestic regulations that impede trade of ASEAN member countries in five business services sectors, namely: accountancy, architectural, legal, computer and related services and management consulting services. Complex structures of trade-inhibiting policies and regulations were found, particularly in the regulated professional sectors. Yet even the unregulated sectors of computer and related services and management consulting are also found to have their shares of policies that are discriminatory against foreign suppliers and protective of incumbents. Some strategies to overcome existing barriers and move forward the negotiations for progressive liberalization of the sector are recommended.

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LIST OF ACCRONYMS

ASEAN	Association of Southeast Asian Nations
AADCP – REPSF	ASEAN – Australia Development Cooperation Program – Regional Economic Policy Support Facility
ACE	Architects’ Council of European Union
ACRA	Accounting Committee Regulatory Authority
AFAS	ASEAN Framework Agreement on Services
AHP	Analytic Hierarchical Process
AIA	American Institute of Architects
AMC	ASEAN Member Countries
BCI	Building and Construction Interchange
CICT	Commission on Information and Communication Technology
CPRU	Construction Planning Research Unit
DDD	Digital Divide Data
DFAT	Department of Foreign Affairs and Trade
FAP	Federation of Accounting Profession
FLA	Formal Law Alliances
IBA	International Bar Association
ICPAS	Institute of Certified Public Accountants of Singapore
JLV	Joint Law Ventures
KICPAA	Kampuchea Institute of Certified Public Accountants and Auditors
MC	Member Countries
MCA	Management Consultancies Association
MIA	Malaysian Institute of Accountants
MNCs	Multinational Corporations
MRA	Mutual Recognition Agreement
NAC	National Accounting Council
NCARB	National Council of Architectural Registration Boards
NIDA	National Information Communication Technology Development
OECD	Organization for Economic Co-Operation and Development
PAM	Perturbuham Architect Malaysia
PICPA	Philippine Institute of Certified Public Accountants
PRB	Professional Regulatory Board
PRC	Professional Regulatory Commission
QEMS	Quality and Environmental Management System
RIBS	Restricted Index in Business Services
UIA	Union Internationale des Architectes
UMFCCI	Union of Myanmar Federation of Chambers of Commerce & Industry
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organizations

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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 negotiations

I. BACKGROUND OF THE STUDY

A. Introduction

As firms strive to become more competitive in the global market, many activities that were previously done in-house are increasingly contracted out to independent and specialized service suppliers. The recourse to outsourcing of services that firms do not consider among their core functions is driven by competitive pressures for greater flexibility, specialization, product differentiation, cost efficiency, and access to new markets, innovation, skills and expertise, among others. Users of business services expect that their reliance on the market, instead of their respective internal organizations, to supply the services that are intermediate inputs to their production will achieve for them lower costs, superior product quality and greater organizational efficiency.¹

The range of activities classified under “business services” is broad as it covers an array of services catering to producers’ requirements at different stages in the value chain. The World Trade Organization (WTO) has clustered these activities into seven major categories: professional services (legal, accounting and tax consultancy, architectural, engineering); computer and related services (software implementation, data processing, data base); research and development; real estate services; rental or leasing services without operators (of transport and construction equipment and office machinery); and others (advertising, market research, management consulting, technical testing and analysis).²

Except for professional services, most business services operate under relatively liberal market environment and are subject to few trade impediments. Restrictions, if they exist, are usually applied to the forms of establishments and foreign equity participation under mode 3 service delivery. In some cases, mode 4 is hampered by limits on movement of intra-corporate transferees and contractual service suppliers, while mode 1 is restrained by residency requirements imposed on service suppliers.

By contrast, more rigid trade restrictions and heavy regulation are usually applied to professional services.³ Foreign suppliers are commonly discriminated by nationality and residency requirements; in some cases, these are replaced by less overtly discriminatory requirements such as collaboration with locals and bonding. Other trade impediments pertain to requirements in ownership and control of establishment, regulation of international transactions, cross-border movement of personnel and professional independence.

Regulatory powers may be vested in public authorities or private professional organizations or shared by public and private authorities. The scope of regulation extends to both the service provider and service itself, i.e., from the educational qualifications and license of the professional to standards for performing the service (e.g., auditing standards in accountancy profession). Some of these domestic regulations inhibit trade even if they do not necessarily cross the market access and national treatment obligations; for example, if they constrict the supply of skills through imposition of unnecessarily stringent standards. Sheer diversity of domestic regulations across nations could already be an effective deterrent to the practice of

¹ Apart from private producers of goods, some governments have also resorted to business services suppliers to help them in modernizing public administrations.

² This list is not exhaustive; the clustering is based on the Services Sectoral Classification List of the World Trade Organization (MTN.GNS/W/120).

³ For this reason, several economies including the US, Canada, Australia and European Union have proposed to separate the negotiations in the World Trade Organization (WTO) for trade liberalization in business services from those of professional services.

profession outside of one's home country, as when adjustments to country-specific regulations and market conditions impose excessive cost burden on the foreign supplier.

Yet trade in business services could also be impeded by the quality of the local education system. On the one hand, there is often a scarcity of skills to fill up the requirements of local firms taking in outsourced services from abroad. On the other hand, education programs in legal services tend to have a strong national character, producing professionals unable to transfer their knowledge and skills in foreign markets.

Other powerful trade inhibitors are neither created nor could they be eliminated by policy. Cultural differences, for example, could alienate a service supplier in a foreign market, particularly for services such as advertising, where congruence in objectives and values of the client and supplier is critical. This explains why some local service suppliers who are strongly focused on their national markets can effectively compete against large multinational players notwithstanding the latter's resources and network advantages.

Against this backdrop of policy-instigated and institutionally-induced trade restrictions is a movement towards digital delivery of business services. Online delivery allows suppliers not only to penetrate national barriers and reach new markets but also to improve the quality and reliability of their services and respond to price pressure. Some business services amenable to digital delivery include software development, information technology (IT) services, information retrieval, R&D, technical testing and design, advertising and marketing, and labor supply and recruitment.

For this class of digitally delivered services, a different set of trade concerns (and policy issues) apply; they relate mainly to e-commerce and infrastructure support for digital delivery. Essentials to digital delivery are bandwidth availability, low network latency and competitive communications costs. Here reforms in the telecommunications and IT sector that help in raising infrastructure investments and putting pressure on prices of communications services are strategic to the growth of business services. In addition, institutional support for e-commerce such as enforcement of intellectual property rights (IPR), standards (of technology, data and processes), security and privacy must be in place to induce service providers to adopt an e-business model. Countries lagging behind in their reforms in the communications sector are also likely to miss out in the growth of trade in business services.

It is evident from the foregoing that just as the growth of business services sector is linked to increasing competition in the global market for goods, the relevant issues on business services trade transcend traditional policy-imposed restrictions on the sector. Rather, the issues extend to the arena of domestic regulation (particularly relevant to professional services), education (for supply of skills), technology (for diffusion of business services), promotion of small and medium enterprises (as most business services suppliers are SMEs), e-commerce (due to digital delivery), and capacity-building for more efficient delivery of business services. An understanding of how these different elements impact on the demand for and supply of business services is important in designing strategies and policies aimed at expanding trade in business services.

B. Objectives of the Study and Scope of Work

The importance of the services sector in general, and business services in particular, for the ASEAN economies is becoming more evident as member countries integrate faster and deeper into the global market. Already, services represent between a little more than a fourth (Lao PDR) to three-fourths (Singapore) of total production in ASEAN. By comparison,

services sector in low and middle income countries makes up more than half of their output while that in high income (OECD) countries, about 70%.

But while the output share of services continues to grow, its trade share has not grown proportionately. Singapore's share of services in total exports is less than 20% and the Philippines' service sector contributed only about a tenth of exports in 2005. Yet the disproportional shares of services in output and trade are true not only in ASEAN economies but also elsewhere. The services sector of the U.S., for instance, while accounting for some four-fifths of domestic production, is found to contribute only about a fourth of total exports (WTO, 2004).

The slow growth in services trade has been traced to the existence of a wide range of trade barriers, many of which are deemed formidable. In recognition of the need to remove these barriers for trade in services to prosper, the economic ministers of ASEAN have signed the ASEAN Framework Agreement on Services (AFAS) in 1995 in order inter alia, "to eliminate substantially restrictions to trade in services among Member States" and "to liberalize trade in services by expanding the depth and scope of liberalization beyond those undertaken by Member States under the GATS with the aim of realizing a free trade area in services". This was later reiterated by a series of complementary guidelines and targets, the most relevant being the agreement to liberalise trade in services in the region with the vision to create the ASEAN Economic Community. Thus, during the 37th ASEAN Economic Ministers' Meeting in Vientiane in September 2005, it was agreed to set 2015 as the deadline for the free flow of services within the region, although flexibility in some sub-sectors shall be taken into consideration.

As a contribution to the ASEAN goal of free trade in services, the ASEAN-Australia Development Cooperation Program – Regional Economic Policy Support Facility (AADCP-REPSF) has supported several studies evaluating the state of services sector in the region for the purpose of identifying opportunities and constraints to expanding trade and recommending strategies to improve member countries' commitments to regional trade. In the past three years, studies have been commissioned on aviation, financial services, maritime transport, telecommunications and ICT, among others.

The present study belongs to the same genre, focusing on a dynamic yet less explored services sector which is business services. It has two key research objectives, namely:

- To evaluate existing barriers as well as opportunities for trade in business services in ASEAN;
- To suggest strategies and policies to overcome the barriers to trade, and hence, expand trade in business services in the region.

Because it is not feasible to provide an in-depth analysis of all sector that fall under the business services classification, given its large number and heterogeneity, focus will be made on the following sectors:

- Accounting, auditing and bookkeeping (CPC 862)
- Legal services (CPC 861)
- Architectural services (CPC 8671)
- Software development and IT services (CPC 842, 843, 844, 845+849)
- Management consulting service (CPC 865)

The first three are professional services; the latter two represent other business services that are often unregulated and subject to fewer trade restrictions. One may expect that an examination of professional services markets will highlight sector-specific trade restrictions under the four modes of supply, while an assessment of less regulated business services

would call attention to policy issues outside the bounds of business services that nonetheless have strong influence over these sectors. An analysis of these sectors is expected to bring out diverse and significant trade issues, some of which have been identified in the negotiating proposals submitted by various developed and developing countries to the WTO.

To achieve the objectives of the study, the research is organized under four tasks:

- Assessment of the general state of business services sector in each of the ASEAN member countries;
- Evaluation of barriers to growth and trade of business services sector in each member country;
- Quantification of trade restrictions by developing an index to facilitate comparative analysis among member countries and assessment of opportunities for further trade liberalization in the region; and
- Design of strategies and policies to promote regional trade in business services.

C. Organization of the Report

This report consists of two volumes. This volume, labeled Main Report, presents a cross-country analysis of the general state of, and barriers to growth and trade in, business services in ASEAN member countries (AMCs), as represented by the five selected sectors, namely: accountancy, architecture, legal, computer and related services and management consulting. It draws from country reports that are compiled in Volume II, and results of two surveys – one of key informants, another of business service providers in the region. Trade barriers are assessed, qualitatively and quantitatively using index methodology. And in the context of global trends and trade reform initiatives at the individual country- and regional levels, a set of strategies is proposed to overcome the trade- and growth-inhibiting effects of existing barriers.

The country reports are outputs of country visits conducted by the research team between December 2006 and February 2007. These reports examine the current status, regulatory environment and significant trade barriers in the five selected business services using information obtained from relevant government agencies, professional organizations, business associations and some large users of business services. An important section in each of these country reports is a case study of a successful business services exporter in a member economy. The insights and policy implications that may be derived from these case studies are summarized in this volume.

The succeeding sections in this volume are as follow:

- Chapter II discusses the market structure, recent trends and key issues affecting the global market for five selected business services sectors;
- Chapter III examines the business services sector in ASEAN through the commitments made by member countries in GATS and AFAS, and experiences of successful exporters of business services;
- Chapter IV presents a cross-country inventory of significant policies and factors inhibiting trade and growth of business services sectors in ASEAN;
- Chapter V provides a quantitative assessment of trade barriers in business services and analytical classification of these barriers; and
- Chapter VI builds a case for removing existing trade barriers and outlines strategies to expand trade and promote growth of business services.
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II. BUSINESS SERVICES IN GLOBAL PERSPECTIVE

Business services are defined as those that cater to producers' requirements at various stages in the value chain. They include a broad range of activities - from professional services (such as accountancy, legal, management consulting), technical services (architectural, engineering, technical testing and analysis), to operational services (such as security activities, industrial cleaning).⁴ The sector also covers computing consultancy services, research and development services, marketing and advertising, leasing and renting of equipment, and employment and personnel services.

The competitiveness of producers is deemed inextricably linked to the health of the business services sector. This follows from the benefits that producers expect to derive from cost-effective and efficiently delivered business services, which are: improved flexibility; greater specialization; ability to tailor products to customers' needs; and access to knowledge, skills, expertise, new technology and markets.

Despite diversity of services included in its scope, most markets for business services are characterized by the following:⁵

- Dominance of few large multinational corporations (MNCs) operating in many segments – their scale and scope confer them market advantage over small and specialized local suppliers;
- Notwithstanding this dominance, coexistence of large and small firms within a particular services sector; the latter outnumbering the former;
- Tendency of major service suppliers to “trade” through their affiliates rather than cross-border;
- Strong market competition because of relatively low capital intensity;
- Vulnerability of service suppliers to volatility of demand for their clients' businesses; and
- Information and knowledge intensiveness of services, and compatibility of many of them to digital delivery.

The above factors are important as they influence the pattern and modality of trade. How much of these factors apply to the selected business services sectors is the subject of the next sections.

A. Accountancy

1. Definition of the Sector

There is general acceptance on the critical value of the services rendered by accountants in a market economy in general, and corporate governance in particular. Besides vouching for the financial positions and results of operations of economic entities, accountants are relied upon to supply information that could be used by financial institutions to enforce prudential requirements on their clients. Moreover, as financial reports are used as basis for taxation, the health of the country's fiscal system depends in large measure on the reliability and efficiency of accounting services.

⁴ In its representation to the WTO (7 March 2002), Australia sought to distinguish professional services from business services since the former are subject to a number of access and regulatory requirements, while the latter are subject to fewer regulatory controls.

⁵ OECD (2004), “Digital Delivery of Business Services,” report to the Working Party on the Information Economy by the Directorate for Science, Technology and Industry, 22 April, STI/ICCP/IE(2003)2/FINAL.

Because of the various purposes for which accountancy services may be put into use, it developed, almost quite naturally, that accountants are made to render services that are related to, but outside the traditional scope of accountancy, for example tax, corporate finance and insolvency, business recovery, and management consulting. The largest 100 accountancy firms, as a result of this change, are now said to derive about two-fifths of their revenues from management consulting (WTO Secretariat, p. 11).

Notwithstanding, the United Nations' Central Product Classification (CPC), adopted by the WTO and ASEAN, delimits accountancy to services traditionally associated with the accounting profession, namely, accounting, auditing and bookkeeping services. This narrow construct of accountancy services is the basis for trade negotiations at the multilateral and regional levels.

Section 862 of CPC, labeled "Accounting, auditing and bookkeeping services" is subdivided into two four-digit sectors: accounting and auditing services (CPC 8621) and bookkeeping services (CPC 8622). Based on the five-digit classification, the scope of accountancy services is as follows:⁶

- Financial auditing services (CPC 86211)
Examination services of the accounting records and other supporting evidence of an organization for the purpose of expressing an opinion as to whether financial statements of the organization present fairly its position as at a given date and the results of its operations for the period ended on that date in accordance with generally accepted accounting principles.
 - Accounting review services (CPC 86212)
Reviewing services of annual and interim financial statements and other accounting information. The scope of a review is less than that of an audit and therefore the level of assurance provided is lower.
 - Compilation of financial statements services
Compilation services of financial statements from information provided by the client. No assurances regarding the accuracy of the resulting statements are provided. Preparation services of business tax returns, when provided as a bundle with the preparation of financial statements for a single fee, are classified here.
- Exclusion:* Business tax preparation services, when provided as separate services, are classified in sub-class 86302 (Business tax preparation and review services).
- Other accounting services (CPC 86219)
Other accounting services such as attestations, valuations, preparation services of *pro forma* statements, etc.
 - Bookkeeping services, except tax returns (CPC 86220)
Bookkeeping services consisting in classifying and recording business transactions in terms of money or some unit of measurement in the books of account.

Exclusion: Bookkeeping services related to tax returns are classified in subclass 86302 (Business tax preparation and review services).

⁶ WTO Secretariat, p. 9

2. Market Structure

As is true in many business services sector, the international accountancy market is characterized by the dominance of few large multinational corporations (MNCs) that are delivering services cross-border through their affiliates, and the coexistence of large and small firms. In the UK, for example, of the nearly 20,000 accounting firms operating in 2000, the “big five” – all MNCs – account for 80% of the revenues generated by the top 50 firms.⁷ Globally, four (previously five) MNCs occupy the top ranking in terms of income, namely PricewaterhouseCoopers International, Deloitte Touche Tohmatsu, Ernst and Young Global and KPMG International. Table II.1 shows the other firms comprising the top 10.

Table II.1 Top 10 Accounting Firms, by income, 2004

Firm Name	Income (US\$ million)	Growth rate (%)
PricewaterhouseCoopers International	17,600.0	11.0
Deloitte Touche Tohmatsu	16,400.0	9.0
Ernst and Young Global	14,500.0	11.0
KPMG International	13,440.0	14.7
BDO International	3,017.5	13.0
RSM International	2,128.0	2.0
Grant Thornton International	2,122.0	20.0
Baker Tilly International	1,815.0	29.0
Moores Rowland International	1,794.0	4.0
Horwath International	1,777.0	14.0

Source: www.worldaccountingintelligence.com

A peculiar characteristic of accountancy, however, is that even in advanced and open economies, the sector is heavily regulated. Detailed regulation and standards governing the accountancy practice are often rationalized by the need to protect public interest and ensure quality of service. But some domestic regulations could hinder trade as they are often shaped by national market conditions and therefore tend to be different among countries. In addition, many of these regulations impede mobility of services and professionals across borders.

To cope with divergent national regulations, two international accountancy bodies, namely the International Federation of Accountants (IFAC) and the International Accounting Standards Committee (IASC), are developing standards to govern the practice of accountancy. IFAC has produced standards to address a wide range of issues, of which the most important are the International Standards on Auditing (ISA) and the Code of Ethics for Professional Accountants. IASC is more concerned with harmonization of financial reporting and in this regard, has developed the International Accounting Standards (IAS).

The standardization efforts of these two international organizations have only helped but not resolved the problem of diverging national regulations. One reason for this is that the national accounting bodies that are members of these organizations are not compelled to adopt the standards. But even if members are obliged to adopt the standards, neither organization has the resource to verify and monitor compliance. Surveys conducted on the compatibility of national rules with international standards have limited use if the results could not be checked against actual behavior.

To improve the adoption of international standards, IASC reconstituted itself recently into the International Accounting Standards Board (IASB) whose membership is not limited to national accounting bodies, but extends to other parties with stake in the production and use

⁷ International Financial Services London, 2001, p. 3.

of financial statements. Such reorganization is aimed at raising the institution's profile so as to attract more national bodies to subscribe to its standards. IFAC is also currently working to improve its stature for the same purpose.

Divergence among, as well extensiveness of, domestic regulations is a major impediment to international trade in accountancy services. Large accounting MNCs cope with them by partnering with domestic firms, resulting in the formation of international networks. Through these networks, MNCs are able to render service in different jurisdictions, despite differences in national accountancy rules and standards, as well as nationality and residence requirements imposed on individual professionals. But the relationship between the MNC and their local partners is not parent-subsidiary; rather, local firms remain independently-owned, often because of restrictions on foreign ownership or on legal form of establishment (which does not allow for corporate structure).

Despite the absence of unified ownership among these networks, there is still market expectation that members in the network adopt a common standard of practice, thus there is commercial benefit that can be derived from network membership. Small and purely domestic accounting firms are disadvantaged, as a result, because of the "One Name-One Standard" expectation, which thus allow MNCs to dominate both international and national accountancy markets.

Yet international networks are not single entities operating under common management and control. The license to perform accountancy services is granted to locally established entity or accredited professional, not to the network. In practice, the degree by which networks enforce quality standards to its affiliates varies, in part because of differences in domestic regulations. Since the network itself is not regulated, members may agree to observe standards of performance on a purely voluntary basis, unlike local regulations which are strictly imposed on locally-licensed member firm. This creates problems on service users who may have mistaken the use of the network name as a warranty to the quality of performance the member firm.

Moreover, since members in the network maintain separate legal personalities, users have no legal recourse against the MNC or its network in case of disputes. In most cases, legal action can be taken only against the member firm directly involved, in its home jurisdiction, and using local standards in measuring performance.

It is usual in these networks for members to refer work or clients across borders with each other. Such referral arrangement is mandatory for some networks, while voluntary for others, and might involve fee-sharing arrangements. It arises because of various domestic regulatory restrictions to the practice of foreign professionals, which inevitably favors local professionals who would have to provide the service for clients solicited by their foreign partners.

3. Recent Developments

Among the recent changes in the global accountancy market, at least four are having profound impact on the structure of the market, namely: (i) separation of consultancy from accounting; (ii) new regulatory measures to address independence of audit services; (iii) emergence of multi-disciplinary practices; and (iv) exploration of alternative legal structures for accounting firms.

Separation of consultancy from accounting services

One of the major moves taken recently by members of the "big five" is to create a legal separate entity for their consulting services, prompted by the need for external capital to support expansion. KPMG, for one, spun off its consultancy arm so it can raise capital in the

market, while Ernst & Young sold off its management and IT operations. Arthur Andersen and its sister consulting firm Andersen Consulting separated and changed their names, the former has become Andersen, while the latter, Accenture. The separation stems from the changing demands of consultancy market which requires more partnering and equity involvement from clients – an arrangement that is incompatible with existing regulation on accountancy services that prescribes independence of audit services.

Measures to enhance independence of audit

There have been increasing concerns on the independence of audit as large accounting firms extend non-audit services to their audit clients.⁸ Two regulatory approaches have been adopted, rule-based and framework, to address the concerns. The former is favored by the US, the latter by the UK and the European Union. The framework, as opposed to rule-based, does not prescribe specific rules or requirements which accounting firms should comply; instead it involves looking at the adequacy of safeguards to assure independence of audit. Firms are expected, on their own measures and depending on their circumstances, to observe the principles underlying the safeguards. Such flexibility is designed to prevent the use of narrow legalistic interpretation of rules so as to circumvent independence requirements.

Of late, however, the distinction between the two approaches has become less clear-cut because of modification in the rules promulgated by the US Securities and Exchange Commission since 2000. In particular, current regulations are directed towards the following:⁹

- Reducing the scope and therefore the number of audit firm employees and their relatives, whose investment in, or employment with, audit clients may be deemed to impair an auditor's independence.
- Identifying non-audit services supplied by an audit firm which may impair an auditor's independence.
- Allowing limited exemption for inadvertent violations, provided that the firm had the necessary quality controls in place and that the violation was promptly corrected.
- Requiring companies to disclose in the annual statements filed with the SEC certain information about any non-audit services supplied by the auditor during the financial year.

A more recent regulatory reform measure affecting the accountancy markets of the US and EU is the 2002 Sarbanes-Oxley Act, the primary objective of which is to improve the quality of audit in the wake of the Enron and Worldcom accounting scandals. Among the key provisions of the Act are:

- Establishment of the Public Company Accounting Oversight Board (PCAOB) to oversee the audits of public companies
- Annual quality reviews (inspections) of public accounting firms that audit more than 100 issues; all others must be conducted every 3 years
- Requiring foreign accounting firms who audit a US company (including its foreign subsidiary) to register with the PCAOB
- Declaring "unlawful" for a registered public accounting firm to provide any non-audit service to any issuer contemporaneously with the audit, including among others: (i) bookkeeping or other services related to the accounting records or financial statements of the audit client; (ii) financial information systems design and

⁸ To be sure, conflict of interest is already inherent in the auditor-auditee relationship even if the former's services are limited to auditing. The auditor has the duty to provide independent opinion on the reliability of the auditee's financial statements, but since it is the auditee that pays for the service, thus the auditor is inevitably pressured to maintain business with the auditee to sustain its auditing revenue.

⁹ Ibid, p. 7.

implementation; (iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (iv) actuarial services; (v) internal audit outsourcing services; (vi) management functions or human resources; (vii) broker or dealer, investment adviser, or investment banking services; and (viii) legal services and expert services unrelated to the audit.

- Requiring the Chief Executive Officer (CEO) and Chief Finance Officer (CFO) of each issuer to **personally** certify the audit report as to the appropriateness of the financial statements and disclosures, and to be criminally liable for any misstatement in those accounts.

Multi-disciplinary Practices

While accounting firms are distancing themselves from consultancy and other services that are perceived to pose conflict of interest problem, this is not the case for legal services. On the contrary, the emergence of multi-disciplinary practices (MDPs), *i.e.*, partnerships of lawyers and accountants under a fee-sharing arrangement, is now a subject of debate in a number of countries including the US and UK. MDPs arose because of increasing demand for multi-disciplinary approach to the provision of professional services. As clients demand for integrated services, accounting firms are pushed to extend legal services, specifically in areas of taxation, mergers, insolvency and business recovery. Working with commercial lawyers confers marketing advantages to accounting firms, which explains why the size of lawyer groups within the “big five” has been increasing.

The snag here is that while the accountancy institutes in the US and UK favor MDPs, their counterparts in the legal profession are ambivalent. The Law Society of England and Wales, on the one hand, allows its members to enter into MDPs with accountants, either as a minority partner or in alliance with an accounting firm, while the American Bar Association, on the other hand, is against the formation of MDPs and fee-sharing arrangement.

Alternative legal structures for accounting firms

Accounting firms are traditionally structured as partnerships because of regulatory prohibition on incorporation. The basis of this regulation is the perception that partnerships are “the most the appropriate vehicle for preserving the ethos and flexibility of professional services”¹⁰, while ensuring liability (of the service provider) and preventing conflicts of interest. Partners have, however, unlimited liability, causing large accounting firms to shift to alternative legal structures permitted by regulation. In the UK, for instance, two of the “big five” underwent restructuring as limited companies after the regulator relaxed the restrictions on legal form.

An alternative structure to partnership and limited company is limited liability partnership (LLP) which was recently introduced in the US and UK. LLP combines the organizational flexibility and tax status of a partnership, but partners have limited liability because the LLP has a legal personality independent of its members. As such, LLP is similar to a limited company that makes them subject to the same rules in some jurisdictions such as the UK.

Concerns have been raised on the rationale of restricting the legal form for the practice of accountancy services, as well as other related restrictions such as the requirement that at least majority of the capital and voting rights be in the hands of locally qualified accountants, and that majority of directors or members of the management body be locally qualified accountants. The OECD notes that while there may be valid justification (such as consumer protection) for requirements tied to the practice of the profession, the same justification cannot extend to requirements on legal form and on qualifications of investor or owner of the firm.

¹⁰ Ibid, p. 9

4. Trade Barriers

The menu of barriers impeding trade in accountancy services is a combination of limitations on market access and national treatment. All four modes of service delivery are affected, but there is preponderance on mode 4. Some domestic regulations are not explicit limitations on market access or national treatment, but nonetheless have trade restrictive effect and thus are considered among the barriers. The following trade barriers are considered significant and pervasive in accountancy markets across countries:¹¹

- Local equity requirements
- Limitations on the number of accountants that can be employed and/or the number of new licenses to be issued
- Citizenship and prior residence requirements for licensing or certification of accountants, or for requirements to sit for an examination related to obtaining licensing or certification to practice
- Inappropriate restriction on electronic transmission of reports and accounting documents
- Overly burdensome fees and/or taxes on repatriation of profits and other payments
- Limitation on the number of foreign accountants who may be employed
- Licensed or certified foreign accountants are treated less favorably than local accountants in the same jurisdiction
- Discrimination with respect to the form of business organization that is permitted for foreign accounting firms
- Discriminatory requirements relating to ownership and control of foreign accounting firms
- Discriminatory treatment with respect to foreign partners in a joint venture
- In the licensing process, setting discriminatory prior conditions unrelated to the ability of the supplier to provide the service
- Discriminatory requirements for membership in a particular professional body as a prior condition for licensing application
- Discriminatory treatment of applications from foreign service suppliers vis-à-vis domestic applications, including: criteria related to education, experience, examination, and ethics; overall degree of difficulty when testing competence of applicants; the need for in-country experience before sitting on examinations
- Minimum requirement for local hiring

Not only do these restrictions make it difficult for foreign professionals and firms to operate in the local market, thereby preventing international integration of accountancy firms, they also impose significant costs on clients with international operations that are unable to enforce uniform financial reporting standards across their affiliates because of diverging accounting regulations across countries. Absent a common accounting standard, financial reports from affiliates could not be easily consolidated to provide information about the status of its global operations.

Multilateral efforts to liberalize accountancy services have yielded, to date, 69 members of WTO (including Brunei, Malaysia, Thailand and Singapore) undertaking specific commitments in the accountancy sector. But there is consensus that while the Uruguay Round brought focus on domestic regulation as a significant source of trade barrier in accountancy services, there was not much significant progress on trade liberalization that could be ascribed to negotiations at the multilateral level. The specific commitments, it was pointed out, have merely bound the *status quo ante* in the countries that have undertaken them.

¹¹ *Communications from the United States: Accounting Services*, S/CSS/W/20, 18 December 2000.

The Working Party on Professional Services (WPPS) at the WTO recommended that multilateral efforts may be concentrated on three measures to achieve trade liberalization in accountancy services, namely:

- Development of multilateral disciplines relating to market access
- Use of international standards to harmonize domestic regulations; and
- Mutual recognition of qualifications.

How effective have these suggested measures in opening trade in accountancy services?

In December 1998, the Council for Trade in Services (CTS) adopted the Disciplines on Domestic Regulation in the Accountancy Sector, akin to the Reference Paper in telecommunications. The purpose of the Disciplines is to check on domestic regulations so that they are based on objective and transparent criteria, such as competence and the ability to supply the service, and are not more burdensome than necessary to ensure the quality of the service. It contains provisions with respect to: transparency, licensing requirements and procedures, qualification requirements and procedures, and technical standards.

As it turns out, the Disciplines agreement has limited impact on trade for a number of reasons. First, it excludes limitations on market access and national treatments inscribed in a member's schedule of commitments, even if they relate to qualifications, standards or licensing. This means that the adoption of the Disciplines does not require a member to remove those limitations, and as such, those limitations can only be removed through negotiations. Second, it does not have a legal standing as it is yet to be integrated into the GATS. Third, the formulation of the text in the Disciplines agreement is rather weak, in the sense that it is non-prescriptive and non-binding. For example, many of its provisions are qualified by the phrases such as "in principle", "whenever possible" and the like. Fourth, the Disciplines agreement does not deal with the cumulative effect of the requirements or standards, each of which may be individually innocuous, but restrictive when considered together.

Even less successful in effecting changes in trade are the standardization efforts of international bodies such as IFAC and IAS. As noted above, the standards produced by these two bodies are not mandatory even for their members. In addition, neither of these institutions have the capability to monitor and verify compliance with the standards.

On mutual recognition of qualifications to ease mobility of professionals across borders, the CTS endorsed the Guidelines for Mutual Recognition Arrangements in the Accountancy Sector which was developed by the WPPS. The Guidelines document aims to bridge differences in education, examination standards, experience requirements and other licensing and accreditation requirements. But it has been criticized for merely identifying the issues that negotiators need to address when discussing recognition of foreign accountancy qualifications, without offering specific guidance on the conduct of negotiations.

Recognizing the differences in licensing rules are too wide to mend at the multilateral level, the Guidelines document acknowledges that the most common means to achieve recognition is through bilateral agreements, and such agreements are easier to forge if they are not subject to MFN obligations. The document, however, stipulates that when a bilateral agreement has been achieved, members have an obligation to extend opportunity to other interested members to negotiate their accession to that agreement.

Although mutual recognition agreements in accountancy are proliferating, they involve mainly developed countries with relatively similar arrangements for certification and

accreditation. Thus the Guidelines document is regarded to have limited impact in advancing trade in accountancy services.

In view of the foregoing, various suggestions have been offered at the WTO for trade liberalization in accountancy services to move forward. The US, for one, is proposing that WTO members who have already made commitments in the accountancy sector to amend their commitments based on the provisions in the Disciplines agreement. This is akin to the approach adopted in the telecommunications sector where some members have included the regulatory principles contained in the Reference Paper in their schedule of specific commitments. Australia, on the other hand, has suggested extending the Disciplines agreement to measures that are subject to scheduling, *i.e.*, limitations on market access and national treatment, which are nonetheless related to licensing, qualifications and standards. Canada and Switzerland have proposed to extend the Disciplines to other sectors, while the EU calls for the removal of MFN exemptions covering professional services.¹²

Perhaps what might be considered an idyllic scenario for accountancy services is the EU accountancy sector where harmonization of domestic regulations and mutual recognition of professional qualifications have been applied. A number of EU directives have already been adopted to harmonize the preparation of accounts and qualification of auditors. A general system of mutual recognition of diplomas is also in place, allowing accountants in the EU to obtain local professional title of the host member state after passing only an aptitude test. In addition, financial statements produced in one member state according to laws and regulations that comply with the EU directives on accountancy are recognized in other EU member states without restatement.

EU member states can only impose restrictions on movement of services if three conditions are cumulatively met, namely:¹³

- the restriction has to be justified by reasons linked with the protection of the general interest;
- this interest should not already be protected by the rules of the member state where the supplier is established; and
- the same result should not be capable of achievement through less demanding rules.

Notwithstanding these arrangements, it has been noted that intra-EU trade in accountancy services remains minimal. That is, few accountancy professionals have actually taken advantage of the general system of mutual recognition of diplomas; cross-border provision of accountancy services is, in practice, still difficult; and accountancy firms owned by nationals in different member states have problems of being recognized in any of the member states concerned.¹⁴

B. Legal Services

1. Definition of the Sector

Legal services play a crucial role in any business transaction. With the integration of markets and increased trade among nations, the legal services sector has found itself at the heart of the global infrastructure of world commerce (Grosso, 2004). There is a growing need for many branches of law – particularly those that pertain to international business and trade -- that have heretofore been scarcely known, let alone developed. Subjects, such as corporate restructuring, cross-border mergers and acquisitions, intellectual property rights,

¹² Trolliet and Hegarty (2003).

¹³ *Ibid.*, p. 156.

¹⁴ *Ibid.*, pp. 156-157.

competition law, have increased the demand for greater and more sophisticated legal services. This has also led to emergence of a different kind of lawyering: from one that is purely traditional or domestic to one that demands versatility and knowledge that transcends the confines of a country into a global or transnational.

Broadly defined, legal services have two aspects: advisory and representation services, and activities related to administration of justice. In trade and business negotiations, however, this second aspect of legal services is excluded as it is deemed to be a service supplied by government in the exercise of its state authority. A working definition of legal services thus covers only advisory and representation services in the various fields of law and in statutory procedures.

The WTO “Services Sectoral Classification List” identifies five sub-classes of legal services, with the following scope:¹⁵

- Legal advisory and representation services concerning criminal law (CPC 86111): legal and advisory representation services during the litigation process, and drafting services of legal documentation in relation to criminal law;
- Legal advisory and representation services in judicial procedures concerning other fields of law (CPC 86119): legal and advisory representation services during the litigation process, and drafting services of legal documentation in relation to law other than criminal law;
- Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. (CPC 86120): legal and advisory representation services during the litigation process, and drafting services of legal documentation in relation to statutory procedures;
- Legal documentation and certification services (CPC 86130): preparation, drawing up and certification services of legal documents; and
- Other legal advisory and information services (CPC 86190): advisory services to clients related to their legal rights and obligations and providing information on legal matters not elsewhere classified.

2. Market Structure

There are quite sparse statistics on the legal sector. Yet the available data show that the legal sector had enjoyed continuous growth during the past decades, because of the growing demand for all kinds of legal service, particularly due to the growing trend of internationalization of trade. While the number of professional providers of legal services in the US had tripled between 1973-1993, it had grown by 20% in EC between 1975-1995. In 1999, the number of lawyers in the US topped 858,000 with output of legal services at an estimated US\$148 B; In EC, the year 2000 saw 617,060 lawyers with an output of €176 B in 1999 (OECD, 2004).

The sector also underwent substantial consolidation, leading to the creation of multinational firms. Of the 98 biggest firms in 2002, 69 were American, 17 were British, 7 were Canadian and 5 were Australian (OECD, 2004). Table II.2 presents the 25 largest law firms in the world.

¹⁵ WTO (1998), “Legal Services,” S/C/W/43, 6 July.

Table II.2 25 World's Largest Legal Firms, 2002

Rank	Firm	Home Country	No. of Lawyers	Lawyers outside home country (%)	No. of countries w/ offices
1	Clifford Chance	UK	3,322	63	19
2	Baker & McKenzie	US	3,094	83	37
3	Freshfields Bruckhaus Derijnger	UK	2,430	61	18
4	Allen & Overy	UK	2,197	48	20
5	Linklaters	UK	2,000	52	22
6	Eversheds	UK	1,776	4	6
7	Skadden, Arps, Slate, Meagher & Flom	US	1,653	10	12
8	Jones, Day, Reavis & Pogue	US	1,565	18	12
9	Lovells	UK	1,432	55	15
10	White & Case	US	1,427	60	24
11	Latham & Watkins	US	1,400	17	10
12	Sidley Austin Brown & Wood	US	1,400	11	6
13	Holland & Knight	US	1,212	0	1
14	Mayer, Brown, Rowe & Maw	US	1,197	26	5
15	Minter Ellison Legal Group	Australia	1,139	5	6
16	Morgan, Lewis & Bockius	US	1,097	4	5
17	Shearman & Sterling	US	1,085	37	11
18	Akin, Gump, Strauss, Hauer & Feld	US	986	3	4
19	DLA	UK	984	3	4
20	Herbert Smith	UK	970	26	8
21	Foley & Lardner	US	944	0	1
22	Garrigues	Spain	929	11	3
23	Morrison & Foerster	US	916	9	6
24	McDermott, Will & Emery	US	914	9	3
25	Mallesons Stephen Jaque	Australia	909	3	3

Source: Annex Table 2, (from The American Lawyer/Legal Business)

In most countries, the legal profession consists of individual practitioners or small firms. The large law firms are still limited to a small number of Anglo-Saxon, Common Law countries; hence the two major exporters of legal services are the US and UK, although in the past years, large firms have emerged from Civil Law jurisdictions like France, Germany, and the Netherlands. It can be seen from Table II.2 that except for a few, such as Clifford Chance, and Baker & McKenzie, the lawyers are overwhelmingly domestic.

Asian law firms are starting to become active at the global front. For instance, Hong Kong, China has 569 law firms, 49 of which are foreign, and with a revenue that exceeded US\$ 1.5 B whereas Singapore's domestic legal services sector earned revenue of Sg\$ 849 M in 2000.

The first legal services directive in EU (Directive 77/249 of 22 March 1977) allowed lawyers to provide their services in other EU countries under the home country title, and without need to register in the host country. The second directive (Directive 98/5 of 16 February 1998) states the lawyers must register in the host country and for the first three years must practice under their home country title. The host country can require them to receive assistance from a local lawyer, when representing and defending clients in court. However, after three years, they can fully exercise their profession under the host country's title without having to take a qualifying examination. These two directives proved to exert a major impact on the actual movement of lawyers within EC and may even become the basis for regulating the movement of other professionals within the EU.(WTO, 1998b) .

3. Trade Barriers

Much of legal services trade takes the form of cross border trade (mode 1) or of the temporary stay of natural persons traveling as individual professionals (mode 4) or as employees or partners of a foreign law firm (mode 3). Due to the high cost of establishing commercial presence, however, cross-border trade is still the preferred mode, and affiliate trade is limited to large law firms and directed mainly towards the world's major financial and business centers (Brussels, Frankfurt, Hong Kong, London, New York, Paris, Singapore, Tokyo) where presumably the demand for business and international law would be highest.

The following are considered significant and prevalent impediments to trade in legal services:

Market Access

- Nationality requirements: Some countries maintain nationality requirements, although they may affect only some sectors of the legal profession, such as notarial and representation services, and less frequently, the practice of domestic law. In the Philippines, however, there is no such distinction as to the functions of lawyers who have to be citizens of the country. In other ASEAN countries, such distinctions may exist.
- Restrictions on the movement of professional, managerial and technical personnel. Such restrictions may be part of a country's immigration policy.
- Restrictions on legal form: Some countries allow selected forms of incorporation while others prohibit it.
- Restrictions on foreign equity

National Treatment

- Restrictions on partnership with locally licensed professionals and restrictions on the hiring of locally licensed personnel: This prevents foreign law firms from acting as foreign legal consultants, hence limiting their practice of international and foreign law. It likewise limits their ability to hire local lawyers.
- Restrictions on international and foreign firm names: These discriminate against foreign suppliers. In some countries, foreign firms are allowed to use their firm name, so long as they mention the name of one of the partners.
- Residency requirements: These may not be discriminatory to foreigners, so long as the same legal obligation is imposed on domestic and foreign service suppliers.
- Prior residency requirements: This may be imposed as a condition for obtaining a license. It favors those already residing in the host country. But some countries require *permanent* residency. This discriminates against the foreign service suppliers who have to take up residency in the host country, and often leads to the loss of home country residency.

Domestic regulation

- Qualification requirements: Legal education varies from country to country. Sometimes, the qualification requirements are so disparate that regulators require foreign qualified lawyers to re-qualify before practice.
- 2. Prohibition of multidisciplinary partnerships: In order to ensure the quality of the legal service and on grounds of consumer protection, such multidisciplinary partnerships may be prohibited by some countries. This is presumably done in order not to endanger lawyer-client privilege, the professional independence of the lawyer, or his ethical standards.
- Membership in professional organizations

C. Architectural Services

1. Definition of the Sector

Architecture and engineering services are often discussed together because these two sectors are strongly integrated. Architecture refers to the provision of blueprints and designs for building and other structures, while engineering provides planning, design, construction and management services for building structures, installations, civil engineering works and industrial processes (WTO, 1998c).

A delineation of the scope of activities between these two services is described in the WTO's Services Sectoral Classification List.¹⁶

- Architectural services (CPC 8671): covers all types of architectural services except those classified below under planning and landscape architectural services, which are: (i) advisory and pre-design architectural services (86711); (ii) architectural design services (86712); (iii) contract administration services (86713); (iv) combined architectural design and contract administration services (86714); and (v) other architectural services (86719).
- Engineering services (CPC 8672): covers all engineering activities except integrated engineering services, which are: (i) advisory and consultative engineering services (86712); (ii) engineering design services for the construction of foundations and building structures (86722); (iii) engineering design services for mechanical and electrical installations for buildings (86723); (iv) engineering, design services for the construction of civil engineering works (86724); (v) engineering design services for industrial processes and production (86725); (vi) engineering design services n.e.c. (86726); (vii) other engineering services during the construction and installation phase (86727); and (viii) other engineering services (86729).
- Integrated engineering services (CPC 8673): covers engineering services related to turnkey projects, which are: (i) integrated engineering services for transportation infrastructure turnkey projects (86731); (ii) integrated engineering and project management services for water supply and sanitation works turnkey projects (86733); and (iv) integrated engineering services for other turnkey projects.
- Urban planning and landscape architectural services (CPC 8674): covers (i) urban planning services (86741) and (ii) landscape architectural services (86742).

2. Market Structure

Most of the official statistics subsume architectural services under broader categories of services, such as business services or construction activity. Some specialized surveys of the sector is undertaken yearly by magazines or journals especially devoted to architecture and engineering, such as *World Architecture*. An example of such surveys is given for 2005 and 2006 in Table II.3 which lists the top 25 firms in architecture and engineering. The only Southeast Asian firm to make it to world's largest 100 architectural firms is Palafox Associates, a Philippine firm.

¹⁶ WTO (1990), "Architectural and Engineering Services," S/C/W/44, 1 July.

Table II.3 25 World's Largest Engineering and Architectural Firms, 2005-2006

Year		Firm	Type of Firm
2005	2006		
1	1	URS. San Francisco, Calif, US	Engg-Arch-Const
2	2	SNC-Lavalin Intl. Inc., Montreal, Canada	Engg-Const
3	4	Atkins, Epsom & Surrey, UK	Engg-Arch
4	5	AECOM Technology Corp, Los Angeles, Calif., US	Engg-Arch
5	6	Jacobs, Pasadena, Calif. US	Engg-Arch-Const
6	3	Fluor Corp, Irving, Texas, US	Engg-Const
7	7	CH2M HILL Cos., Englewood, Colorado, US	Engg
8	10	KBR, Houston, Texas, US	Engg-Const
9	8	Bechtel, San Francisco, Calif., US	Engg-Const
10	9	AMEC plc, London, UK	Engg-Const
11	12	Fugro, NV, Leidschendam. The Netherlands	Engg
12	14	ARCADIS, NV., Arnhem, The Netherlands	Engg
13	11	Tetra Tech Inc., Pasadena, Calif. US	Engg
14	19	WorleyParsons, North Sydney, NSW, Australia	Engg-Const
15	13	Parsons, Pasadena, Calif., US	Engg-Const
16	16	Parsons & Brinckerhoff, New York, N.Y., US	Engg-Arch-Const
17	15	Mott MacDonald, Croydon, UK	Engg
18	18	ARUP Group Ltd, UK	Engg
19	22	MWH, Broomfield, Colorado, US	Engg-Const
20	17	Earth Tech Inc., Long Beach, Calif. US	Engg-Const
21	23	The Louis Berger Group, East Orange, NJ., US	Engg-Arch
22	20	Black & Veatch, Overland Park, Kansas, US	Engg-Const
23	24	The Shaw Group, Baton Rouge, LA, US	Engg-Const
24	25	WSP Group plc, London, UK	Engg
25	31	HDR. Omaha, Nebraska, US	Engg-Arch

Source: World Architecture.

In the US, architecture is relatively much smaller than engineering, which is one of the largest and more diverse of professions, while in Europe, the opposite seems to be the case. A first attempt at arriving at a mutual recognition agreement between the US and EU is the "Agreement for Mutual Recognition of Professional Qualifications" between the National Council of Architectural Registration Boards (NCARB) and The American Institute of Architects (AIA) on the one hand and The Architects' Council of European Union (ACE) on the other. It was the fruit of the meetings between 2001 and 2005 of American and European representative bodies, which constituted the preliminary step towards achieving a binding Mutual Recognition Agreement (MRA) on the recognition of educational and professional qualifications between the US and EU for the provision of architectural services.

With the advent of digital delivery, it is possible to send blueprints and designs as well as architectural consulting to clients on-line. This development may raise the relative importance of cross-border supply (Mode 1). However, one can say that the majority of the supply of architectural services can still be envisioned to take place through commercial presence or the presence of natural persons.

But architectural services may tend to remain local or regional. Even the multinational firms that are successful internationally only score rare successes.

3. Trade Barriers

A number of sector-specific regulations have been identified as sources of trade barriers, namely:

Market Access

- Citizenship or nationality requirements to practice
- Economics needs test
- Educational and other qualification requirements
- Licensing requirements for temporary or occasional practice
- Fee-setting regulations
- Compulsory membership in professional associations
- Compulsory partnership with local professionals

National Treatment

- Local presence requirements, including permanent residency
- Measures limiting or excluding the right to incorporate or limiting legal forms
- Measures limiting mobility of natural persons
- Restrictive government procurement contracts
- Limits to foreign direct investment and ownership
- Requirement of a minimum number or percentage of local directors/managers, staff
- Restrictions on international relationship of locally based firms

Other domestic regulations may inhibit trade and foreign practitioners of architecture. The reasoning behind these regulations is the need to maintain the quality or standard of the service provided, and to ensure a good understanding of the cultural and other factors specific to the market in the exercise of the profession.

There have been attempts in the past to facilitate such access and these have made substantial progress in recent years. For instance, the European Union and the European Economic Area have introduced the principle of free movement of professionals and the mutual recognition of diplomas, certificates and other evidence of formal classifications in the field of architecture. In the NAFTA, there is no provision for the automatic recognition of professional titles but contains other disciplines, such as objectivity and transparency as well as a commitment to eliminate citizenship or permanent residency requirements that a party maintains for the licensing or certification of professional service providers of another party. The NAFTA also encourages relevant bodies in their respective countries to develop acceptable standards and criteria for licensing and certification. In the US-Canada Free Trade Agreement, the architectural profession has concluded an agreement on a series of requirements for certification applicable to US and Canadian architects as early as 1994. The 3rd edition of the Accord on Recommended International Standards of Professionalism in Architectural Practice has been presented for adoption of members of UIA (Union Internationale des Architectes) in 2002. It has developed guidelines on 1) education policy; 2) accreditation/validation/recognition policy; 3) practical experience/ training/ internship policy; 4) practical examination (demonstration of professional knowledge and ability) policy; 5) registration/ licensing/ certification policy; 6) procurement policy; 7) ethics and conduct policy and 8) continuing professional development policy. The APEC has its own APEC Architect project precisely to help reduce barriers to regional trade in goods and services by developing common basis for the recognition of professional competence that will greatly simplify access to independent practice of architects in the participating APEC economies (28th GOS Meeting, Gyeongju, Korea, 9 September 2005). Its first project is to establish a Register of APEC architects “who have fulfilled common elements of the education and training requirements for professional recognition in participating economies and are

currently registered/licensed as architects, and who have a proven record of professional experience as registered practitioners.” (APEC Architects, htm.)

D. Computer and Related Services

1. Definition of the Sector

Among business services, the computer and related services (CRS) is undoubtedly the fastest growing subsector and has the most extensive impact on trade of services in general. With unabated development in information and communication technology (ICT), CRS continues to expand in scope and complexity, as new services emerge.

A distinction should be made however between services that are computer-enabled on the one hand, and computer and information services on the other hand. The former are services whose tradability has been improved by ICT which allows for service delivery from remote locations instead of face-to-face, e.g., banking. The latter, which may or may not be delivered via a network such as the internet, includes consultancy services related to installation of computer hardware, software implementation, data processing, database services, data preparation, and training related to computer programs, computers or computer services.

The GATS Services Sectoral Classification List describes the coverage of computer and related services as follows:¹⁷

- Consultancy services related to the installation of computer hardware (CPC 841): assistance services to the clients in the installation of computer hardware and computer networks.
- Software implementation services (CPC 842): all services, involving consultancy on, development and implementation of software, and defines “software” as the set of instructions required to make computers work and communicate, which may include a number of different programmes developed by specific applications (application software) and situations in which the customer may have a choice of ready-made off-the-shelf programmes (packaged software), specifically developed programmes for its requirements (customized software) or a combination of the two. The sub-categories are:
 - Systems and software consulting services (CPC 8421): services of a general nature prior to the development of data processing systems and applications. It might be management services, project planning services, etc.
 - Systems analysis services (CPC 8422): analysis of the clients’ needs, defining functional specification, and setting up the team. Also involved are project management, technical coordination and integration and definition of the systems architecture.
 - Systems design services (CPC 8423): technical solutions, with respect to methodology, quality-assurance, choice of equipment software packages or new technologies, etc.
 - Programming services (CPC 8424): implementation phase, i.e. writing and debugging programmes, conducting tests, and editing documentation.
 - Systems maintenance services (CPC 8425): consulting and technical assistance services of software products in use, rewriting, or changing existing programmes or systems, maintaining up-to-date software documentation and manuals, and specialist work, e.g. conversions.
- Data processing services (CPC 843)
 - Input preparation services (CPC 8431): data recording services such key punching, optical scanning or other methods for data entry.

¹⁷ WTO Secretariat, p. 155

- Data-processing and tabulation services (CPC 8432): data processing and tabulation services, computer calculating services, and rental of computer time.
- Time-sharing services (CPC 8433): there is no clear distinction between 8432 and 8433; computer time only is bought in 8433. If time is bought from the customer's premises, telecommunications services are also bought. Data processing or tabulation services may also be bought from a service bureau.
- Other data processing (CPC 8439): services which manage the full operations of a customer's facilities under contract: computer-room environmental quality control services; management services of in-place computer equipment combinations; and management services of computer work flows and distributions.
- Database services (CPC 844): all services provided from primarily structured databases through a communication network, but excluding data and message transmission services (e.g. network operation services, value-added network services) which are classified under telecommunications services as CPC 7523 and documentation retrieval services classified under library services as CPC 96311.
- Other computer services (CPC 849)
 - Data preparation services (CPC 8491) for clients not involving data processing.
 - Other computer services, n.e.c. (CPC 8499): training services for staff of clients and other professional computer services.

As the foregoing coverage of CRS was delineated in the mid-1990s, several issues have been raised at the WTO Doha round of negotiations concerning the current classification of CRS.

The first is its appropriateness in view of the changing nature of business activity in the sector. As clients increasingly prefer total or integrated solutions, application of computer services would usually combine services that are delineated as three-digit subsectors under CPC 84. Accordingly, computer-related services usually employ: some consultancy services before implementation (CPC 841); development and integration services to implement the applications (CPC 842); data processing, database and connectivity services (CPC 843 and 845); and maintenance, support and training services (CPC 849). Some WTO member countries have thus proposed that trade commitments be based on two-digit CPC classification, and that a "value-chain" approach be used instead in defining the scope of CRS. In this case, CRS activities will be classified according to four stages: pre-implementation, implementation, operations, and maintenance and support.¹⁸

While accepting that CRS activities have evolved, rendering obsolete the three-digit subsector description under CPC 84, some other WTO member countries however believe that a clarification on the scope of CPC 84 using functional definition would suffice to provide legal certainty as to the scope of the countries' trade commitments. Specifically, the member states of the European Communities offer the following description:¹⁹

Computer and related services, regardless of whether they are delivered via a network, including the internet, include all services that provide:

- consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
- computer programs defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation,

¹⁸ TN/S/W/10, S/CSC/W/37, "Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu," 8 January 2003.

¹⁹ TN/S/W/6, S/CSC/W/35, "Communication from the European Communities and their Member States," 24 October 2002.

- integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
- data processing, data storage, data hosting or database services; or
 - maintenance and repair service for office machinery and equipment, including computers; or
 - training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

Another issue pertains to the possible overlap between activities classified under CRS and those under the telecommunications services since database and data processing services are increasingly being supplied on-line. CPC 844 description of database services states that while the services may be provided through a communications network, it explicitly excludes electronic data and message transmission services which should be classed under value-added telecommunication services (CPC 7523). But it is not clear whether the exclusion applies to all activities listed under CPC 7523, namely: electronic mail, voice mail, value-added facsimile services, on-line information and database retrieval, and electronic data interchange.

Convergence of services has indeed blurred the distinction between computer services and value-added telecommunication services. It is not clear, for example, how activities that combine computer and telecommunications technologies to deliver internet-based telecommunications services, and integrate computer and audiovisual technologies to deliver multimedia content are to be classified.

Even more contentious is the issue of whether the software supplied on-line should be treated as a good or service. CPC 842 is described as consultancy services related to development and implementation of software, but it is not clear if a distinction should be made between the software (treated as a good) and the consultants' services for producing the software. Less certain still is whether or not a distinction between packaged and customized software should be made -- treating the former as good and the latter as service.

2. Market Structure

Unlike other professional services, entry barriers created by domestic regulations are few and surmountable in CRS. By the nature of the services, a supplier can penetrate the market with sufficient skills base and strong entrepreneurial business attitude. Yet as in other business services, the global market for CRS is dominated by firms from developed economies. As presented in Tables II.4 and II.5, respectively, 8 of the top 10 IT and software firms are US-based.

Table II.4 Top 10 IT Service Firms by revenue, 2005
(values in US million dollars)

Firm	Country	Description	Revenue
EDS	USA	Professional services firm that applies consulting, information and technical expertise to enhance clients' business performance. Services include the management of computers, networks, information systems, business operations and related personnel	20,377
Tech Data	USA	Provider of information technology products, logistic management and other value-added services. It distributes microcomputer hardware and software products to value-added resellers, corporate resellers, retailers, direct marketers and internet resellers	19,790
Accenture	Bermuda	Provider of management and technology consulting services and solution which help clients capitalize on	17,094

Firm	Country	Description	Revenue
CSC	USA	their most important business and technology opportunities One of the world leaders in the IT services industry; services include outsourcing, system integration and IT and management consulting and other professional services.	14,059
First Data	USA	First Data Corporation provides high-volume information processing and related services, payment instruments, card issuer services, and merchant processing services.	10,460
ADP	USA	Provides computerised transaction processing, data communication and information services, especially in payroll and human resources information management	8,499
CapGemini IAC/Interactive	France USA	Combines software, services and consulting business Operates a portfolio of brands in the online travel, retailing, ticketing, personals, media, financial services, real estate, and teleservices industries worldwide.	8,323 7,207
SAIC	USA	US's largest employee-owned research and engineering company, providing information technology, systems integration and e-solutions to commercial and government customers	7,187
Unisys	USA	Worldwide information services and technology company, which provides services, systems and solutions that help clients apply IT.	5,772

Source: OECD (2007), Information Technology Outlook 2006.

Table II.5 Top 10 Software Firms, by revenue, 2005
(values in US million dollars)

Firm	Country	Description	Revenue
Microsoft	USA	Develops, manufactures, licenses and supports a wide range of software products for a multitude of computing devices, including scalable operating systems for servers	39,788
Oracle	USA	Supplier of software for information management. Oracle develops, manufactures, markets and distributes computer software that is categorised as systems software and Internet business applications software	11,799
SAP	Germany	International developer and supplier of integrated business software designed to private cost-effective comprehensive solutions for businesses	9,563
Softbank	Japan	Provider of information infrastructure and distributes services to the computer industry in Japan	7,737
CA	USA	Leading e-business software company; addresses all aspects of e-business process management, information and infrastructure management	3,530
Electronic Arts	USA	Creates, markets and distributes interactive entertainment software for a variety of hardware platforms	3,129
Symantec/Veritas	USA	Provides content and network security softwares for both consumers and businesses used for functions such as virus protection, intrusion detection, and remote management; also offers services in security assessment, consulting and outsourced security management. In July 2005, Symantec acquired	2,583

Firm	Country	Description	Revenue
Intuit	USA	Veritas. Provider of small business tax preparation and personal finance software products and services that simplify complex financial tasks for small businesses, consumers and accounting professionals.	2,038
Amdocs	USA	Provider of software products and services known as business support system (BSS) to major communications companies.	1,918
Adobe Systems	USA	Offers the Acrobat Reader (distributed free of charge) that displays portable document format (PDF) files on the Internet. Adobe's products also include print technology geared toward manufacturers, as well as Web design and electronic book publishing software. Adobe's Professional Services group offers implementation, training and support.	1,885

Source: OECD (2007), Information Technology Outlook 2006.

That dominant CRS firms have been reared from developed economies underscores the important contribution of availability and quality of basic ICT infrastructure and of favorable business environment to the growth of globally competitive CRS suppliers. Among the business environmental factors relevant to CRS are: (i) cost and ease of setting up a business; (ii) existence of clear-cut procedures for enforcing contracts; (iii) ease of patent applications; and (iv) large size of urban population. In addition, familiarity with the language and culture of clients is also important. Thus, since the largest consumers of CRS are from developed economies, so too are the largest suppliers. According to the OECD report (2007), 83% of exports and 80% of imports of CRS are accounted for by OECD member countries.

Suppliers from developing economies are, however, gradually catching up. The OECD notes that India and China already account for about 6.5% of exports and 5% of imports of CRS in 2005.²⁰ Moreover, some countries in Eastern Europe and the Baltic register the largest growth of CRS supply, particularly the so-called BRICS economies, consisting of Brazil, Russia, India, China and South Africa. Services suppliers from these economies, especially India, are adopting the business models of MNC suppliers as they penetrate the markets of developed economies.

There is however no one business model that accounts for the success of MNC suppliers in the global market. A strategy that has worked for some companies like Satyam Computer Services, TCS and Infosys Technologies involves establishing software development centers in client markets and countries in close proximity to clients. The latter, dubbed "near-shoring", accounts for the movement of MNC suppliers in Eastern Europe and Latin America, as these regions are used as bases for Western Europe and US markets, respectively. Other large CRS exporters such as Patni Computer Systems and Wipro Technologies, by contrast, adhere to the "off-shoring" model where core activities are located in countries remote from the clients market and are usually selected on consideration of relatively low cost of factors of production.

A combination of near- and off-shoring strategies gives rise yet to another strategy, dubbed "global delivery" model, which was pioneered by IT companies from India. Although Indian companies are hardly in the league of top IT and software suppliers, they are usually selected as strategic partners in large outsourcing projects. The key feature of the model is fragmenting the tasks and providing them in different geographical locations where they are cost-effective. In the case of Infosys Technologies, for example, activities for each phase of

²⁰ OECD (2006), "Information Technology Outlook 2006 Highlights," p. 7.

the system design are identified and assigned strategically in different locations, namely: in the client's site (Germany), near-site (Czech Republic) and offshore (India). Thus the development and integration phase of the project is carried out and coordinated from three different locations: detailed design, code development and testing and integration are performed offshore; requirement analysis, high-level design, prototype building, and implementation support are assigned to near-site location; and architecture, change management and actual implementation are done on-site.

In terms of product range, the NASSCOM-McKinsey report in 2005 predicts that four business models are likely to succeed in the market in the next five years. One strategy is to deliver a full range of IT and ICT-enabled services, offering multiple service lines and integrated solutions. Another strategy is to specialize in activities that could be supplied across industries (e.g. infrastructure management), or to focus on services required by select industries, e.g. finance and telecommunications. A third strategy is to focus on application development and maintenance services, keeping the size of operations scalable and cost-effective by cooperating with smaller consulting companies. Lastly, specializing in business processing services such as process reengineering, chip design and financial analysis, with global coverage, is also seen as a workable business strategy.

3. Trade Barriers

CRS is comparatively less restricted than other business services sectors, but it is not exempted from limitations inscribed in the horizontal section of the schedule of specific commitments. Most of the relevant restrictions concern mode 3 supply, *i.e.*, limitations on commercial presence (such as type of legal entity and level of foreign equity), and mode 4 supply, *i.e.*, limitation on the movement of natural persons.²¹

To date, 72 WTO members have specific commitments for CPC 84, but the level and area committed varies. In particular, 62 members committed for CPC 841; 67 members for CPC 842; 65 members for CPC 843; 57 members for CPC 844; and 38 members for CPC 849. Among those who have made commitments in CRS, full market access commitments for commercial presence are high (between 68 and 77 percent depending on the subsector). By contrast, the proportion with full market access commitments on market access of natural persons is very low (at 4 to 7 percent).

Restriction on the number of foreign suppliers that can deliver service in the domestic market is the most common barrier affecting mode 4 delivery. But other trade barriers are confronting software producers as well, including:²²

- discriminatory tax treatment for foreigners;
- excessive capital transfer and/or repatriation taxes; and
- restrictions on or excessive requirements for temporary entry and exit of specialized technical personnel.

Apart from the above sector-specific restrictions, CRS is also affected by government policies and practices that may have trade-restricting effects such as:

- labour policies on work permits, visas, education and training;
- protection of intellectual property rights to address software piracy;
- technical standards;
- tariffs on computer equipment;
- bandwidth availability and reliability of infrastructure;

²¹ Significantly though, there are no MFN exemptions at the WTO members' schedule of commitments on CRS.

²² S/CSS/W/129, "Communication from Costa Rica," 30 November 2001.

- research and development support; and
- government procurement of information services (not subject to GATS discipline).

With convergence of services blurring the distinction between other services and CRS, the latter is becoming affected by regulation that should have been directed to the former. Even as the CRS sector itself is highly competitive, the other sectors to which it overlaps, such as telecommunications, are not. Some recent regulatory initiatives have thus prompted US-based Business Software Alliance to raise alarm on what it calls “regulatory creep.” Examples of such initiatives are imposition of government-mandated standards on communications software, and application of telecommunications rate regulation on local access fees to internet services and on other data communications technologies.²³

The World Information Technology and Services Alliance (WITSA) identifies the key trade issues affecting the ICT industry, namely:²⁴

- Inability to provide a service because a country has not committed to liberalize either the primary service, or a secondary service sector necessary to providing the primary service;
- Inability to enforce a country’s commitment to liberalize a service because the commitment lacks clarity in describing the service to be liberalized or in the limitations constraining the commitment;
- Uncertainty about how a new service is covered by a country’s existing services commitments due to the rapid introduction of new technologies and services; and
- Absence of effective recourse to mechanisms that require incumbent telecommunications and other service suppliers with market power to compete fairly with new entrants.

In view of the above issues, WITSA supports trade negotiations that would:

- liberalize ICT services through new market access and national treatment commitments;
- improve enforcement and increase scope of ICT commitments through improved negotiating approaches; and
- foster fair competition between dominant incumbents and new entrants for the telecommunications services that provide the infrastructure for the ICT industry.

While there may be few disagreements on the benefits of fully liberalizing the CRS sector, trade negotiations may yet be stalled by issues confounded by the convergence of technology and services and the speed with which new technologies and services are being developed in the ICT sector.

E. Management Consultancy Services

1. Definition of the Sector

Management consulting refers to “the rendering of independent advice and assistance about management issues”, according to Management Consultancies Association (MCA). It includes, normally, the identification and investigation of problems and/or opportunities, as well as the recommendation of appropriate action and assistance in the implementation of those recommendations. Such roles imply that management consultants are involved in

²³ WTO Secretariat, p. 166.

²⁴ “International Trade Negotiations and ICT Products and Services,” 5th Ministerial Conference of the WTO, Cancun, 9-14 September 2003.

'consulting' (identifying the problem, recommending a solution, helping with implementation) but rarely in 'managing', except perhaps in outsourcing.

Absent a detailed description of the sector in the WTO's Sectoral Services Classification List, the scope of the sector may be defined by key services that large management consulting firms are offering their clients, namely:

- outsourcing of functions;
- IT services;
- corporate strategy;
- e-business; and
- human resource.

In addition, management consulting firms are also involved in project management, and financial and administrative systems.

2. Market Structure

Management consultancy has evolved from its traditional advisory role to working closely with clients in the large scale implementation of business solutions and on an ongoing basis. Demand for such services stem from a number of factors. Often it is due to a lack of relevant expertise in a particular field, or if available, the experts may be working to such a degree as to lack the time to advise management properly on a particular issue. Or a firm may feel that it needs an objective and detached view of the problem that a management consultant can give.

Major global accounting firms have generally built up their management consultancy groups, but the two activities have always been distinct and separated. Indeed, accounting is more often than not a regulated, accredited profession, while management consulting is usually unregulated. But many accounting firms have either sold off their consultancy practices or restructured in such a way as to distance their role of auditing from their consultancies (City Business Series, 2001).

In recent years, there has been a rapid expansion of management consulting due to corporate downsizing, the elimination of management tiers, the rapid growth in e-business, including outsourcing. A number of backroom services are now being provided where they cost less, that is, in developing countries. Table II.6 gives the top twenty firms in management consulting in 2000. The Kennedy Information Research Group (KIRG) estimates that the international market reached \$102 B in 1999, with the ten largest firms accounting for 33% and the fifty largest accounting for over 50% of fee income. The US dominates this market (51%), Europe well over a third (37%, with Germany and UK representing 12% and 10% respectively), and other developed countries, such as Canada and Australia with significant shares.

Table II.6 20 World's Largest Management Consulting Firms, 2000

Firm	International Revenue (\$M)
1. IBM Global Services	9,762
2. Accenture	8,941
3. Cap Gemini Ernst & Young	8,200
4. PricewaterhouseCoopers	7,600
5. Deloitte Consulting/DTT	5,050
6. Computer Sciences Corp	3,800
7. KPMG	3,000
8. McKinsey & Company	2,900

Firm	International Revenue (\$M)
9. Mercer Consulting Group	1,950
10. Andersen	1,400
11. Booz-Allen & Hamilton	1,370
12. Towers Perrin	1,338
13. Hewitt Associates	1,075
14. Boston Consulting Group	948
15. DMR Consulting Group	920
16. Bain & Company	756
17. Aon Consulting Worldwide	656
18. Woodrow Millman	509
19. PA Consulting Group	469
20. Telcordia Technologies	380

Source: Accounting and Management Consultancy, 2001: from Management Consultant International, June 2000

Because IT is the major driver of business strategy, newly emerging technologies, such as mobile phones, need to be integrated into the activity of these firms. But major multinationals also need to integrate their services around the world for their individual clients. They have to confront a number of issues usually connected with the fact that they are often unregulated by government. These are: *self-regulation* to ensure high standards of service and conduct among firms and individual practitioners, *certification*, so that firms may get consultants certified on the basis of training they have received; as well as developing a *code of conduct* that must be verified on an ongoing basis

3. Trade Barriers

In most economies, management consultancy is an unregulated sector. But there are exceptions where the sector is subject to similar set of trade restrictions as other business services. The following may inhibit trade in management consulting:

Market Access

- Nationality or citizenship requirements
- Limitations on the number of service suppliers or total value of service transactions
- Restrictions on foreign equity/legal form, profit repatriation
- Restrictions on the movement of personnel

National Treatment

- Restrictions on partnership with local professionals
- Restrictions on the hiring of local personnel
- Restrictions on the use of international/foreign firm name
- Residency requirements
- Prior residency requirements/permanent residency

Domestic regulation

- Membership requirement in professional organizations
- Local presence requirements

III. BUSINESS SERVICES IN ASEAN

For all that have been said about the shortfall of AFAS in promoting services trade in the region, it is undeniable that some significant achievements have been made in business services recently. In December 2005, ASEAN members forged a mutual recognition agreement on engineering services that allows professional engineers licensed in one member country to practice its profession in other member countries.²⁵ This major achievement has spurred work on MRAs in other sectors, including that for nursing, which was signed in December 2006. MRAs in accountancy, architectural services, surveying, medical practitioners and tourism are at various stages of negotiations, but there are high expectations that some new agreements are forthcoming.

The headway in MRAs should be viewed in the context of the long-term targets set by ASEAN leaders. Specifically, the Vientiane Action Plan (VAP) has identified the ASEAN goals for 2010 with respect to the liberalization of trade in services, namely:

- Clear targets and schedule of services liberalization for each sector and each round towards achieving free flow of trade in services;
- Application of the ASEAN minus-X formula to accelerate services liberalization;
- Completion of MRAs (mutual recognition agreements) in major professional services to facilitate free movement in talents in ASEAN (by 31 December 2008);
- Adoption of agreement to facilitate the free movement of business people, skilled labor and talents in the region; and
- Establishment of “professional exchange” to promote the use of ASEAN professional services (by 2008).

Then a much higher target was set by ASEAN leaders in 2005, which is to achieve free flow of services in the region by 2015, leading up to the creation of the ASEAN Economic Community.

How much of these targets can be realistically met with the present levels of commitments from member countries and state of development of the services sector? The next sections explore this issue, with a focus on business services.

A. Trade in Business Services in ASEAN

The inadequacy of existing statistics on services trade severely limits the analysis that could be made of it. Table III.1 attempts to provide a picture of business services trade in ASEAN from best available information sources. The data source is the Balance of Payments Statistics of the International Monetary Fund, which unfortunately does not include Brunei.

²⁵ The agreement provides the following recognition requirements:

- (i) Completion of an accredited engineering degree recognized by the professional engineering accreditation body whether in the country of origin or host country or assessed and recognized as having the equivalent of such a degree;
- (ii) License and registration to practice engineering in the country of origin issued either by the Professional Regulatory Authority (PRA) of the ASEAN member country or the Monitoring Committee, a body to be formed in each ASEAN member country to ensure the implementation of the agreement;
- (iii) Practical and diversified experience of at least seven years after graduation, of which at least two years are spent in charge of “significant engineering work”;
- (iv) Compliance with the Continuing Professional Development policy of the country of origin at a “satisfactory level”; and
- (v) Certification from the PRA of the country of origin of no record of serious violation of technical, professional or ethical standards.

Table III.1 ASEAN Balance of Payments in Goods and Services Trade, 2005
(values in million US dollars unless otherwise specified)

	CAM	LAO	IND	MAL	MYA	PHL	SGP	THA	VNM
Exports									
Services	1,106.5	12,926	166.1	19,676	254.7	4,462	51,308	20,647	4,176
Services as % of goods & services	28%	13%	35%	12%	8%	10%	18%	16%	11%
Transportation	126.1	2,841	22.7	4,056	85.3	1,041	17,904	4,626	
As % of Services	11%	22%	14%	21%	33%	23%	35%	22%	
Travel	839.5	4,522	103.8	8,846	83.9	2,130	5,735	10,104	
As % of Services	76%	35%	62%	45%	33%	48%	11%	49%	
Other services	140.9	5,563	39.6	6,674	85.5	1,291	27,667	5,917	
As % of Services	13%	43%	24%	34%	34%	29%	54%	29%	
Computer & Information									
As % of Services		367	0%	60		89	476		
As % of Services		3%	0%	0%		2%	1%		
Other business services									
As % of Services	39.1	2,876	0%	2,773	6	6	20,960	17	
As % of Services	4%	22%	0%	14%	0%	0%	41%	0%	
Imports									
Services	630.8	23,728	31.6	21,956	459.6	5,858	54,260	27,611	5,282
Services as % of goods & services	14%	27%	6%	17%	19%	11%	22%	21%	14%
Transportation	358.7	7,030	4.9	8,396	227.2	3,125	19,876	14,005	
As % of Services	57%	30%	16%	38%	49%	53%	37%	51%	
Travel	96.9	3,584	0.1	3,711	28.9	1,2799	9,853	4,995	
As % of Services	15%	15%	0%	17%	6%	22%	18%	18%	
Other services	175.2	13,114	26.7	9,849	203.6	1,454	24,531	8,611	
As % of Services	28%	55%	84%	45%	44%	25%	45%	31%	
Computer & Information									
As % of Services		561		379		62	334		
As % of Services		2%		2%		1%	1%		
Other business services									
As % of Services	48.5	9,116	0%	3,636	185	632	11,789	4,606	
As % of Services	8%	38%	0%	17%	40%	11%	22%	17%	
Trade balance in goods	-1,017.5	22,323	-216.8	33,155	927.9	-7546	37,890	3,162	-838
Trade balance in services	475.7	-10,802	134.5	-2,280	-204.9	-1,396	-2,952	-6,964	-1,106
Trade balance in other services	-34.3	-7,551	12.9	-3,175	-118.1	-163	3,136	-2,694	0
Trade balance in computer & info		-194		-319	0	27	142		
Trade balance in other bus serv	-9.4	-6,240		863	-185	-626	9,171	-4589	

Source: Balance of Payments Statistics. Part I: Country Tables, Yearbook 2006, IMF

It would be noted that the IMF statistics does not have specific data for business services; rather it is lumped with other services. Thus, trade in business services can only be approximated from statistics on “Other Services,” which has separate items for “Computer and Information” and “Other Business Services.”

From the limited available data, one could discern that the ASEAN region is a net importer of business services. Lao and Thailand register large trade deficits in “Other Business Services” in 2005, i.e., about US\$6.2 and US\$4.6 billion, respectively. Singapore, in contrast, has a huge trade surplus in the same sector, i.e., US\$9.2 billion, but this, together with Malaysia’s trade surplus of US\$0.9 billion, are not sufficient to compensate for the deficits of other member countries.

The available statistics does not allow inference about intra-ASEAN trade in services.

B. ASEAN Commitments in GATS and AFAS

The Fifth Package of Commitments under the ASEAN Framework Agreement on Services (AFAS 5), signed in December 2006, bear substantial improvements in commitments from all MCs, particularly in business services. The total number of inscribed sectoral commitments in business services by member countries grew from 67 in AFAS 4 to 247 in AFAS 5. A major contributor to the increase is Brunei, which committed to only 4 business services sectors in AFAS 4, but now has commitments to 46 sectors in AFAS 5.

One explanation for the improvement in commitments is the explicit inclusion of sectors that member countries committed under GATS which are not in their commitment schedules under AFAS 4. Take Indonesia, as an example. It has no commitments in business services written in its AFAS 4 schedule, but it has commitments to 12 business services in GATS. The Protocol to implement the countries’ commitments in AFAS states that:

Member States who are WTO Members shall continue to extend their specific commitments under GATS to ASEAN Member States who are non-WTO Members.

This provision is interpreted to mean that all commitments of member countries in GATS extend to AFAS, thus ensuring that AFAS’ commitments are no less liberal than GATS’ and is consistent with the goal of making AFAS exceeds GATS liberalization commitments, i.e. “GATS plus”. That being the case, a member country’s commitments in AFAS should be read in conjunction with its commitments in GATS. Thus, in the case of Indonesia, even if it had no written sectoral commitment in AFAS 4, it is understood to have committed to 12 business services sectors which are in its GATS’ schedule of commitments.

Under AFAS 5, many of the sectors that have been committed in GATS but not inscribed in AFAS 4 have been included. Brunei, for example, has four other sectors included in its GATS schedule that are not listed in its AFAS 4 schedule. These four sectors are among the 46 sectors that Brunei has committed in AFAS 5.

Strictly speaking, the inclusion of these sectors does not constitute a real improvement in commitments since it is understood that a MC’s commitments in GATS are carried over to AFAS. But the AFAS 5 schedules contain many other sectors that are not included in the GATS schedules. Consider, for instance, Lao and Myanmar, both WTO nonmembers. These two economies did not have any business services commitment in their individual schedules under AFAS 4, but now have committed to 9 and 10 sectors, respectively. Thus, AFAS 5 is not only an improvement in the MCs’ commitments compared to previous packages, but has also made AFAS a “GATS plus” agreement as what member countries have intended since the inception of AFAS.

An inventory of the business services sectors listed in the individual MC schedules under AFAS 4 and AFAS 5 reveals the following:

Table III.2 Number of Business Services Sectors* Listed in Individual MC Schedules in AFAS 4 and 5

Sector	Member Country	AFAS 4 plus GATS**	AFAS 5 plus GATS**
A. Professional Services	Brunei Darussalam	2 plus 1	11
	Cambodia	9 plus 2	9 plus 2
	Indonesia	0 plus 4	9
	Lao PDR	1	6
	Malaysia	5 plus 2	20
	Myanmar	0	5
	Philippines	0	8
	Singapore	3 plus 5	7 plus 2
	Thailand	4 plus 3	11
	Vietnam	4	8 plus 1
B. Computer and Related Services	Brunei Darussalam	1 plus 3	5
	Cambodia	6	6
	Indonesia	0 plus 2	3
	Lao PDR	0	3
	Malaysia	3	3
	Myanmar	0	0
	Philippines	0	6
	Singapore	1 plus 3	3 plus 1
	Thailand	4	4
	Vietnam	0	0 plus 5
C. Research and Development Services	Brunei Darussalam	0	3
	Cambodia	0	0
	Indonesia	0 plus 1	1
	Lao PDR	0	0
	Malaysia	1	2
	Myanmar	0	3
	Philippines	0	0
	Singapore	1 plus 1	2
	Thailand	1	7
	Vietnam	0	1
D. Real Estate Services	Brunei Darussalam	0	0
	Cambodia	0	0
	Indonesia	0	0
	Lao PDR	0	0
	Malaysia	0	0
	Myanmar	0	0
	Philippines	0	0
	Singapore	0	0
	Thailand	0	0
	Vietnam	0	0
E. Rental/Leasing Services without Operators	Brunei Darussalam	1	6
	Cambodia	1 plus 1	2
	Indonesia	0	1
	Lao PDR	0	0
	Malaysia	2 plus 1	2 plus 1
	Myanmar	0	0
	Philippines	0	1
	Singapore	0	1
	Thailand	4	4
	Vietnam	0	2
F. Other Business Services	Brunei Darussalam	0	21

Sector	Member Country	AFAS 4 plus GATS**	AFAS 5 plus GATS**
	Cambodia	9 plus 1	10
	Indonesia	0 plus 5	6
	Lao PDR	0	0
	Malaysia	2 plus 8	8 plus 2
	Myanmar	0	2
	Philippines	0	0
	Singapore	2 plus 6	9
	Thailand	1 plus 10	11 plus 3
	Vietnam	0	17
Total Business Services Sectors Committed	Brunei Darussalam	4 plus 4	46
	Cambodia	25 plus 4	27 plus 2
	Indonesia	0 plus 12	20
	Lao PDR	0	9
	Malaysia	13 plus 12	33 plus 3
	Myanmar	0	10
	Philippines	0	15
	Singapore	7 plus 15	22 plus 3
	Thailand	14 plus 13	37 plus 3
	Vietnam	4	28

*One sector corresponds to one CPC at 3-, 4- or 5-digit level.

**Only those included in GATS that are not listed in the MC's schedule in AFAS.

The entries in the above table are to be understood as follows. Using Singapore's commitments in professional services as an example, "3 plus 5" under "AFAS 4 plus GATS" column means that in AFAS 4, Singapore committed to 3 professional services sectors. It has also committed to 5 sectors in GATS which are not among the 3 sectors that are inscribed in its AFAS schedule. Since commitments in GATS extend to AFAS, Singapore has therefore effectively committed to 8 sectors under AFAS 4. Under the "AFAS 5 plus GATS" column, it is shown that Singapore has 7 sectors written its AFAS 5 schedule. It has 2 other sectors written in its GATS schedule which are different from the sectors in AFAS 5. Thus, Singapore has effective commitments on 9 sectors under AFAS 5.

For the five business services sectors that are the focus of this study, Table III.3 shows that the commitments made by AMCs under AFAS 5 and GATS: It would be noted from this Table that while all MCs have commitments in accounting and architectural services, only half of the ASEAN membership have committed in legal services. Except for Myanmar, all MCs have commitments in computer and related Services, while Indonesia, Lao PDR and the Philippines are the only MCs that have no commitments in management consulting.

Table III.3 Coverage of Commitments of ASEAN Member Countries in Five Business Services Sectors under AFAS 5 and GATS, by CPC sectors

Country	Accounting	Legal	Architectural	Comp. & RS	Mgt Cons.
Brunei	862	None	8671	841-844	865
Cambodia	86211	861	8671	841-845 + 849	865
Indonesia	86220	861	8671	841, 842, 844	None
Lao PDR	862	None	8671	841, 842, 844	None
Malaysia	862	8619	8671	841, 842, 844	8650
Myanmar	862	None	8671	None	86503
Philippines	86211, 86212	None	8671	841- 845, 849	None

Country	Accounting	Legal	Architectural	Comp. & RS	Mgt Cons.
Singapore	862	None	8671	841-844	865
Thailand	862	861	86711-86714, 86719	841-845	86501
Vietnam	862	861	8671	841-845, 849	865

The coverage of commitment varies in each sector. In Computer and Related Services, for example, some MCs committed to all six subsectors (CPC 841-845, CPC 849), while others committed only to some. A similar observation applies to accounting services. In this sector, the commitments of all except three MCs apply to the entire sector; Cambodia, Indonesia and the Philippines, however, have committed to only selected subsectors. The Philippine commitment, in particular, does not cover all accounting, auditing and bookkeeping services (CPC 842), but only financial auditing (CPC 86211) and accounting review (CPC 86212).

Horizontal Commitments

Countries' horizontal commitments apply to all sectors included in the schedule of specific commitments. Horizontal commitments usually apply to the 3rd (commercial presence) and 4th mode (presence of natural persons) and are often unbound (no commitments). However, certain exceptions are given by countries under their horizontal commitments. Table III.5 gives such exceptions by each member country.

Table III.4 Horizontal Commitments by ASEAN Member Countries

Restriction	BRU	CAM	IND	LAO	MAL	MYA	PHL	SGP	THA	VNM
Equity of foreign investor	X		X				X		X	
Acquisition & lease of land		X	X	X	X		X		X	X
Access to domestic credit							X			
Temporary stay/ entry of foreign service provider	X	X		X	X		X	X	X	
Taxation/incentives			X	X	X					
Establishment of represent. office			X	X						X
Nationality or residency of board members/directors	X									
JV with locals			X	X						
Subsidies		X								X
Acquisitions, mergers, takeovers					X					
Legal form, conditions of ownership, etc.										X
Investors' provision of training		X								

As can be seen from the Table above, exceptions abound with regard to the equity of the foreign investor (i.e. minority share), the acquisition and lease of land, as well as the temporary entry and stay of foreign suppliers. With regard to equity, foreign investors can own only 30% in Brunei, 49% in Indonesia, 40% in the Philippines, and 49% in Thailand. In other words, the foreigners are bound by law to own only a minority share of a firm. As to the acquisition of land, most countries stipulate that foreigners cannot purchase or own land, but can only lease it. As to the entry or stay of foreign service providers, most countries in ASEAN have immigration laws that provide for the entry and stay of these service providers.

Specific Commitments of ASEAN Member Countries

Commitments In all the five business service sectors have been made by only four out of ten MCs, namely Cambodia, Malaysia, Thailand and Vietnam. Some member countries have committed only in four business service sectors (Brunei, Indonesia, Singapore) while the rest have committed in only three sectors (Lao PDR, Myanmar, Philippines).

Table III.6 presents the liberalization commitments of ASEAN countries in the 5 business service sectors under analysis (excluding horizontal commitments). As has been said earlier, some MCs committed on 4- or 5-digit CPC instead of 3-digit CPC, so that the percentages given in the Table can only be computed for common CPC sector. It can be seen that liberalization commitments for Modes 1 and 2 (Cross-border supply and

Table III.5 Liberalization Commitments of ASEAN Countries in Selected Business Service Sectors (in percent)

Sector	Mode 1			Mode 2			Mode 3			Mode 4		
	F	P	N	F	P	N	F	P	N	F	P	N
Accounting (CPC 862)												
7 countries												
Market Access	57	29	14	86	14	--	14	86	--	--	29	71
National Treatment	57	29	14	86	14	--	57	29	14	--	14	86
Legal (CPC 861)												
4 countries												
Market Access	75	--	25	100	--	--	25	75	--	--	--	100
National Treatment	75	--	25	100	--	--	50	25	25	--	25	75
Architectural(CPC 8671)												
10 countries												
Market Access	80	10	10	100	--	--	10	90	--	--	60	40
National Treatment	60	30	10	100	--	--	35	40	25	--	50	50
Computer & related services (CPC 841.842, 844) 5 countries												
Market Access	100	--	--	100	--	--	60	40	--	--	60	40
National Treatment	100	--	--	100	--	--	60	40	--	--	80	20
Management Consulting (CPC 865) 5 countries												
Market Access	100	--	--	100	--	--	40	60	--	--	--	100
National Treatment	100	--	--	100	--	--	80	--	20	--	20	80

Notes:--

1. Number of countries should be 10 MC of ASEAN, if not for the fact that some countries committed on 4 or 5-digit, instead of 3-digit CPC. Percentages are computed only for countries that committed on the same digit CPC.
2. F: Full commitment : "none"
P: Partial commitment (limitations inscribed, including "unbound except for " as well as "as in horizontal section")
N: No commitment ("unbound" whether or not in horizontal sections)
3. Excludes horizontal commitments

consumption abroad) have been made by most MCs. There are thus hardly any restrictions for Modes 1 and 2. Restrictions abound however for Mode 3 (commercial presence) and especially for Mode 4 (presence of natural persons). For Mode 4, it is noticeable that no country had made any full commitment ('None') while partial and unbound commitments abound.

C. Business Service Exporters in ASEAN

One way of obtaining a glimpse of the sector's potential is to examine the experiences of some its successful participants. In business services, some ASEAN firms have evolved into full-blown exporters, often – but not always – in collaboration with firms from developed countries. According to entrepreneurs, the biggest constraint they face as exporters of professional services is a “generalized mistrust on the part of potential buyers” (Nielson and Taglioni, 2004). For instance, an exporting firm from Africa, which now exports payments systems regionally and to European and North American markets, says that they had to overcome skepticism at home and abroad regarding the ability of such firms from developing countries to develop as well as operate advanced technologies. But the presence of trade barriers, such as nationality requirements, visa restrictions on temporary business travel, etc. easily add challenges to exporting activity of these firms. In spite of the obstacles to exporting, these firms have ventured forth at all costs and have been motivated by the notion that success had to be won at the point of the sword.

The experiences of these successful exporters allow one to identify viable strategies that other ASEAN service providers can emulate to boost their trade capacity. They also point to some policy measures required to help local providers penetrate other markets.

Outsourcing is the way developing countries can grow into the export sector.

Lao PDR is a country that has used outsourcing to create jobs for its citizens. It has also used it to create skills as well as educational opportunities for its people. An example is Digital Divide Data, a computer firm that has tied up with DDD USA.

Box III.1 The Case of Digital Divide Data

Digital Divide Data (DDD) is one of very few foreign companies in the computer service business in Laos. What is most unique about DDD is that it is a social enterprise established in July 2001 to create jobs and educational opportunities in developing countries by providing outsourced data services to business and public sector customers. DDD is established in the U.S. as a 501(c)3 organization, as well as organized as a non-governmental organization in Cambodia and as a business in Laos. Ownership of the Laos operation is split between the local partner, who manages the business, and DDD USA. It should be noted that although DDD Laos registers as a business entity, its corporate objectives remain very much socially-oriented as it aims at creating employment for the handicapped and opportunities for upward mobility for disadvantaged population through in-house training programs.

DDD Laos has been able to surpass its targeted objectives as demand for outsourcing in Laos has been overwhelming. Revenue growth for DDD during 2002-2006 averaged 40% per annum. Its revenue increased five fold from US\$100,000 to US\$500,000. As in other business services, the computer service faces severe supply-side constraint due to lack of qualified personnel. To meet the surge in demand, DDD undertakes its own computer training programs from the very basic to the more advanced levels. The number of employees, now at roughly 90, is expected to double in the following year as the current trainees become staff members.

But outsourcing has to go hand in hand with technology development, if it is to progress in the export sector

Technology development must accompany outsourcing for a developing country to continue growing into the export sector.

Indonesia is an example of a country that is well-known for its huge population and hence for its comparative advantage in labor-intensive activities. But it knows that its labor intensity cannot go very far without helping itself of the technology shelf. One of its outsourcing firms – PT Urbane Indonesia – has taken advantage of the difference in time zones and of course, technology that exploits it to raise its efficiency.

Box III.2 The Case of PT Urbane Indonesia

PT Urbane Indonesia was established in 2003 by M. Ridwan Kamil, after he finished his Master's degree in the US and had worked in some big company in the world such as DDG, SOM, HOK and EDAW (1997-2003). In 2004, M. Ridwan Kamil together with Achmad D Tardiyana, Reza Nurtjahja, Irvan P Darwis, and some friends (from the Institute of Technology in Bandung) established Urbane. Now with 25 personnel (no one foreign architect/professional) including 18 architects and urban designers and 7 staff members for administration and marketing, PT Urbane Indonesia has specialization in Architecture and Urban design or urban planning (each with a share of 50%)

Urbane tries to make its design of buildings unique and environment-friendly, so that everyone who comes to the building never forgets it. But this is one case where government regulations on construction law can restrict the implementation of ideas. Other barriers are that architectural education in Indonesia is not recognized internationally and that Indonesia does not even have a specific law on architecture.

It prefers to outsource persons or other firms to do a big project than to hire new architects because in doing the latter it has to incur operational cost. In the past, when economic crisis took place in Indonesia, many firms were affected and ended up by decreasing the number of their employees. Urbane's mission is to be a "training centre of architects". Thus their architects get training both in languages as well as in architectural skills and specialization. They also go abroad to study or work in international firms, and they eventually come back to implement their knowledge and experiences in Indonesia. Besides Urbane exports designs overseas, so that some of Urbane's architects go abroad to undertake projects or join international firms under an outsourcing contract.

It believes that globalization and high technology can not be separated so that one of Urbane's projects (in Saudi Arabia) will be finished in 45 days only, when it is scheduled to be finished in three months! It takes advantage of the difference in time zones, That is, it can do a project 24 hours a day, for example: Urbane would design a project from 08.00 am – 07.00 pm and then send the design to an American company, where colors and finishing touches to the design can be made. This is possible only through the use of technology.

Technology utilization is thus a sine qua non for business. And Malaysia knows this, so that it has encouraged research and development even in the palm oil industry.

Technology utilization is the key to competitiveness and growth.

Box III.3 The Case of Veritas Design Group

The **VERITAS Design Group** is a multi-disciplinary design firm that is located in Kuala Lumpur, Malaysia. World Architecture cited the company in the 1999 survey of the Top 500 Architectural Practices. The VERITAS Design Group was founded in 1987 as an architectural practice and now offers a full range of design services. Interior design services are provided by VERITAS Interiors Sdn Bhd and landscape design and planning services are provided by VERITAS Landscape Sdn Bhd. VERITAS has undertaken an increasing amount of work overseas through VERITAS Global Sdn Bhd.

During the 1990's the Malaysian government commenced encouraging Western firms to enter the market and compete against local architects and designers. Worldwide barriers to trade and travel restrictions were also disappearing, and Malaysians were enjoying visa-free entry into most Asian nations. VERITAS utilized this opportunity to collaborate with Western firms entering Malaysia and completing many high profile projects. The company also started exploring international markets and made modest attempts in Thailand, Vietnam, and later the Philippines, enjoying minor success and recognition

The company has since formed a joint-venture with Bonyan Emirates and opened a Dubai office to undertake many projects in the UAE. In 2004, VERITAS was appointed as architects for major developments in Iran and Pakistan, and have recently been invited for projects in India and Indonesia.

VERITAS secret of success has been their ability to utilize technology (especially the internet) to create a strong international profile. The company has been willing to take risks in exploring new markets. While this strategy has caused some problems for VERITAS, as initially in Dubai, their perseverance has helped them win major contracts. The company has also shown that the removal of protectionism can encourage an increased emphasis on quality and innovation, which are the major requirements for firms competing in the international marketplace.

Sometimes, a niche is opened up by circumstances one is in. The point, however, is to SEIZE IT.

Cambodia is one country that has had a colorful past. But it has used this past to create for itself a future. It has seized an important niche area that has been created by circumstances. But it has done so through the experience of locals.

Box III.4 The Case of DFDL/Mekong Law Group

Despite weakness in the domestic legal, judicial, and enforcement systems, strength in a niche area was opened up by the opportunities created by inflows of foreign investment and expertise, complemented by foreign educational and work experience by locals. This niche area was exploited to the hilt by the **DFDL/Mekong Law Group**. The DFDL/Mekong Law Group, established in January 1995, is the first officially authorized foreign legal and tax consultancy in Cambodia. It has 5 foreign advisors and 8 Khmer advisors, mostly lawyers and a few tax and accounting professionals. The partnership has successfully integrated international standards with in-depth knowledge of the local environment.

Taking advantage of the geographical closeness in the Mekong region, the DFDL/Mekong Law Group has opened offices in other four countries: Lao P.D.R., Thailand, Myanmar and Vietnam (Ho Chi Minh and Hanoi) [mode 3, commercial presence]. The regional network consists of 12 foreign lawyers and advisors and 18 local lawyers, advisors and legal assistants. The focus of the law group has been commercial and corporate legal services to foreign and local investors in the Mekong Region. Examples of such services are legal support in initial contacts, licensing, negotiations with the government and joint venture partners, land purchasing, leasing and financing, and other operational matters such as labor and taxation.

In Cambodia, the group has worked with other large international law firms, multinational corporations, and bilateral and international organizations. It has advised both lenders and investors in infrastructure, telecommunication, energy and financing projects. The operations of the DFDL/Mekong Law Group cover all modes of trade in services: modes 1 to 4.

Another example is Myanmar. One of its firms has specialized in arbitrating disputes.

Box III.5 The Case of UMFCCI

One important legal-related service to international trade is the provision of arbitration facilities that actually may prevent full-scale legal battles among trading firms crossing borders. This is seldom explored since in international trade contracts there are usually stipulations when there are disputes.

There are assignments as to the location of arbitration, and jurisdiction when cases are further pursued in courts. Yet for many emerging market firms that undertake international trade the sophistication from multinational firms is still to unfold.

The **(Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI))** has been providing arbitration services in cases of disputes between its member firms. Apparently this kind of service has also been provided to international firms which have disputes with parties in Myanmar and the record so far indicates that international firms have been quite satisfied with the arbitration agreements that have resulted from the services.

This is one kind of a service that UMFCCI has acquired some capacity which itself could also export especially around the region. This is far short of the purely legal services but is not also riddled with the constraints and other barriers that beset other professional services. On the other hand there are really no standards, regulations, or vehicles for measuring quality. What this means is that this service needs to be further explored and systematized if it is to be offered as part of services trade commitment.

Local partners are essential for growth.

In countries, particularly where the English language is not spoken or understood by the great number of the population as well as those that are characterized by legal restrictions that foreigners are not familiar with, local partners are a sine qua non for the growth of a company. Vietnam is a country where such a partnership with locals by a foreign corporation has yielded important results.

Box III.6 The Case of Archetype Vietnam Ltd.

Archetype Vietnam Ltd., is a partnership architectural firm and a member of the Archetype Group which has Asian operations in India, Thailand, Hong Kong, Cambodia and Vietnam. The Archetype Group is one of the Top 100 Global Architectural Firms, and is one of the of the Top 10 Architectural Firms in Australasia. Archetype Vietnam has also been named one of the Top 10 market leaders in architecture in Vietnam since 2005 by the Building and Construction Interchange (BCI) Asia.

The firm's Vietnam operations had only 10 employees four years ago. Since then, Archetype Vietnam has grown steadily, expanding its operations to its present level that employs around 200 people (81 and 98 local staff in the HCMC and Hanoi offices respectively, and 13 and 16 expatriates for each office)—with 45 full-time architects from Southeast Asia and from France in its roster of employees. Currently, the company holds offices in Hanoi and Ho Chi Minh City. Its mix of contracts consists of a 1/3 high rise apartment and office buildings, 1/3 hotels and beach resorts, and 1/3 that is a combination of everything else.

When Archetype first started in Vietnam five years ago, it had to contend with the country's lack of information and transparency in the government bureaucracy. This made decision-making and planning for the firm's management very difficult. In response, Archetype sought and found local partners to help them navigate around the business, government, and market environments in Vietnam.

The firm still utilizes local partners and local consultants to assist them comply with the evolving regulations and standards. With the language barrier a continuing issue (regulations are disseminated in Vietnamese), local partners are essential for Archetype to submit and comply to building and design requirements and specifications. This is true for all architectural firms whose designing base is composed mostly of international architects rather than local ones.

Archetype notes that in many cases, the zoning regulations in the different districts in Vietnam are 'quirky'—making the approval process for building applications complex. As such, companies such as Archetype that submit designs for approval often find themselves negotiating with local authorities. The process is ad hoc, and the presence of local consultants and networks help in the negotiation process.

Domestic regulations can be a hindrance to growth.

A local architectural firm in the Philippines had grown in spite of the restrictions against foreign consultants. Given the time it takes to process working papers and visas, the firm regrets its loss of foreign consultants, but nevertheless managed to grow because of the sheer demand for its services.

Box III.7 The Case of Palafox and Associates

Palafox and Associates is the only architectural firm in the Philippines that has succeeded in being included in the Architectural Group's top 100 architectural firms in the world. In 2006, the firm ranked 94th, up from 105th slot in 2005, the only Southeast Asian firm to land in the world list. Building and Construction Interchange (BCI) Asia has listed it in 2004 and 2005 among the top ten market leaders in architecture in the Philippines and has included it among its nominees of the top ten architectural firms of Asia. It has implemented and successfully obtained certified audit for an integrated quality and environmental management system (QEMS) in architecture, planning, urban design, engineering, and landscaping. It has been certified by TUV (TUV Management Service GmbH) for its QEMS based on ISO 9001 (Quality Management) and ISO 14001 (Environmental Management).

It was founded by Architect and Urban Planner Felino Palafox, Jr. in 1989. It has been involved in the architectural design in 17 countries, including Southeast Asia (Malaysia, Indonesia, Vietnam, Philippines). For instance it includes among its international projects the Jakarta Urban Transit, the Tok Bali Fish Port and Tourism Estate as well as the Taiping Development, both in Malaysia, the Urban Planning for New Township in My Tho City of Vietnam, several hotels in Vietnam, including the Park Hyatt and Norfolk Hotel, both in Ho Chi Minh City. In the Philippines, their projects have spanned from resorts & recreation to offices, institutions, medical hospitals, educational institutions, environmental parks industrial parks, including the comprehensive development plans for a number of cities and towns in the country.

They used to have a number of foreign architects – Australians, especially – from whom they have been able to learn technically. But because of the limits on the allowable period of temporary stay, the difficulty of obtaining visas and work permits, the time needed to obtain these, the non-recognition of foreign professional qualifications and the general restrictions on the movement of personnel, the supply has begun to dry up. Lately they have been focusing their attention on projects at the Middle East countries of UAR, Saudi Arabia, Qatar and others.

Technology, together with strategic alliances, is important for growth. But Singapore realized that partnership cum technology will be useful only if business activities are not hampered by the presence of trade barriers.

Box III.8 The Case of PICO

PICO was established in 1971 in Singapore as a company specialising in outdoor advertising. In the 1980s, when the exhibitions and conventions industry started to develop in Singapore, Pico diversified into the business of constructing exhibition booths. It built its name, not just in Singapore but internationally, to the point where it now attracts major contracts, not just building the booths but managing the whole process.

PICO describes itself as an ideas and design-driven enterprise, and notes the importance of strategic alliances with technology partners. This combination of ideas and design in partnership with technology providers allows the development and delivery of high quality creative services through what it describes as the efficient deployment of best global resources.

Further it uses partnerships in countries of market to successfully win and undertake contracts. For example in a major contract handling the setting up of hospitality facilities providing everything from tents and furnishings to props and decorations, a partnership with a Greek entity was an essential component

Noteworthy to its success has been the lack of or absence of trade barriers that have allowed Pico to: (i) market and advertise freely throughout the region; (ii) recruit staff from around the world without any significant qualification or other barriers; and (iii) establish joint ventures or sub-contracting arrangements with local firms in other countries.

In order to achieve their success Pico has been innovative in product development and delivery. It has supported its innovation by ensuring it retains its local base and presence, while developing appropriate supporting partnerships and a presence in the markets it is seeking to penetrate across ASEAN and indeed internationally.

Given the above examples of ASEAN firms that have managed to export, it is not a pipe dream to expect other firms to grow by way of exports. The following sections discuss the barriers to trade in business services that might have inhibited the growth and development of local firms into service exporters.

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IV. Barriers to Trade in Business Services in ASEAN

On the tenth year of the ASEAN Framework Agreement on Services (AFAS), the ASEAN Secretariat commissioned a study to assess the progress of the AFAS, to determine the extent to which AFAS has removed trade restrictions in services among AMCs and to determine the extent of regulatory convergence and harmonization. The results of the study by Thanh and Paul Barlett (2006) indicate that in terms of coverage (width) of liberalization across the four AFAS packages, the total number of commitments made by each AMC exceeds the GATS coverage by 50%, but that the extent of this extra coverage was limited. While the degree of services trade coverage was 1.58 for all ASEAN, for a number of countries, specifically Singapore, Vietnam, Cambodia, Malaysia, and Thailand, the sectoral coverage ratio was only between 1.09 and 1.35. This implies that commitments to liberalise within the ASEAN region are not significantly greater than those made globally. Thus, the issue is raised on just how substantial AFAS liberalization has been.

As to the depth or the extent to which the agreements are binding, AFAS does not explicitly oblige the AMCs to freeze the existing regimes and measures up to a given date. Moreover, GATS is observed to provide 'deeper' liberalization with respect to transparency. Whereas GATS Article III includes many transparency provisions that WTO members are under obligation to implement, none such provision exists in AFAS that would at least commit member countries to make fully transparent their existing legislation, rules and procedures. (Thanh and Bartlett, 2006)

There is also no clause preventing AMCs from 'backsliding' in terms of any preferential commitments that it has implemented after the effective date of a freeze.. Thus, theoretically the service providers can introduce sudden changes that reverse previous liberalization initiatives. Practically, however, the objectives of the AFTA do not admit of such 'backsliding'.

With regard to the extent to which restrictions to services have been eliminated, the study shows that "the successive AFAS packages have reduced the 'level of restrictiveness' to services trade in every AMC (Thanh and Bartlett, 2006). However, the difference between restrictiveness represents only a slight margin of preference for AMCs over non-AMCs. In the case of Singapore and Malaysia, the two economies with the most significant proportion of regional services trade, this preference is not substantial at all.

This section takes stock of the trade barriers in business services in ASEAN. Impediments or barriers to business services can range from the most formidable ones, such as differences in culture and language to less daunting ones, such as restrictions on the membership of foreign professionals in local professional bodies. The purpose of stocktaking is to obtain an understanding of the dynamics of trade regimes for business services in member countries and to qualitatively assess the restrictiveness of these regimes. A quantitative assessment of these barriers is presented in the next chapter.

A. Cross-Country, Cross-Sector Analysis of Trade Barriers in Business Services

The discussion on Chapter II elucidates on the types of trade restrictions that may apply to business services, particularly in the five selected sectors. Evidently, there are a number of common restrictions among these sectors. For analytical ease, these restrictions may be classified as follows:

- **Restrictions that impede or limit the relationship between an international firm and domestic affiliate** include limits on foreign ownership or equity in a local firm, restrictions on involvement of foreigners in local firm management; prescribed form of establishment in which to practice; limitations on the use of international firm or network name; restrictions on international payments such as fees, royalties, etc.; and requirement to enter into joint venture with a local firm in order to practice.
- **Restrictions on movement of professionals into and out of a country for purposes of providing services** covers difficulty, delays and red-tape associated with obtaining visas and work permits; limits on allowable period for temporary entry; restrictions on permanent movement of personnel such as executives, senior managers and specialists.
- **Lack of transparency and due process in regulatory decision-making and rule-making** which is evidenced by non-publication of rules, regulations and regulatory decisions; lack of opportunity to comment on proposed regulations; arbitrary enforcement of rules; and absence of an appeals process.
- **Restrictions that relate to the practice of profession** pertain to requirements for licensing and accreditation of professionals; restrictions on advertising, marketing and solicitation; restrictions on legal form of establishment in which to practice profession; restrictions on size of professional firms such as limitations on the number of partners and number of engagements; limitations on ownership or control by nonprofessional investors; nationality requirements; residency and local presence requirements; government procurement rules that discriminate against internationally affiliated firm in winning public contracts; restrictions on the number of geographic location, branches or offices; restrictions on multidisciplinary practices; activities reserved by to the profession; restrictions on setting professional fees; technical standards not aligned to international standards.
- **Restrictions that prevent foreign professionals from practicing in a country** relate to non-recognition of foreign professional qualifications; use of quotas or economic needs tests on the number of foreign professionals and firms; impediments to foreigners from becoming members of professional bodies; requirement on hiring local professionals.
- **Infrastructure-related constraints** include limitations on bandwidth availability; low network latency; high costs of communication access and usage; weak enforcement of IPR; weak network security; non-existence of payment standards; and presence of border tariff on online sales.

How pervasive are these restrictions? The next sections take an inventory of their presence in sectors and member countries.

1. Relationship between international firm and domestic affiliate

Trade barriers of this type affect Mode 3 supply. There is actually a wide range of policy measures that may serve to thwart entry of foreign capital in the sector; but five measures are considered here as they are more commonly applied, namely: foreign equity cap, restrictions on foreigners' involvement in management of local firm, requirement to enter into joint venture or partnership with locals and restrictions on capital repatriation.

Table IV.1 Number of AMCs with Restrictions that Limit the Relationship between the International Firm and its Domestic Affiliate

Trade Barrier	Acctg	Legal	Archi	Mgt. Cons.	CRS
Cap on foreign ownership or equity in a local firm	7	4	8	7	6
Prohibition on foreigners' involvement in the management of a local firm	1	3	0	0	1
Restrictions on the use of international firm or network name	4	4	4	1	1
Requirement to form joint venture or enter into partnership with a local firm	6	4	7	0	3
Restrictions on repatriation of fees, royalties, inter-network payments	0	0	2	0	0

As can be seen from the Table, at least half of ASEAN countries have imposed limits on foreign ownership or equity of local firms to a minority share (see horizontal commitments of ASEAN member countries). Majority of countries require foreign accounting and architectural firms and some in the legal services to form joint venture or partnership with local firm. A number of countries apply restrictions on the use of international firm or network name in professional services, but some countries extend such restriction even in unregulated sectors such as management consulting and computer-related services.

In contrast, foreigners are usually allowed to be involved in the management of a local firm and there are often no regulations on the repatriation of fees, royalties, and inter-network payments.

2. Movement of Professional Personnel

Barriers to movement of professional personnel cut across sectors as they relate to a country's immigration rules, not to sector-specific regulation. The more liberal the trade regime, the longer period it allows temporary or permanent entry of professionals. Delays in processing visa and work permit can be also considered a trade barrier.

Table IV.2 Number of AMCs that have Restrictions on the Movement of Professional Personnel

Trade Barrier	No. of AMCs
Temporary entry of professionals	
Not allowed	4
Up to 30 days	1
Up to 60 days	1
Up to 90 days	2
Visa and work permit processing	
Less than 1 week	
1 week to 1 month	
More than 1 month	
Permanent entry of professionals	
No restriction	2
Maximum of 2 years	2
Maximum of 3 years	2

Trade Barrier	No. of AMCs
Maximum of 5 years	1
Subject to economic needs test	2
Not allowed	1

The table above shows that 4 AMCs do not issue temporary permit for entry of professionals; 1 AMC does not allow even permanent entry. Most temporary entry permits are valid for up to 90 days, while 5-year visa for professionals is considered the norm. It is evident that most AMCs do not measure up to these norms.

3. Regulatory Environment

Table IV.3 provides an indication on the degree of transparency of regulatory environment in AMCs. Since computer and related services and management consulting are unregulated, this set of measures is relevant only to the regulated professional services.

Table IV.3 Number of AMCs where Regulatory Environment Lacks Transparency

Trade Barrier	Acctg	Legal	Archi
Rules, regulations, and regulatory decisions are not published, or published only occasionally, or published only in national language	5	6	6
Comments before issuance of new regulations are not solicited or solicited only occasionally	6	3	5
Rules are not consistently applied or consistently applied but only occasionally	2	2	4
Absence of a well-functioning appeals process	2	1	1

* Because there are ten member countries in ASEAN, the maximum number is 10.

** When response is 'not applicable' (N/A), response is not counted.

Transparency requires publication of all rules, regulations and decisions at all times, and in both national and English language. It also necessitates consultation before new regulations are passed. Consistent application of rules and existence of well-functioning appeals process are likewise requisites of a transparent regulation. Clearly, some AMCs fall short on these transparency requirements.

4. Requirements for the Practice of Profession

Rules and requirements to regulate the practice of profession are not trade inhibiting *per se*. But they become so when they are overly burdensome, redundant or unnecessary to ensure quality of service and to protect consumers.

The Table below presents an inventory of the number of countries that have restrictions or requirements which exceed those of liberal regimes. It will be remembered that most of these apply to both domestic and international practitioners so that there is no discrimination implied.

Table IV.4 Number of AMCs with Trade-restrictive Requirements on the Practice of a Profession

Trade Barrier	Acctg	Legal	Archi	Mgt Cons.	CRS
Licensing and accreditation of professionals					
• Professional exam	7	7	5	1	2
• Experience	7	5	5	1	0
• Compulsory membership in a local association	6	4	3	0	0
Advertising, marketing, solicitation not allowed	5	6	5	0	1
Restrictions on legal form of establishment in which to practice	7	3	4	3	4
Limits on size of establishment (e.g. limitation on no. of partners, capital)	3	1	0	0	0
Restriction on ownership or control by non-professionals	6	3	6	0	0
Nationality requirements	5	10	6	0	1
Residency & local presence requirement	6	7	6	1	4
Discrimination against internationally-affiliated firms by govt –procurement rules	0	0	4	1	1
Restrictions on number and geographic location of branches or offices	0	0	0	0	1
Inter-disciplinary or multi-professional partnerships not allowed	6	5	3	0	0
Cooperation between professionals not allowed	1	1	1	0	0
Restrictions on setting of professional fees	0	2	6	0	0
Local technical standards not aligned to international	4	3	n/a	n/a	n/a

The first observation is that the traditional professions are usually the most regulated, i.e. accounting, legal, and architectural services. Legal services have the largest number of countries in a given regulation, i.e. all 10 countries have a nationality requirement, although countries differ on the restrictiveness of implementation of such policy. Residency and local presence requirements likewise abound in most business services. In terms of legal form of establishment, most countries require accounting firms not to incorporate, probably due to the limited liability of corporations. Majority of countries in the accounting and legal professions do not allow partnerships to be formed between those coming from other professions. The setting of fees is stipulated by most countries for architects but not for the other business services.

In contrast, there are usually no stipulations for the size of establishment, discrimination against internationally-affiliated firms by government-procurement rules, number and geographic location of branches or offices. Cooperation between professionals is also generally allowed.

5. Practice of Foreign Professionals in the Domestic Market

Some countries have regulations that absolutely prohibit foreign professionals from practicing in the country; others have only de facto prohibition. Table IV.5 shows the number of countries that have such restrictions.

Table IV.5 Number of AMCs that have Restrictions on the Practice of Foreign Professionals in the Country

Trade Barrier	Acctg	Legal	Archi	Mgt Cons.	CRS
Foreign professionals are required to undergo licensing and accreditation requirements	8	8	6	1	1
Use of quotas or economic needs test on the number of professionals and firms that would be allowed entry	4	4	4	2	2
Foreign professionals not allowed to become members of professional bodies	4	6	6	1	2
Foreign firms required to hire local professionals	6	4	7	8	6

On the licensing and accreditation of foreign professionals, a majority of countries, particularly in accounting services leave to the licensing body the right to judge on a case-to-case basis, whether a foreign professional may be allowed to practice in the country. In the legal profession, on the other hand, some countries have absolute prohibition on the practice of foreign professionals. Some countries require an economic needs test particularly in accounting, legal, or architectural services to determine whether a foreign professional or his/her firm can practice in the country. Majority of countries in the legal services do not allow foreign professionals to become members of professional bodies. Moreover, a majority of countries in *all* fields require foreign firms to hire local professionals. This is the only restriction or requirement that is true in all sectors in most countries, in spite of the unregulated nature of management consulting and computer-related services.

6. Infrastructure

As most business services are amenable to digital delivery, the availability and quality of communications infrastructure is a significant factor in facilitating trade. In this study, however, infrastructure-related constraints are deemed to relevant more to computer and related services than in other business services sectors.

Table IV.6 State of Computer-related Infrastructure in ASEAN

	No. of AMCs
Broadband availability	
• Broadband is widely deployed	3
• Broadband is available only in central districts and cities	7
• Broadband network is not available	
Reliability of network	
• High	3
• Medium	4
• Low	3
Cost of communications	
• Low income countries	3
• Middle-income countries	7

	No. of AMCs
• High-income countries	-
Security of communications	
• Highly secured	1
• Sufficiently secured	5
• Not secured	4
Enforcement of IPR	
• Needs improvement	6
• Good	4
Payment standards for online transactions	
• Yes	-
• Yes, but not followed consistently	2
• No	8
Border tariffs on online sales	
• Yes	2
• No	8

Most countries in ASEAN have a broadband network only in central districts and cities, while it is widely deployed in three countries. The reliability of the network ranges from low to high. The cost of communications is mainly akin to middle-income countries. And while on the average countries' communications are sufficiently secured, four countries said that they were not. Most countries stand to gain improvement in communications; payment standards are often not available for online transactions but most countries do not impose tariffs on online sales.

B. Analysis of Trade Barriers, by Sector

Given that each business services sector has its specific characteristics, trade barriers have different impact on the sectors where they are applied. That is, the same trade barrier measure may be more trade-inhibiting in one sector than in another. Thus, a mere frequency count of the trade barriers in place does not provide an adequate assessment of the degree of restrictiveness of a particular regime.

This section identifies the trade barriers that are considered more important than others in affecting trade in a given sector.

1. Accountancy

With developments in information technology, trade in accountancy services should have been boosted by the increasing possibility of mode 1 delivery. However, mode 4 delivery of accountancy services is still predominant and the traditional regulations on the practice of profession have not been changed in most cases. The following regulations are deemed to have the most significant impact on trade in accountancy services:

Nationality requirement. At least half of the ASEAN membership still imposes nationality condition before issuing license. This traditional form of regulation is based on the notion that nationals are more familiar with local rules than foreign suppliers. However, this regulation has gone out of synch as countries align their standards of practice with international standards.

Residency and local presence requirement. A majority of AMCs still imposes this requirement, which is often justified by the need to ensure that consumers' redress in case

of malpractice. Some AMCs however have removed this regulation, perhaps in recognition of increasing opportunity for mode 1 delivery of accountancy services.

Restriction on legal form of establishment in which to practice. Incorporation of accounting firms is still prohibited in 7 of 10 AMCs. These countries continue to uphold the tradition of organizing accounting firms either as sole proprietorship or partnership. Such regulation is premised on the principle that making professionals personally liable for their practice will imbue discipline on them. There are no indications that these AMCs are inclined to remove such restriction, at least in the near term, even with the emergence of new forms of organization that preserve the personal liability of professionals but allows for greater flexibility.

Licensing and accreditation requirements. The trade-restrictive aspect of licensing and accreditation requirements for the practice of the profession does not emanate from the requirements themselves but from the divergence of these requirements across economies. In accountancy services, such divergence is pronounced. Reconciling differences in education and experience requirements has been proven difficult, which explains the lengthy negotiations before a mutual recognition agreement can be forged. Among ASEAN members, only the Philippines has instituted reciprocity arrangements to allow foreign professionals to practice in the country provided they have “equivalent” licensing requirements as the Philippines’ and their home countries accord reciprocal privilege to Filipino accountants.

Restrictions on foreign ownership or equity in local firm. At least 6 AMCs have not divorced the prohibition on the practice of foreign professionals from restrictions on foreign capital infusion in local firm. Myanmar and the Philippines, for example, have absolute prohibition on foreign equity as they also prohibit foreign professionals from practicing in their respective domestic markets (albeit the Philippines has allowed for reciprocity arrangements). In other AMCS, the restriction to foreign ownership is not absolute. In Thailand, the equity cap is placed at 49%, while in Malaysia, at 45%,

2. Legal Services

Among the accredited professions, legal services seem to be the most restricted. As seen earlier, of the ten ASEAN countries, only five (5) have committed their legal services sector to AFAS 5. The following measures are considered to have restricted trade in the sector:

Licensing and accreditation. In all countries, a university degree of three to five years from a college, university, or institute certified by the State is a must. The Philippines, in addition to a pre-legal degree at the tertiary level, requires four years of study of legal jurisprudence. In contrast, while most countries require experience of their lawyers, Philippine lawyers are not so required, although a good legal curriculum often requires a practicum. In Indonesia, two years of experience while in Malaysia, nine months of pupillage with a mentor with at least seven years of practice are required. Then, a professional examination has to be passed in most countries, although a few like Thailand allow its lawyers to practice on completion of their legal education, without passing a professional exam. Most countries also require membership in a professional association, which may offer continuing education or may be the standards-setting or self-regulating body.

Nationality requirement is required by *all* member countries of ASEAN, with varying degrees of severity. Singapore has loosened its rules in 2000, permitting joint law ventures (JLVs) and formal law alliances (FLAs) between local and foreign firms. Foreign lawyers in these ventures are thus allowed to render advice on Singapore law relating to banking, finance, or corporate work. Foreign lawyers - as is true for most ASEAN countries – are not permitted to appear in court. Moreover, the foreign lawyer or the firm he is working for is

required an employment pass after admission by a court order. Brunei allows foreigners from the United Kingdom, Singapore, Malaysia or any other country or territory in the Commonwealth to practice, subject to some requirements. Moreover, Muslims can have special trials in Shariah courts, where one has to be a Muslim in order to practice. In Vietnam, foreigners are allowed to practice international law but cannot appear in courts. In Malaysia, foreigners with a certain number of years of experience and who have mastered the local language can be allowed to practice. On the severe side of the legal spectrum is the Philippines, with its absolute prohibition of foreigners from the legal practice, without reciprocity.

Restrictions on interdisciplinary or multi-professional partnerships. A number of countries do not allow legal partnerships to be formed with professionals not from the practice of law. This means that a legal establishment could not be under the control of an investor who is not in the legal profession, even if such investor is a national or local resident.

Licensing and accreditation of foreign professionals: Foreign professionals with their licenses and qualifications are often not recognized to practice the legal profession. They are barred from practice with absolute prohibition, as in the Philippines. They may likewise be prohibited from practicing their profession, as in Brunei, Cambodia, Lao PDR and Malaysia. In Singapore, foreign officials are prohibited from practice. But other than officials, foreigners in Singapore are assessed on a case-to-case basis, after which local training might be required for a full license to practice the legal profession. Likewise, in Vietnam, a case-to-case assessment of the foreign lawyer's certificate or license will have to be conducted.

3. Architectural Services

Like accountancy and legal services, trade in architectural services continues to be stifled by domestic regulations. The following are deemed to have the most significant impact:

Licensing and accreditation. A university degree in architecture from a university certified by the State is required by most countries. Experience of a number of years is also required: for instance, ten years in Malaysia, five years in Singapore, and two years in the Philippines. Most countries also require passing a professional examination. Certain countries likewise stipulate compulsory membership in a professional association.

Nationality requirement. Most countries require citizenship to practice the profession. However, the nationality requirement is mitigated by reciprocity arrangements. The Philippines, for example, allows foreigners to practice if they are from countries that allow Filipinos to practice. Brunei, on the other hand, allows architects from Commonwealth countries to practice the architectural profession in Brunei. Together with nationality requirement are the requirements of **residency and local presence**.

Formation of a joint venture or partnership with a local firm. Majority of countries stipulate the forming of a joint venture or partnership of a foreign firm with a local firm. This is true for Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, and Thailand.

Foreign equity or ownership is usually allowed but it is often subject to a percentage that requires foreign ownership to be less than majority, except in large, foreign owned projects, such as in Indonesia. Thus in Malaysia foreigners can own only a maximum of 30% of equity, the Philippines 40%, Thailand 49%.

Hiring of locals. Brunei has to hire local professionals who have to make up 50% of employees, while in Indonesia, the figure must be more than 50%. In Singapore, for every

foreigner that is hired, 2 locals have to be taken in. In Thailand, however, 50% of directors must be Thai citizens.

Setting of professional fees. A maximum and minimum amount of professional fees is set by the regulatory body or the standard-setting professional association. This seems to be the case in the architectural sector for Malaysia, Myanmar, the Philippines, Singapore and Vietnam.

4. Management Consulting

Even if management consulting services is an unregulated activity in practically all the member countries of ASEAN, it has not escaped the restrictiveness of certain barriers to trade, as can be seen from the following discussion.

Foreign ownership or equity in a local firm. Foreigners are not allowed to acquire majority share of firms in a number of countries. Thus, Brunei expects foreigners to have equity of only up to 30% in sole proprietorships and partnerships' 49% in Cambodia and in Thailand; 40% in the Philippines, and up to 30% in Vietnam (up to January 2008).

Hiring of locals: Local employees must be hired in a number of countries, just as in Brunei or in Cambodia. In Malaysia, the requirement is that of the minimum of two directors that must be hired, one of them has to be Malaysian. In Thailand, for every foreigner that is hired, 4 locals must be taken in. While in Vietnam, at least 20% of hires must be nationals. Thus, while management consulting is usually unregulated in ASEAN, most countries require nationals to be hired by firms that operate there.

5. Computer-related Services

The most significant restrictions to trade in computer and related services are not related to domestic regulation since the sector is unregulated, saved for the licensing examination administered in the 2 AMCs (Brunei and Myanmar). Rather, trade restrictions emanate from immigration policies that bar movement of professionals, and infrastructure constraints.

Restrictions on temporary and permanent movement of professionals. Difficulty of obtaining visa and work permit for IT professionals constrain mode 4 supply of the service. Some AMCs have no explicit prohibition on entry of foreign IT professionals, but nontransparent and inefficient immigration procedures could impose de facto prohibition. These restrictions are compounded by requirement to hire local professionals, which effectively reduce the demand for foreign suppliers. In Thailand, for example, not only is it tedious to obtain a working visa (processing may take 3 months for a 1-year valid visa), but firms are also required to observe a 4:1 ratio of local to professional staff.

Infrastructure constraints. Of the sectors focused on this study, computer and related services is the most dependent on the availability and quality of IT infrastructure. Problems on network reliability and security and limited supply of broadband hamper the potential of the sector for trade. However, these concerns are outside the control of the sector, and thus must be addressed at the national, instead of sectoral, level.

V. QUANTITATIVE ASSESSMENT OF BARRIERS TO TRADE

A. Rationale and Approach

1. Rationale for Index Methodology

A major challenge in analyzing trade barriers in services is transforming information about these barriers that are qualitative by nature into quantitative measures to allow for cross-sector and cross-country comparison, as well as time-trend analysis. To date, most studies on services sector utilize the index methodology. The approach was pioneered by Hoekman (1995) and since then has been adopted and improved upon in various sector studies, including a recent one on the impact of new regulations on services trade in the European Union.²⁶

The popularity of the index methodology owes in part to the lack of superior alternative. While it has been criticized for some arbitrariness in setting scales and assigning weights, the alternative - frequency ratio - is a less meaningful measure as it only counts the number of restrictions without taking account of differences in character and degree by which these restrictions are applied. By contrast, the index methodology reflects not only the number of restrictions, but also the extent these restrictions are applied and have actually hindered trade. Thus this study adopts the index methodology to quantify and further analyze trade restrictions in business services in ASEAN.

Trade restrictiveness index, labeled hereafter Restrictiveness Index in Business Services (RIBS) is hierarchical; specific restrictions are evaluated and scored at the lower level, then weighted and summarized in an aggregate index. The index number, between zero and unity, represents the severity of barriers to service traders in a given sector and country. The larger the value of the index, the more restrictive the prevailing trade regime is for a given sector and country.

In this study, the index construction consists of four steps:

- Identification of trade restrictions pertinent to each of the five business services sector under study, namely, accountancy, architectural, legal services, computer and related services, and management consulting;
- Development of a scoring system;
- Determination of weights for each form of trade restriction; and
- Calculation of index by obtaining a weighted average of scores given to a set of trade restrictions.

2. Identification of trade restrictions

The relevant trade restrictions in the five business services sector under study were identified and discussed in the previous chapter. It would be recalled from previous discussions that the relevant trade restrictions could not be limited to those inscribed in the members' schedule of commitments in AFAS or GATS since some de facto barriers do not fall neatly in the GATS definition of restrictions pertaining to market access or national

²⁶ Copenhagen Economics (2005), "Economic Assessment of the Barriers to the Internal Market for Services: Final Report," January.

treatment.²⁷ For example, domestic regulations that apply to all service suppliers, foreign and local, may be deemed discriminatory against foreign suppliers and can be considered trade barriers if those regulations are different from the ones prevailing in the home country of the foreign supplier. Regulatory disparities, aggravated by non-transparency of regulations, impose additional costs on the foreign suppliers and therefore restrict trade.

Using a broader definition of trade barriers to include both GATS-defined and *de facto*, a total of 38 measures are identified and grouped into the following major categories:²⁸

- Restrictions on the relationship between an international firm and its domestic affiliate to the extent that they prevent the former from managing efficiently a global network and ensuring the quality of services of the latter.
- Restrictions on movement of professional personnel into or out of a country for purpose of providing services
- Lack of transparency and due process in regulatory decision-making and rule-making processes
- Restrictions that relate to the practice of profession to the extent that they undermine competition
- Restrictions that limit the capacity of foreign professionals from practicing in a country
- Infrastructure and other supply-side barriers

The last category is specific to computer and related services and includes quality and cost of communications infrastructure, enforcement of intellectual property rights and other policies relevant to e-commerce.

Quality of rule-making and regulation is relevant to the practice of accountancy, legal, architectural and other regulated professional services, but extraneous to management consulting and computer and related services which markets operate unregulated in most economies.

With some exceptions, most restrictions on movement of professional personnel apply cross-sector as they are often part of the immigration policies of an economy. Temporary entry policies, for example, apply to all personnel independent of the profession. Some

²⁷ Market access restrictions, as enumerated in Art. XVI of GATS, include the following:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic need test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict to require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

The national treatment provision of GATS (Art. XVII) requires each member to accord "treatment no less favourable than that it accords to its own like services and service suppliers." Thus, measures that apply only to foreign suppliers are violations of the national treatment agreement.

²⁸ European Services Forum (2002).

economies, however, adopt exceptions for specific sectors, such as the Philippines' reciprocity policy on movement of accounting professionals.

3. Scoring system

For each trade barrier in a given sector and country, a score of 0 to 1 is assigned to represent the existence and pervasiveness of such barrier in the sector and country. The score ranges from 0, for least restrictive or non-existence, to 1, for most restrictive.

The scoring system may be discrete, continuous, binary or n-levels, depending on the nature of the restriction as well as the quality of information available. A finer scoring system, *i.e.*, more scales or levels, is possible with more detailed information on the trade restriction measure. For example, the score system for the use of economic needs test can be n-levels, instead of binary, if information is available on the way the measure is applied, not just whether the measure exists or not. Table V.1 contains the scoring system applied in this study.

The actual scores assigned to the trade barriers in a given service sector and country are based on information about the sector obtained from the country reports (Volume II of this report) which in turn were gathered from responses to survey questionnaire (Appendix 1 of this volume), interviews with selected group of policymakers, users and service providers, policy documents and other secondary sources. The list of resource persons interviewed in each country is presented as appendix in the country report in Volume II.

It is worth emphasizing that the scores are based on information obtained not from a single source. Rather, several resource persons were interviewed; various documents were consulted; and the information was translated into numerical scores according to the scoring system.

Ideally, the score given for a trade restriction measure in a member economy must reflect *actual* implementation of such measure in that economy. A score of 1 to a restriction measure may be given therefore even if there is no enunciated policy on such measure, but service providers and other informed sources claim that the measure is actually applied. Similarly, a score of 0 is appropriate if the survey reveals that a policy that bears such measure has not been implemented at all. The scores should also reflect the variations in the trade regimes in the member countries. Thus there should be sufficiently enough scales in the scoring system to differentiate one form of implementation of the measure from another.

All these suggest that **the quality of the index depends on the objectivity and reliability of information sources.** Consequently, there is risk that a score lower than appropriate is given to a particular regime because not enough information is available to corroborate the presence of trade barriers and they are presumed non-existent unless verified. The study team has sought to mitigate such risk by being comprehensive in gathering and synthesizing information to the extent time and resources permit. But even the use of best known sources of information is not sufficient to eliminate the risk completely. This qualification is important to consider when reading through the index results.

Table V.1 Scoring System for RIBS

Form of Trade Barrier	Score Type	Specific Score
A. Restrictions on the relationship between international firm and domestic affiliate		
1. Foreign ownership or equity in a local firm	Continuous	One minus maximum foreign equity share prescribed by law, e.g., a maximum of 40% equity is equivalent to a score of 0.60
2. Involvement of foreigners in local firm management	Discrete	1 = Absolute prohibition on foreigners holding management position 0.5 = Foreigners are allowed to hold management position but with conditions 0 = No restriction on foreigners in local firm management
3. Use of international firm or network name	Discrete	1 = Absolute restriction 0.5 = Allowed but used with name of local affiliate 0 = No restriction
4. Requirements of joint venture or partnership with a local firm in order to practice	Discrete	1 = Prohibition on partnership with foreign professionals 0.5 = Partnership or joint venture with local professionals required 0 = No requirement of joint venture or partnership
5. Restrictions on international payments, such as fees, royalties, profits and other intra-network payments	Continuous	One minus maximum percentage of fees, royalties, profits, etc. that may be repatriated; e.g. if ban on repatriation is absolute, then score is 1; if no repatriation cap, score is 0.
B. Restrictions on movement of professional personnel		
1. Limits on allowable period for temporary entry	Discrete	1 = No temporary entry 0.75 = Temp. entry of up to 30 days 0.50 = Temp. entry of up to 60 days 0.25 = Temp. entry of up to 90 days 0 = Temp. entry of over 90 days
2. Difficulty of obtaining visas and work permits (average time for visa processing, i.e., from submission of application to release)	Discrete	1 = At least one year processing time or 1 year or less visa 0.75 = 6 months to 1 year processing 0.50 = 3 to 6 months 0.25 = 1 to 3 months 0 = Less than 1 month
3. Restrictions on permanent movement of professionals (executives, senior managers or specialists)	Discrete	1 = No entry of executives, senior managers or specialists or subject to economic need test 0.8 = Entry of up to 1 year 0.6 = Entry of up to 2 years 0.4 = Entry of up to 3 years 0.2 = Entry of up to 4 years 0 = Entry of up to 5 years or more
C. Lack of transparency and due process in regulatory decision-making and rule-making		
1. Non-publication of rules,	Discrete	1 = Rules, regulations and regulatory

Form of Trade Barrier	Score Type	Specific Score
regulations, and regulatory decisions		<p>decisions are not published</p> <p>0.75 = Rules, regulations and regulatory decisions are published only in national language (non-English)</p> <p>0.5 = Rules, regulations and regulatory decisions are published only in national language (non-English) and available in the web</p> <p>0 = Rules, regulations and regulatory decisions are published in English and available in the web</p>
2. Lack of opportunity to comment on proposed regulations	Discrete	<p>1 = No public consultation process on proposed regulations</p> <p>0.5 = Occasional public consultations on proposed regulations</p> <p>0 = Regular public consultations on proposed regulations</p>
3. Arbitrary enforcement of rules	Discrete	<p>1 = Arbitrary enforcement of rules in most cases</p> <p>0.5 = Occasional arbitrary enforcement of rules</p> <p>0 = consistent application of rules</p>
4. Absence of an appeals process	Discrete	<p>1 = No appeals process</p> <p>0.5 = Appeals process exists but few take recourse on the process</p> <p>0 = Well-functioning appeals process</p>
D. Restrictions that relate specifically to the practice of profession		
1. Licensing and accreditation of professionals	Discrete	<p>(Scores are cumulative.)</p> <p>0.2 Compulsory membership in professional association</p> <p>0.2 Professional examination (in English)</p> <p>0.4 Professional examination in local language</p> <p>0.2 Practical experience required</p> <p>0.2 Higher education (beyond bachelor's degree) required</p> <p>0.2 Other requirements, e.g., Continuing Professional Education</p>
2. Restrictions on advertising, marketing and solicitation	Discrete	<p>1 = Prohibition of advertising, marketing and solicitation</p> <p>0.5 = Restrictions apply to some groups or activities</p> <p>0 = Allowed but subject to general legal requirements</p>
3. Restrictions on legal form of establishment in which to practice	Discrete	<p>1 = Prohibition on incorporation</p> <p>0.5 = Some form of incorporation permitted</p> <p>0 = No restrictions</p>
4. Restrictions on size of professional firms, such as	Discrete	<p>1 = Caps on size of firm, number of partners or engagements discriminate</p>

Form of Trade Barrier	Score Type	Specific Score
limitations on the number of partners or number of engagements		against largeness 0.5 = Restrictions apply to some groups or activities 0 = No restrictions
5. Limitations on ownership or control by non-professional investors	Continuous	One minus maximum allowed equity share of non-professional investors; e.g., if firm must be owned or controlled by professionals, then maximum allowed equity is 0 and score is 1.
6. Nationality requirements	Discrete	1 = Nationality required to qualify or practice 0.5 = Nationality required to qualify or practice but subject to reciprocity arrangements 0.25 = Nationality required for use of professional title, but practice is relatively free 0 = No restrictions
7. Residency and local presence requirements	Discrete	1 = Permanent or prior residency (more than 12 months) 0.75 = 12 months prior residency 0.5 = 12 months or less prior residency required 0.25 = Domicile or representative office only 0 = No restrictions
8. Government procurement rules that discriminate against internationally affiliated firms in winning public projects	Discrete	1 = No international firm is allowed to win public bidding 0.5 = No written rule discriminating against foreign supplier but tacit discrimination exists 0 = Non-discriminatory
9. Restrictions on the number of geographic location of branches or offices	Discrete	1 = Prescribed number discriminates against largeness 0.5 = Restrictions apply to some groups or activities 0 = No restrictions
10. Multidisciplinary practices	Discrete	1 = Prohibition on partnership or association with other professions 0.5 = Majority partnership required 0 = No restrictions
11. Restrictions on cooperating with other suppliers from different professions	Discrete	1 = Cooperation forbidden 0.5 = allowed but only between comparable licensed professionals 0 = Cooperation generally allowed
12. Restrictions on setting professional fees	Discrete	1 = Minimum and maximum fees for all groups in the profession 0.5 = Restrictions apply to some groups or activities 0 = Fees may be set freely
13. Technical standards not aligned to international standards	Discrete	1 = Local standards not aligned to any international or regional

Form of Trade Barrier	Score Type	Specific Score
		standards 0.5 = Some local standards are not aligned to any international or regional standards 0 = Local standards are aligned to international or regional standards
E. Restrictions that prevent foreign professionals from practicing in a country		
1. Non-recognition of foreign professional qualifications	Discrete	1 = Absolute prohibition on foreign professionals from practicing in local market 0.8 = Local retraining required for a full license 0.6 = Local examination required in all cases 0.4 = Case-by-case assessment of foreign license and qualifications 0.2 = Aptitude tests required 0 = Foreign license and qualifications are sufficient to practice
2. Quotas or economic needs tests on the number of foreign professionals and firms	Discrete	1 = Absolute prohibition on foreign professionals from practicing in local market 0.75 = Quotas or economic needs tests (ENT) apply without clear criteria on how the tests are applied 0.5 = ENT apply but with well-defined criteria 0 = No restrictions
3. Impediments to foreigners becoming members of professional bodies	Discrete	1 = Foreigners are not allowed to become members even after obtaining local license 0.75 = Foreigners are allowed membership after obtaining local license 0.25 = Foreigners are allowed membership without local license, but subject to some conditions 0 = Foreigners are allowed membership, with or without local license
4. Requirements on hiring local professionals	Discrete	1 = All professional staff must be local 0.75 = Majority of professional staff must be locals 0.5 = Less than majority but substantial proportion of professional staff must be locals 0.25 = Some key positions are reserved to locals 0 = No restrictions
F. Other restrictions related to network infrastructure and conditions of online transactions (for computer and related services)		

Form of Trade Barrier	Score Type	Specific Score
1. Bandwidth availability	Discrete	1 = Unavailability of broadband network in central districts 0.5 = Availability of broadband network but only in central districts and major cities 0 = Wide deployment of broadband network
2. Reliability of Network	Discrete	1 = Low network latency 0.5 = Medium-level network latency 0 = High network latency
3. High costs of communication access and usage	Discrete	1 = Costs of communication access and usage higher or comparable to low-income countries 0.5 = Costs of communication access and usage comparable to medium-income countries 0 = Costs of communication access and usage comparable to high-income countries
4. Weak enforcement of IPR	Discrete	1 = No national legislation on IPR 0.5 = National legislation on IPR exists but weakly enforced 0 = Strong enforcement of IPR
5. Weak network security	Discrete	1 = Absence of network security measures 0.5 = Network security measures exist but not always reliable 0 = Reliability of network measures most of the time
6. Non-existence of payment standards	Discrete	1 = No payment standards 0.5 = Payment standards exist but weakly enforced 0 = Payment standards are widely observed
7. Border tariff on online sales	Discrete	1 = Border tariff on online sales for most goods and services 0.5 = Border tariff on online sales for some goods and services 0 = No border tariff on online sales

4. Assignment of Weights

As important as the scoring system to the quality of the index is the assignment of weights for each trade restriction measure. More weight is given to a measure that has more severe impact on trade. The index, which is an aggregate score, should reflect the presence more of measures that have material impact on trade, and less of those with relatively insignificant trade impact. But just like the scoring system, the design of the weighting system is left to the index developer, who in turn would have to work around available information.

In most studies, the researcher uses logic and discretion in assigning weights. Nationality requirement is usually given greater weight over other restrictions as they tend to render other forms of restrictions secondary or in some cases, redundant. When a profession can

be exercised only by nationals, for example, the other licensing and accreditation requirements are considered secondary hurdles, or even irrelevant, for a foreign professional. That is, the fact that a foreign supplier has to go through laborious, lengthy and stringent immigration procedures is sufficient to deter its entry in the local market. The logic of assigning more weight to nationality requirement is thus clear, but it is not as clear for other trade barriers and even less clear how much more weight is warranted for a particular measure relative to other measures.

Thus an alternative to a researcher's subjective judgment is econometric estimation using factor and principal component analysis. Such approach was used in a recent EU study on services (Copenhagen Economics, 2005). Factor analysis is a statistical technique to determine the minimum number of latent variables (in this case, trade barriers) that explains the maximum amount of overall variance of the observed variables (in this case, prices of the service). The technique generates a measure of the correlation of the latent with observed variables, which correlation value (called factor load) is interpreted as the relative contribution of the factors to the observed variables. As applied in the EU services study, the factor loads of the barriers that were grouped into two, namely barriers to establishment and barriers to on-going operations, are used to assign weights between these two groups of barriers. Once the weight for a group of barriers is determined, such weight is then allocated subjectively by the researcher to the individual barriers within said group.

While the econometric approach is clearly superior to pure researcher's subjective judgment, it cannot be adopted in this study in the absence of detailed data on firms' and market performance.

A third approach is thus used here, where qualified, albeit still subjective judgment is used to assign weights, but the judgment is that of a group of service providers instead of the researcher's. The rationale for this alternative approach is that the former are more informed on the actual workings of the market. Specifically, service providers would know if a particular trade barrier is binding or not, i.e., whether there are ways to circumvent a measure or policy to penetrate the market. Moreover, a service provider is also in the best position to assess the importance of such trade barrier in terms of potential or actual impact on its costs, price and competitive position in the market.

Thus in this study, the assessments of a number of service providers on the relative importance of the different trade barriers were surveyed. Multinational corporations (MNCs) and ASEAN service providers with global or regional experience were targeted to render their opinion on the degree of importance of the barriers. The survey questionnaire used for this exercise is presented in Appendix II of this report. Table V.2 is a list of respondents to the survey and the sector where they rendered their opinion.

Table V.2 List of Survey Respondents to the Ranking of Trade Barriers

Company/Institution Name	Base Country	Sector
Deloitte Indonesia	Indonesia	Accountancy
KPMG Lao, Ltd.	Lao PDR	
PriceWaterhouseCoopers	Malaysia	
Shamsir Jasani Grant Thornton	Malaysia	
Philippine Institute of Certified Public Accountants	Philippines	
Punongbayan and Araullo	Philippines	
Manabat Sanagustin & Co.	Philippines	
Accenture Philippines	Philippines	
Philip Liew & Company	Singapore	
Foo Kon Tan Grant	Singapore	
CNOOC SES Ltd.*	Indonesia	Legal

Company/Institution Name	Base Country	Sector
Ali Busiardjo, Nugroho, Reksodiputro	Indonesia	
PriceWaterhouseCooper	Lao PDR	
Wong Partners	Malaysia	
Shearn Delamore	Malaysia	
Romulo Mabanta Buenventura Sayoc & De los Angeles	Philippines	
Fortun Narvasa & Salazar	Philippines	
Deloitte Touche Tohmatsu Jaiyos	Thailand	
DFDL/Mekong Law Group Laos	Lao PDR	
Ongkiko Kalaw Manhit & Acorda	Philippines	
Hutabarat, Halim dan Rekan	Indonesia	
Assegaf Hamzah and Partners	Indonesia	
PT Urbane Indonesia	Indonesia	Architectural
Arkitek Punca Cipta	Malaysia	
Anak Arshad Architecture	Malaysia	
Palafox Associates	Architectural	
Traart Interior Architecture Design and Consultancy	Singapore	
Recio+Casas Architects	Philippines	
Philip H. Recto Architects	Philippines	
PT Yodya Karya	Indonesia	
Jatis Solutions Ecom	Indonesia	Computer and related services
Digital Divide Data	Lao PDR	
Computer Association Malaysia	Malaysia	
Crimson Logic Philippines	Philippines	
Microsoft Philippines Inc.	Philippines	
Convergys	Thailand	
McKinsey & Co.	Thailand	
Crimson Logic Pte Ltd	Singapore	
PriceWaterhouseCoopers	Indonesia	Management Consulting
PT Silakencana Tirtalestari*	Indonesia	
Corporate Partners Asia	Malaysia	
Drake Beam Morin Philippines Inc.	Philippines	
Sun Capital Research	Thailand	
LP Power Consultants, Ltd.	Thailand	
SSA Consulting Group	Singapore	
Schenker Singapore	Singapore	

*Service user.

Of the 46 respondents, two are business associations (PICPA and Computer Association Malaysia), two are large users of business services (CNOOC and PT Silakencana), all others are service providers. Most of the service providers are affiliated with MNCs and export their services within and outside the ASEAN region.

In the survey, the respondents were asked to compare pairwise the six major categories of restrictions (enumerated in Section A.1 above) as to their relative importance in affecting trade. For example, the survey asks if restrictions on movement of professionals are more important (i.e., posing more significant impediment to trade) compared to restrictions on the relationship between international and domestic firms. Each category of trade restrictions is thus compared with the five others, resulting in 14 pairwise comparisons. The responses were then processed using Analytic Hierarchical Process (AHP) to generate a ranking of the categories. These rankings are translated into weights which are applied on the scores for the trade barriers to generate the RIBS.

It should be underscored that the survey taken here is akin to a Delphi technique of soliciting subjective views from a small target group of resource persons. There is no intent of

representing the views of all stakeholders in a particular sector. Instead, the aim is simply to solicit the views of a few suppliers who, by their direct participation in the market, have informed assessment as to the relative importance of the trade barriers in the sector. **The purpose and design of the survey, therefore, does not require a sample size representative of the population (composed of service suppliers and users).**

AHP is a mathematical technique of processing qualitative and quantitative decisions, involving simple pairwise comparison of alternatives (in this study, categories of trade restrictions) to obtain a structured and consistent ranking. The technique is appropriate when simple ranking of alternatives is difficult because of multiple criteria and objectives that must be considered, or when judgments of individuals, each with own scale of ranking or preference, have to be synthesized. For example, alternative A may be considered superior to alternative B by two rankers, but the intensity A is preferred over B may be different for each ranker. AHP handles such differences in preferences to generate a consistent ranking of the alternatives. The ranks are expressed in terms of scores that add up to 1, with the highest score given to the most preferred alternative. In this study, the categories of trade restrictions are the alternatives which are ranked and scored. These scores are then treated as weights of the categories.

The survey further inquired on the relative restrictiveness of the individual barriers. Each respondent is asked to rank the individual barriers on a scale of 1 to 5, 5 being the most restrictive. The average scores were used as basis to allocate the weight on the category under which the barriers are classified.

Table V.3 presents the weights of the major restriction categories and individual trade barriers obtained from the process just described. The weights applied in each category differ across sectors, reflecting its perceived importance in trade for a given service. For example, the category pertaining to the relationship between international firm and domestic affiliate (Category B) has a weight of 0.236 in the accountancy index, 0.125 in architectural services index, and 0.180 in legal services index. This shows that service providers in the three sectors perceive differently the relative importance of restrictions applying to the relationship between international firm and domestic affiliate in affecting trade in their respective sector. They are relatively more important in accountancy than in architecture and legal services, reflecting the value of “one-standard” in accountancy associated with international network that restrictions of this type may impair.

Table V.3 Weights Used in RIBS Construction, by Sector

Type of Impediment	Accountancy	Architecture	Legal	CRS	Mgt. Cons.
A. Restrictions on the practice of profession	.197	.315	.175	.106	.221
1. Licensing and accreditation	.013	.027	.018	.009	.016
2. Limits on advertising, marketing and solicitation	.016	.026	.017	.007	.016
3. Limits on legal form of establishment	.016	.023	.015	.007	.016
4. Limits on size of professional firms	.015	.022	.008	.008	.016
5. Limits on ownership or control by nonprofessionals	.018	.027	.011	.007	.016
6. Nationality requirements	.017	.028	.019	.007	.019
7. Residency and local presence requirements	.013	.026	.016	.008	.019
8. Government procurement rules that discriminate against internationally affiliated firms	.013	.026	.014	.010	.020
9. Limits on number of geographic location of branches or offices	.013	.021	.009	.009	.014
10. Restrictions on multidisciplinary practices	.016	.021	.011	.009	.019
11. Activities reserved by law to the profession	.016	.019	.012	.008	.015
12. Restrictions on setting professional fees	.014	.022	.011	.009	.019
13. Non-alignment of local standards to international standards	.016	.026	.014	.010	.015
B. Restrictions on the relationship between international firm and domestic affiliate	.236	.125	.180	.086	.154
1. Limits on foreign ownership or equity in a local firm	.046	.029	.042	.016	.037
2. Restrictions on involvement of foreigners in local firm management	.051	.019	.037	.015	.033
3. Restrictions on use of international firm or network name	.054	.020	.029	.018	.024
4. Requirement of joint venture or partnership with a local firm in order to practice	.037	.028	.043	.017	.035
5. Restrictions on international payments, such as fees, royalties, etc.	.048	.030	.028	.020	.026
C. Transparency and due process in regulation	.130	.220	.312	.234	.381
1. Non-publication of rules and regulations	.035	.049	.084	.072	.102
2. Lack of opportunity to comment on proposed regulation	.032	.052	.070	.056	.098
3. Arbitrary enforcement of rules	.031	.059	.085	.051	.084
4. Absence of an appeals process	.033	.059	.073	.055	.098
D. Restrictions on movement of professional personnel	.249	.097	.114	.216	.107
1. Limits on allowable period of temporary entry	.091	.033	.032	.063	.038
2. Difficulty of obtaining visas and work permits	.081	.033	.037	.077	.038

Type of Impediment	Accountancy	Architecture	Legal	CRS	Mgt. Cons.
3. Restrictions on permanent movement of professionals	.076	.030	.045	.077	.031
E. Restrictions that prevent foreign professionals from practicing in a country	.188	.243	.219	.175	.137
1. Non-recognition of foreign professional qualifications	.042	.061	.052	.042	.033
2. Quotas or economic needs tests on the number of foreign professionals and firms	.044	.051	.052	.047	.033
3. Restrictions faced by foreign suppliers on membership to professional bodies	.047	.064	.066	.042	.035
4. Requirement on hiring local professionals	.055	.067	.050	.044	.036
F. Limits on infrastructure and other issues specific to delivery of comp. and rel. services				.184	
1. Bandwidth availability				.014	
2. Low network latency (reliability)				.014	
3. Costs of communication access and usage				.014	
4. Weak enforcement of IPR				.057	
5. Weak network security				.057	
6. Non-existence of payment standards				.014	
7. Border tariffs on online sales				.014	

5. Index Construction and Analysis

Given the scoring and weighting systems described above, the construction of restrictiveness index or RIBS is a straightforward process of aggregating the weighted scores of all trade barriers. Indices are constructed for each of the five business services sectors and for the 10 member economies, thus a total of 50 RIBS.

Apart from comparing the values of RIBS across countries for a given business service sector, they can be further analyzed by examining the nature of trade barriers underpinning these numbers. For this purpose, trade barriers are organized in the following dimensions:

- Barriers faced by foreign service providers *versus* barriers faced by domestic service providers;
- Barriers to establishment *versus* barriers to ongoing operations
- Rent-creating barriers *versus* cost-raising barriers

Foreign versus domestic index

Some trade restrictions, e.g., nationality and residence requirements, apply only to foreign suppliers, not to domestic suppliers. All restrictions are however deemed to apply to foreign. In few exceptional cases, some trade restrictions may apply to locals but not to foreign. Since trade restrictions are generally directed against foreign suppliers, most trade regimes are discriminatory in the sense that foreign suppliers are discriminated against their local counterparts. But regimes differ on whether discrimination is an explicit policy, as when the state commits to promote local service providers, and whether discriminatory policies are dominant in the set of trade restrictions.

In the foregoing, the degree of foreign discrimination is represented by the difference between foreign and domestic indices. A foreign index is the same as the aggregate RIBS since all restrictions apply to foreign providers, while a domestic index represent barriers that apply to both foreign and local service providers. The difference between the two indices thus represents a set of barrier that apply only to foreign suppliers.

Establishment versus ongoing operations

Trade barriers can also be distinguished between those that affect service providers who are about to establish market presence and those that applies to providers who are already in the market. The former, dubbed “barriers to establishment”, include restrictions that prevent or raise the cost of a prospective service provider (both foreign and local) from penetrating the market. These barriers have the effect of limiting movement of capital (foreign and domestic) to the sector. They impose a fixed cost on individuals or firms entering the market. Thus they constrict competition in the market by raising barriers to entry. Examples include licensing requirements, prohibition on incorporation and other restrictions on the form of establishment, use economic needs test, and restrictions on foreign partnership and foreign domestic investments.

Barriers to ongoing operations, by contrast, apply to service providers who have already entered the market. These restrictions impose a steady cost on service providers operating in the market, thereby raising the cost of service provision. Included here are regulations on advertising, fees and multidisciplinary practices, as well as restrictions on management and temporary movement of people.

Rent-creating versus cost-raising

A third basis for classifying trade barriers is their impact on price and cost of service. On the one hand, some barriers serve to protect incumbent suppliers from competition against other suppliers, thereby allowing incumbents to inflate prices and reap rents. Clearly, barriers to

establishment are rent-creating since they raise the cost of another service provider to establish presence in the market, which thus protect incumbents. However, some barriers to ongoing operations can be also rent-creating, such as government procurement rules that discriminate against foreign suppliers and restrictions on temporary entry of professionals.

Cost-raising barriers, on the other hand, have direct effect on cost as they necessitate the use of real resources so they could be overcome. For example, a service supplier may have to use additional labor to comply with a requirement for market entry to hire and train locals. Barriers of this type tend to lower productivity and efficiency. They include restrictions on size and form of establishment, requirement to hire local professionals, regulation on professional fees, and nontransparent and unpredictable regulatory regime.

From the foregoing, it is clear that there are overlaps in the classification of barriers. Some types of restrictions can be considered discriminatory (since they apply only to foreign suppliers), barriers to establishment and rent-seeking, e.g., limits on foreign ownership. Some other types are nondiscriminatory, barriers to ongoing operations and cost-raising, e.g., nonpublication of rules and regulation. Still, other restrictions can be labeled nondiscriminatory, barrier to establishment and cost-raising, e.g., limits on legal form of establishment.

A typology of barriers on the basis just described is a useful policy guide on identifying which barriers are priorities for removal given a defined policy objective. If, for example, the objective is to reduce price of service, removing rent-creating barriers should be priority. Of course, eliminating cost-raising barriers should be able to lower prices as well, but in a less direct manner since the supplier would still have to pass on its cost-savings to consumers.

A complete classification of trade barriers included in RIBS according to the above dimensions is presented in Table V.4.

Table V.4 Classification of Trade Barriers

Type of Impediment	Foreign index	Domestic index	Relevant to establishment	Relevant to operations	Rent-creating	Cost-raising
A. Restrictions on the practice of profession						
1. Licensing and accreditation	Yes	Yes	Yes	No	Yes	No
2. Limits on advertising, marketing and solicitation	Yes	Yes	No	Yes	Yes	No
3. Limits on legal form of establishment	Yes	Yes	Yes	No	No	Yes
4. Limits on size of professional firms	Yes	Yes	Yes	No	No	Yes
5. Limits on ownership or control by nonprofessionals	Yes	Yes	Yes	No	Yes	No
6. Nationality requirements	Yes	No	Yes	No	Yes	No
7. Residency and local presence requirements	Yes	No	Yes	No	Yes	No
8. Government procurement rules that discriminate against internationally affiliated firms	Yes	No	No	Yes	Yes	No
9. Limits on number of geographic location of branches or offices	Yes	Yes	Yes	No	Yes	No
10. Restrictions on multidisciplinary practices	Yes	Yes	No	Yes	No	Yes
11. Activities reserved by law to the profession	Yes	Yes	Yes	No	Yes	No
12. Restrictions on setting professional fees	Yes	Yes	No	Yes	No	Yes
13. Non-alignment of local standards to international standards	Yes	No	No	Yes	No	Yes
B. Restrictions on the relationship between international firm and domestic affiliate						
1. Limits on foreign ownership or equity in a local firm	Yes	No	Yes	No	Yes	No
2. Restrictions on involvement of foreigners in local firm management	Yes	No	No	Yes	No	Yes
3. Restrictions on use of international firm or network name	Yes	No	Yes	No	No	Yes
4. Requirement of joint venture or partnership with a local firm in order to practice	Yes	No	Yes	No	Yes	No
5. Restrictions on international payments, such as fees, royalties, etc.	Yes	No	No	Yes	No	Yes
C. Transparency and due process in regulation						
1. Non-publication of rules and regulations	Yes	Yes	No	Yes	No	Yes
2. Lack of opportunity to comment on proposed regulation	Yes	Yes	No	Yes	No	Yes

Type of Impediment	Foreign index	Domestic index	Relevant to establishment	Relevant to operations	Rent-creating	Cost-raising
3. Arbitrary enforcement of rules	Yes	Yes	No	Yes	No	Yes
4. Absence of an appeals process	Yes	Yes	No	Yes	No	Yes
D. Restrictions on movement of professional personnel						
1. Limits on allowable period of temporary entry	Yes	No	No	Yes	Yes	No
2. Difficulty of obtaining visas and work permits	Yes	No	Yes	No	Yes	No
3. Restrictions on permanent movement of professionals	Yes	No	Yes	No	Yes	No
E. Restrictions that prevent foreign professionals from practicing in a country						
1. Non-recognition of foreign professional qualifications	Yes	No	Yes	No	Yes	No
2. Quotas or economic needs tests on the number of foreign professionals and firms	Yes	No	Yes	No	Yes	No
3. Restrictions faced by foreign suppliers on membership to professional bodies	Yes	No	No	Yes	No	Yes
4. Requirement on hiring local professionals	Yes	No	No	Yes	No	Yes
F. Limits on infrastructure and other issues specific to delivery of computer and related services						
1. Bandwidth availability	Yes	Yes	No	Yes	No	Yes
2. Low network latency (reliability)	Yes	Yes	No	Yes	No	Yes
3. Costs of communication access and usage	Yes	Yes	No	Yes	No	Yes
4. Weak enforcement of IPR	Yes	Yes	No	Yes	No	Yes
5. Weak network security	Yes	Yes	No	Yes	No	Yes
6. Non-existence of payment standards	Yes	Yes	No	Yes	No	Yes
7. Border tariffs on online sales	Yes	No	No	Yes	No	Yes

Using the weights distribution in Table V.3 and combining those with the classification of trade barriers in Table V.4, one could determine the maximum score for a particular type of barrier in a given business service sector. These maximum scores, representing highest degree of restrictiveness, are shown below.

Table V.5 Maximum Restrictiveness Indices for Business Services Sector

	Accountancy	Architecture	Legal services	Computer & related services	Management Consulting
Foreign index	1.000	1.000	1.000	1.000	1.000
Domestic index	0.267	0.429	0.425	0.474	0.530
Discrimination Index	0.733	0.571	0.575	0.526	0.470
Barriers to establishment	0.503	0.446	0.407	0.355	0.363
Barriers to ongoing operations	0.497	0.554	0.593	0.645	0.637
Rent-creating Barriers	0.539	0.466	0.417	0.402	0.380
Cost-raising barriers	0.461	0.534	0.583	0.598	0.620

The numbers from the above table are interpreted as follows. Taking accountancy as reference, maximum discrimination is suggested by a discrimination index of 0.733, which is obtained if a trade regime obtains a score of 1 in all barriers that apply to foreign suppliers but not to domestic suppliers. If a trade regime obtains a score of 1 in all barriers to establishment, then its aggregate index (RIBS) is at least 0.503. The actual RIBS can be higher if it also scores on some barriers to ongoing operations. Similarly, if a trade regime for accountancy obtains a consistent score of 1 in all barriers classified rent-creating, then its RIBS score is at least 0.539.

B. Quantitative Measure of Trade Barriers, by Sector

Applying the above index methodology allows for cross-sector, cross-country comparison of trade regimes in business services among ASEAN member countries. The aggregate indices or RIBS are in Table V.6, while the other indices, based on the classification of trade barriers discussed above, are presented and discussed in the next section.

Table V.6 Trade Restrictiveness Indices of ASEAN Member Countries in Selected Business Services Sectors

Sector	RIBS less than 0.2	RIBS from 0.2 to 0.4	RIBS more than 0.4
Accountancy services	Malaysia	Brunei, Cambodia, Lao, Singapore, Vietnam	Indonesia, Myanmar, Philippines, Thailand
Architectural services	Cambodia	Brunei, Lao, Malaysia, Singapore, Vietnam	Indonesia, Myanmar, Philippines, Thailand
Legal services	Brunei	Cambodia, Singapore, Thailand, Vietnam	Indonesia, Lao, Malaysia, Myanmar, Philippines

Sector	RIBS less than 0.2	RIBS from 0.2 to 0.4	RIBS more than 0.4
Computer and related services	Malaysia, Philippines, Singapore, Vietnam	Brunei, Cambodia, Indonesia, Lao, Thailand	Myanmar
Management Consulting	Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam		

From the summary results, several patterns are discernible. One obvious pattern is the generally high indices in regulated professional services, mainly accountancy, architecture and legal services, and generally low indices in computer and related services as well as management consulting, both unregulated. This is to be expected since domestic regulations are included among the trade barriers represented in the index. The pattern is also consistent with the discussions in Chapter III that point out the presence of multiple and complex restrictions, besides domestic regulations, in professional services, while computer and related services and management consulting are not only unfettered by domestic regulations but also exempted from many trade restrictions prevalent in other sectors.

It can also be observed that trade restrictions are not applied uniformly across professional services within a given economy. In the case of Malaysia, for example, its trade reforms in accountancy sector have been more advanced than in the other professional services. While absolute prohibition on foreign professionals practicing in the domestic market remains in legal services in Malaysia, this is no longer the case in accountancy. The maximum allowed foreign equity in accountancy firms, 45%, is also higher than in architectural firms, which is kept at 30%. Thus, the low RIBS score in accountancy, 0.17, against 0.301 and 0.417 for architectural and legal services, respectively. One factor that might have accelerated reforms in accountancy is the recognition of the sector's export potential. The Malaysian government has recently made available to the sector funds for export market development and tax incentives.

The ranking of the five business services sectors based on the RIBS scores is shown in Table V.7. Here again, one finds disparities in trade regimes across member countries as shown by the different patterns of ranking order. However, some member countries share common ranking order. Indonesia, Lao PDR, and Malaysia have all the highest RIBS in legal services, followed by accountancy, architecture, computer and related services, and management consulting. In Singapore and Vietnam, architecture ranks first, having the highest RIBS, followed by legal, accountancy, computer and related services, and management consulting. In all member countries, RIBS score for management consulting is the lowest among the sectors considered.

Based on the unweighted averages of RIBS for all member countries in the five sectors, the following order of trade restrictiveness for the ASEAN region is revealed: legal, accountancy, architectural services, computer and related services, and management consulting.

Table V.7 Ranking of Business Services Sectors in terms of Restrictiveness
(Rank 1 corresponds to the highest RIBS, i.e., most restrictive)

Country	Accountancy	Architecture	Legal	CRS	Mgt Cons.
Brunei	1	2	4	3	5
Cambodia	1	4	2	3	5
Indonesia	3	2	1	4	5

Country	Accountancy	Architecture	Legal	CRS	Mgt Cons.
Lao PDR	3	2	1	4	5
Malaysia	3	2	1	4	5
Myanmar	1	4	2	4	3
Philippines	1	3	2	4	5
Singapore	3	1	2	4	5
Thailand	1	2	3	4	5
Vietnam	3	1	2	4	5
ASEAN*	2	3	1	4	5

*Based on simple average of RIBS scores of member countries.

What accounts for this heterogeneous pattern of trade restrictions in business services across the region? The next sections examine the calculated indices further and the barriers they represent.

1. Accountancy Services

Four of 10 member countries have RIBS for accountancy sector exceeding 0.4; five others have scores higher than 0.2 (Table V.8). The relatively high RIBS scores in the sector reflect the presence of a broad range of barriers, including restrictions on foreign and non-professional investment, nationality and residency requirements, prohibition on advertising and incorporation, and divergence of local and international technical standards, among others. Myanmar has the highest RIBS score for accountancy; Malaysia has the lowest.

Where RIBS exceeds 0.5, namely in Myanmar and the Philippines, foreign professionals are not allowed to practice in the domestic market (mode 4), nor are they allowed to infuse capital in local firms (mode 3). The Philippines, however, has recently relaxed its mode 4 restrictions by recognizing reciprocity arrangements. This means that foreign professionals are allowed to practice their professions in the Philippines provided they accord the same privilege to Filipino professionals. This relaxation has only helped reduce trade barriers in the accountancy market, but the remaining barriers are still high. Entry of foreign professionals in the Philippines is still subject to economic needs test (ENT) and local firms are still not allowed to form partnerships or joint ventures with international firms. Both Myanmar and the Philippines do not allow temporary entry of professionals, nor do they permit multi-disciplinary or multi-professional partnerships.

By contrast, where RIBS is low, such as in Malaysia, Singapore and Vietnam, foreign professionals are not shut off from the local market. In Malaysia and Singapore, the qualifications of the foreign suppliers are assessed to determine if these are equivalent to the eligibility requirements imposed on local professionals. Passing the final examination in accountancy of the CPA Australia, American Institute of Certified Public Accountants (AICPA), among others, is recognized equivalent to passing local final examination in accountancy in Singapore. In Vietnam, foreign suppliers must pass local examination to practice their profession. These requirements are relatively less stringent to those imposed in other economies. Indonesia, for example, requires foreign professionals to undergo local retraining, in addition to taking the local professional examination. Malaysia's low RIBS score in accountancy owes also to its more liberal policy on temporary entry of professionals, which is not permitted in Singapore and Vietnam, and longer period of visa for foreign executives, senior managers and specialists, *i.e.*, up to 5 years, *versus* 2 years in Singapore and 3 years in Vietnam.

Table V.8 Decomposition of RIBS in Accountancy Services

Country	RIBS	Relationship of foreign & local firms	Movement of professionals	Regulatory environment	Practice of profession	Practice of foreign professionals
BRU	.308	Low	Moderate	Nil	moderate	Moderate
CAM	.228	Nil	Low	Low	moderate	Low
IND	.415	Moderate	Moderate	moderate	Low	Moderate
LAO	.213	Nil	Nil	Low	moderate	Moderate
MLY	.170	Low	Low	Nil	low	Low
MYA	.720	High	High	moderate	high	Moderate
PHL	.532	High	Moderate	Low	moderate	Moderate
SGP	.203	Nil	Moderate	Nil	low	Low
THA	.484	Low	Moderate	moderate	moderate	High
VNM	.262	Nil	Moderate	Low	low	Moderate
ASEAN*	.363	Low	Moderate	Low	moderate	Moderate

Note: "Low" means the country's index for the a given restriction category is less than 35% of maximum score in that category; "moderate", between 35% and 70% of maximum score; "high", above 70% of maximum score. "Nil" means the country's score for the category is zero.

*Simple average.

2. Architectural Services

Compared to scores in accountancy, RIBS in architectural services are lower in 6 of 10 member countries (Table V.9). The average scores for the ASEAN region for the two business services are however close, 0.363 in accountancy versus 0.330 in architecture, as they reflect a number of common trade restrictions such as nationality and residency requirements, requirement of joint venture or partnership with local firm in order to practice, advertising prohibition and divergence of local standards from international.

Nonetheless, some economies have relaxed their nationality and residency requirements as well as foreign investment restrictions. For example, Indonesia has waived the nationality and residency requirements for architectural services, but not for other professional services such as accountancy and legal services, and has allowed as much as 100% foreign equity for large-scale projects. Myanmar, on the other hand, admits 100% foreign investments in architectural firms; it does not in accountancy services.

In lieu of nationality and residency requirements, some economies require foreign architectural firms to tie up with local firms and to hire local architects to facilitate technology transfer. Joint venture with local firm is mandated in Indonesia, Lao, Malaysia and Vietnam. But the Philippines and Thailand have still reserved the practice of the profession to their nationals. It should be noted however that in the case of Thailand, even as the nationality requirement is lifted, foreign architects are still de facto prevented from obtaining local license by the fact that professional examinations are conducted only in Thai.

The most open architectural market, based on the RIBS score, is Cambodia's. Indeed it is the only member country that did not inscribe any restriction under modes 1 to 3 in its AFAS schedule. Owing to the small supply of local service providers, the architectural profession is still unregulated in Cambodia and Lao PDR; thus foreign professionals are not constrained from practicing in these markets. Lao PDR however requires foreign companies with presence in the country to reserve at least 90% of its employment for Lao nationals. Cambodia does not impose local hiring requirement. The absence of sector regulation also means that there are no technical standards observed in these economies.

Table V.9 Decomposition of RIBS in Architectural Services

Country	RIBS	Relationship of foreign & local firms	Movement of professionals	Regulatory environment	Practice of profession	Practice of foreign professionals
BRU	.286	Moderate	Moderate	Low	low	Low
CAM	.057	Nil	Low	Nil	low	Nil
IND	.450	Moderate	Moderate	moderate	low	Moderate
LAO	.216	Nil	Nil	moderate	low	Low
MLY	.301	Moderate	low	Nil	moderate	Moderate
MYA	.410	Moderate	high	moderate	moderate	Low
PHL	.443	Moderate	high	Low	moderate	Moderate
SGP	.336	Low	moderate	Low	moderate	Moderate
THA	.456	Low	moderate	Low	moderate	Moderate
VNM	.397	Nil	moderate	moderate	moderate	Moderate
ASEAN*	.335	Low	moderate	Low	low	Moderate

Note: "Low" means the country's index for the a given restriction category is less than 35% of maximum score in that category; "moderate", between 35% and 70% of maximum score; "high", above 70% of maximum score. "Nil" means the country's score for the category is zero.

*Simple average.

3. Legal Services

RIBS scores for legal services, just like in accountancy and architectural services, in all except one member country (in this case, Brunei) are in the mid (above 0.2) to high range (Table V.10). But in legal services, only 5 member countries have made commitments in AFAS, compared to all in accountancy and architectural services.

Despite the apparent unwillingness to commit, some member economies are nonetheless gradually opening up their markets. Singapore, for example, has not made commitments in the sector but has recently changed its regulation to allow foreign professionals to practice international law in the domestic market. This modality of allowing limited market entry to foreign lawyers is common. In Vietnam, foreign lawyers are also allowed to the practice of international law; in addition, they are not allowed to appear in local courts. In Indonesia, foreign lawyers are only allowed as employees or experts in Indonesian law firms (since foreign firms are still not allowed to establish commercial presence), and therefore they are not permitted to represent clients in courts. Malaysia, on the other hand, has kept its mode 4 commitments unbound, yet it has softened on the nationality requirement by allowing foreign professionals with certain number of years of experience and mastery of local language to be admitted to the bar.

Even in Myanmar, which has the highest RIBS score in legal services, there has been some market opening. While foreign lawyers are still prohibited from practicing, since the license to practice can be awarded only to Myanmar nationals, foreign firms are however permitted establish commercial presence in the country. These firms are allowed to provide legal advice but cannot participate in actual litigation.

Just like in accountancy, nationality and residency requirements, restrictions on foreign investment, and prohibition on advertising and incorporation are pervasive in legal services. Foreign professionals are completely barred from practicing in Lao, the Philippines, and Thailand. Some economies however provide exemptions to the nationality requirement, such as Brunei, where religious affiliation (i.e., Muslim), instead of nationality, can be the basis for qualification to practice law.

Brunei has the lowest restrictiveness score for legal services, principally because it is the only member economy that waives both nationality and residency requirements. Foreign investment is limited to 30% equity in Brunei, versus absolute prohibition to entry of foreign capital in other jurisdictions. The Brunei Bar, in addition, has opened the admission to barristers and advocates from UK as well as those in active practice as either advocate or solicitor in Singapore or Malaysia. And while foreign firms are required to prove commitment to recruit and train local professionals, such requirement may only be good on paper since the criteria for assessing such commitment are not clear. Thus, even with a small market, Brunei is able to attract international-reputed firms such as Norton Rose and Watson, Freshfields Bruckhaus Deringer, Lovells, and Simmons and Simmons, among others. About half of the total number of practicing advocates and solicitors are neither Brunei nationals nor permanent residents.

Table V.10 Decomposition of RIBS in Legal Services

Country	RIBS	Relationship of foreign & local firms	Movement of professionals	Regulatory environment	Practice of profession	Practice of foreign professionals
BRU	.143	low	moderate	Nil	Low	Low
CAM	.208	nil	low	Low	Low	Low
IND	.463	high	moderate	Nil	moderate	High
LAO	.522	low	nil	High	Low	High
MLY	.417	moderate	low	Nil	Low	High
MYA	.600	moderate	high	moderate	moderate	High
PHL	.502	high	moderate	Nil	moderate	High
SGP	.219	low	moderate	Nil	Low	Moderate
THA	.438	low	moderate	Low	Low	High
VNM	.331	nil	moderate	Low	Low	Moderate
ASEAN*	.384	low	moderate	Low	Low	High

Note: "Low" means the country's index for the a given restriction category is less than 35% of maximum score in that category; "moderate", between 35% and 70% of maximum score; "high", above 70% of maximum score. "Nil" means the country's score for the category is zero.

*Simple average.

4. Computer and Related Services

RIBS scores for computer and related services mirror the unregulated market environment in most member economies (Table V.11). The restrictions represented by the indices pertain mostly to limitations in infrastructure, such as extent of network deployment, and quality, cost and reliability of communications infrastructure, which are critical to the delivery of IT services.

Only Brunei, Indonesia and Myanmar maintain some form of regulation in the practice of the profession. This explains their relatively high indices for the sector. In Brunei, foreign investment in IT firms is limited to 30% and IT professionals are required to take an accreditation examination. Myanmar also requires its IT professionals to pass professional examination. In addition to professional examination, Indonesia requires its IT practitioners to be members of the professional body. Myanmar is the only ASEAN economy that regulates professional fees for IT services and requires foreign firms to partner with locals.

That the RIBS scores of Cambodia, Indonesia and Lao are in the mid range, i.e., exceeding 0.20, owes not to any form of regulation, rather to infrastructure constraints such as limited availability of broadband and low network reliability. On the other hand, Thailand's RIBS, which is also in the mid range despite absence of regulation in the sector, reflects the

difficulty of obtaining working visa for IT professionals. It is reported that it could take as long as three months to process a working visa that is valid only for one year. Foreign equity in IT firms in Thailand is also limited to 49%.

Table V.11 Decomposition of RIBS in Computer and Related Services

Country	RIBS	Relationship of foreign & local firms	Movement of professionals	Practice of profession	Practice of foreign professionals	Infrastructure
BRU	.262	moderate	Low	Low	low	Moderate
CAM	.247	low	Low	Nil	low	High
IND	.246	nil	moderate	Low	moderate	Moderate
LAO	.203	nil	nil	Nil	low	High
MLY	.121	low	low	Nil	low	Low
MYA	.423	low	high	Low	nil	High
PHL	.189	low	moderate	Nil	nil	Moderate
SGP	.116	nil	moderate	Nil	nil	Moderate
THA	.241	low	moderate	Nil	low	Moderate
VNM	.146	nil	nil	Low	low	Moderate
ASEAN*	.220	low	moderate	Low	low	Moderate

Note: "Low" means the country's index for the a given restriction category is less than 35% of maximum score in that category; "moderate", between 35% and 70% of maximum score; "high", above 70% of maximum score. "Nil" means the country's score for the category is zero.

*Simple average

5. Management Consultancy

With the exception of Vietnam, RIBS scores of member countries in management consulting are the lowest among the five business services sectors, reflecting the near absence of trade barriers in the sector (Table V.12). A few notable barriers however exist. Myanmar is the only country that requires management consultants to take professional examination which is administered quarterly. However, it is also the only member country that has full commitment in mode 4.

Malaysia and Vietnam require foreign firms to form joint ventures with locals and have caps on foreign equity, namely 70% and 49%, respectively. But interviews with stakeholders in these two economies do not reveal that those restrictions are significant to affect their decision to supply services.

Table V.12 Decomposition of RIBS in Management Consultancy

Country	RIBS	Relationship of foreign & local firms	Movement of professionals	Practice of profession	Practice of foreign professionals
BRU	.101	Low	moderate	low	Low
CAM	.047	Nil	low	nil	Low
IND	.072	Nil	moderate	low	Low
LAO	.027	nil	nil	nil	Low
MLY	.048	nil	low	low	Low
MYA	.175	nil	high	low	Moderate
PHL	.076	low	high	nil	Nil
SGP	.084	nil	moderate	nil	Low
THA	.090	low	moderate	nil	Low
VNM	.079	low	nil	low	Low

Country	RIBS	Relationship of foreign & local firms	Movement of professionals	Practice of profession	Practice of foreign professionals
ASEAN*	.085	low	moderate	low	Low

Note: "Low" means the country's index for the a given restriction category is less than 35% of maximum score in that category; "moderate", between 35% and 70% of maximum score; "high", above 70% of maximum score. "Nil" means the country's score for the given restriction category is zero.

*Simple average.

C. Analysis of Trade Barriers

Classifying barriers according to the dimensions discussed in Section A.4 sheds some more insights on the trade barriers in the five business services sectors. It is also relevant in setting targets or negotiating for market liberalization since the targets or bases of discussions could be the transformation of barriers from one type to another, or elimination of some specific types of barriers.

In what follows, the restrictiveness indices for each sector of each member country are assessed in terms of:

- degree of discrimination against foreign suppliers;
- the extent barriers hinder capital movement in the sector (barriers to establishment) *versus* impede delivery of service (barriers to on-gong operations); and
- the extent barriers are aimed at protecting incumbent suppliers from competition (rent-creating) *versus* raising the cost of service provision (cost-raising).

1. Degree of Discrimination against Foreign Service Suppliers

The degree of discrimination of trade restrictions represents the barriers that affect foreign suppliers but not local suppliers. It is the difference between the foreign index (which is the same as the aggregate index or RIBS) and domestic index (based on barriers faced by both foreign and local suppliers).

Below are the discrimination indices for the five business services sectors in ASEAN economies. The values in parenthesis indicate the proportion of the aggregate index due to barriers that are discriminatory against foreign suppliers. Thus 76% of the ASEAN restrictiveness index for accountancy services is due to discriminatory barriers, 99% in computer and related services, and 94% in management consulting.

Table V.13 Discrimination Indices for Selected Business Services

Country	Accountancy	Architectural	Legal services	Computer & related svcs	Management Consulting
Brunei	.253 (82%)	.192 (67%)	.096 (67%)	.168 (64%)	.085 (84%)
Cambodia	.142 (62%)	.051 (91%)	.117 (56%)	.077 (31%)	.047 (100%)
Indonesia	.338 (77%)	.323 (72%)	.404 (87%)	.154 (63%)	.056 (77%)
Lao PDR	.152 (71%)	.077 (36%)	.295 (57%)	.033 (16%)	.027 (100%)
Malaysia	.111 (65%)	.237 (79%)	.374 (90%)	.065 (53%)	.048 (100%)
Myanmar	.695 (85%)	.262 (64%)	.440 (73%)	.241 (57%)	.165 (94%)
Philippines	.424 (82%)	.275 (70%)	.460 (92%)	.111 (59%)	.076 (100%)
Singapore	.154 (76%)	.252 (75%)	.177 (81%)	.109 (94%)	.084 (100%)
Thailand	.333 (78%)	.328 (72%)	.337 (77%)	.156 (65%)	.090 (100%)
Vietnam	.216 (82%)	.244 (62%)	.204 (62%)	.054 (37%)	.079 (79%)

Country	Accountancy	Architectural	Legal services	Computer & related svcs	Management Consulting
ASEAN*	.287 (76%)	.229 (69%)	.290 (74%)	.117 (54%)	.085 (94%)

Note: Values in parenthesis are discrimination index as percent of RIBS.

*Simple average

In absolute values, discrimination indices are generally higher in the regulated professional services than in the unregulated sectors: the highest in legal services, the least in management consulting. As a proportion of RIBS, however, discrimination indices account the most in management consulting, and least in computer and related services.

These observations are consistent with the discussions above. The large values of discrimination indices in legal services reflect the fact that the most pervasive forms of restrictions in the sector are those that serve to keep the practice of the profession among local suppliers, such as nationality and residency requirements and restrictions on foreign investments. By contrast, there are no national and residency requirements in management consulting but caps on foreign equity are common.

Even as the discrimination indices in management consulting services are the lowest among the five sectors, they nonetheless comprise the largest proportion of the aggregate index or RIBS, ranging from 78 to 100 percent. Indeed all trade restrictions for management consulting in five member countries are discriminatory against foreign suppliers. By contrast, in computer and related services, the RIBS are in large part accounted for by infrastructure constraints that affect foreign and local suppliers equally.

Generally, economies with high aggregate indices have also high discrimination indices, and the latter represents a large proportion of the former. This can be seen in accountancy where the RIBS and discrimination index are highest in Myanmar and lowest in Malaysia. It would be noted also that share of discriminatory barriers in Myanmar's accountancy sector, 85%, is highest in the group, while that for Malaysia, 65%, is lowest. This pattern holds up for other professional services, but breaks down in computer and related services and management consulting. As a case in point, Singapore's RIBS in computer and related services is lowest in the group, but since much of it is due to discriminatory barriers, Singapore's discrimination index is not the lowest. The upshot of this is that while highly restrictive trade regimes in professional services can be considered highly discriminatory as well, this conclusion may not extend to other business services.

2. Barriers to establishment versus barriers to ongoing operations

How much of existing trade restrictions are directed against suppliers that would like to establish presence in the domestic market? An indicator for this is the proportion of trade restrictions comprised by barriers to establishment or those that impose fixed cost on companies or individual professionals entering the market, but do not impact on companies or professionals already operating in the market.

The table below presents the proportion of the aggregate index that can be attributed to barriers to establishment. It shows that barriers to establishment represent less than half of the indices for all five business services. A more significant proportion of the barriers, therefore, relates to on-going operations, instead of establishing commercial presence. Indeed for some sectors, some economies may have no barriers to establishment, especially where the supply of service providers is scarce. That is the case for Lao which has no identified barriers to establishment in architecture, computer and related services, and management consulting.

Table V.14 Barriers to Establishment Index as Percent of RIBS for Selected Business Services

Country	Accountancy	Architectural	Legal services	Computer & related svcs	Management Consulting
Brunei	52.4	55.7	54.0	38.5	54.0
Cambodia	25.4	9.5	24.0	3.3	0.0
Indonesia	63.4	32.0	60.2	40.8	48.8
Lao PDR	31.2	0.0	35.7	0.0	0.0
Malaysia	51.2	48.8	57.4	22.3	19.9
Myanmar	54.6	51.9	50.4	43.3	58.3
Philippines	55.5	61.0	59.8	25.3	50.0
Singapore	47.3	51.0	72.7	39.6	22.5
Thailand	59.8	47.5	49.4	44.6	69.4
Vietnam	34.8	31.1	35.1	37.2	76.9
ASEAN*	48.0	38.9	49.9	29.8	40.0

*Simple average

3. Rent-creating versus cost-raising barriers

Trade restrictions by nature reduce market competition, but some forms of restrictions have the more direct effect of protecting incumbent suppliers. It is useful therefore to make distinction between barriers that tend to reduce competition and create rents for incumbents and those that increase the cost to all suppliers, incumbent or otherwise, because of the need to use real resources to overcome them.

The table below presents the proportion of restrictiveness index accounted for by rent-creating barriers. Even as barriers to establishment are also rent-creating, the pattern reflected in Table V.15 differs from those in the preceding table. Thus more than half of the trade restrictions in accountancy, legal services and management consulting are rent-creating, whereas less than half of those in architectural and computer and related services.

Sector-wise, computer and related services tend to have the least rent-creating barriers. Thus, none of the existing trade restrictions in computer and related services in Lao PDR is rent-creating, while for Cambodia, only 22% of its existing restrictiveness index is attributable to rent-creating barriers. These findings augur with the view that the sector is open and competitive, permitting firms of various sizes to co-exist.

By contrast, only a small number of large firms dominate management consulting services even if the trade restrictions are relatively few. This may be explained by the fact that most trade restrictions in the sector are rent-creating, therefore protective of large incumbent suppliers.

Table V.15 Rent-creating Index as Percent of RIBS for Selected Business Services

Country	Accountancy	Architectural	Legal services	Computer & related svcs	Management Consulting
Brunei	64.6	58.3	72.1	53.7	65.8
Cambodia	48.3	53.9	43.7	22.4	60.9
Indonesia	57.9	36.4	55.9	53.6	52.1
Lao PDR	31.2	0.0	35.7	0.0	0.0
Malaysia	64.1	53.4	55.7	35.2	80.8
Myanmar	59.1	61.5	53.7	59.0	79.8
Philippines	62.5	71.0	60.7	58.7	100.0
Singapore	84.3	61.0	74.0	93.9	67.5

Thailand	67.8	57.9	51.2	51.1	79.9
Vietnam	65.6	36.9	44.9	37.2	56.0
ASEAN	61.1	49.0	54.8	46.5	64.3

*Simple average

4. Synthesis

The nature of trade barriers is just as important as its numbers. Having fewer trade barriers is generally better, but given the differing impact of these barriers on the sector and economy, some trade barriers may impose larger costs than others, so that having fewer but of the less desirable types is not necessarily better. For instance, if the sector is capital scarce, it matters how much of the existing restrictions represent barriers to establishment that raise the cost of setting up commercial presence in the market and thereby limit the infusion of new capital resource in the sector.

This section examines the barriers behind the trade restrictiveness indices and concludes the following:

- To the extent that barriers directed against foreign suppliers account for more than half of the restrictiveness indices, the business services markets in ASEAN are highly discriminatory.
- 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.

The types of trade restrictions found in the two unregulated services, management consulting and computer and related services, might well explain the differences in structures of the two markets. Restrictions on management consulting services are highly rent-creating, whereas in computer and related services, restrictions are more cost-raising than rent-creating. This may account why despite few trade restrictions, management consulting services are often dominated by few large firms, while competition among firms of different sizes is characteristic of markets for computer and related services.

VI. Strategies to Promote ASEAN Trade in Business Services

A. Constraints to Services Liberalization

Policymakers in developing economies need little convincing on the value of opening markets for services, particularly in those where domestic service providers are in short supply. That ASEAN member economies have agreed on 2015 target date to achieve free flow of services in the region should be sufficient evidence that there is little need for discourse on the virtues of market liberalization. In fact all AMCs have concluded – or in the process of negotiating – regional or bilateral agreements. ASEAN is continuously weaving around it a web of agreements under the ASEAN-Plus initiative. Thus ASEAN has an FTA with China, ongoing negotiations with Japan, Australia and New Zealand, Korea and India. Under each of these agreements, AMCs have pushed for services liberalization beyond the GATS. However, as Thanh and Bartlett (2006) indicate, how these goals will be met is not clear.

Box VI.1 Costs and Benefits of Trade Liberalization in Services

Services trade liberalization has been modeled by many researchers and its effects on the liberalizing economy(ies) measured²⁹. The WTO's Council for Trade in Services (1998a) reviewed all the studies done on service liberalization since January, 1990. In spite of the differences in time, country, sector coverage, etc., the overriding objective that inspired all reforms studied was to give freer reign to market forces to determine output, trade and investment. This was to bring about competitive prices and align them with prevailing international prices. The studies delved mainly on financial reform and to a certain extent, on liberalization or deregulation in telecommunications and aviation services, mirroring the actual policy developments of the decade. The immediate result of the reforms was the decline in profits of the incumbent firms. For instance, several studies on financial reform found declining bank profits that eventually led to insolvencies and severe financial crises. Such a decline in profitability at the early stages of reform could be considered "a natural corollary to a process ultimately leading more efficient production and marketing systems" (WTO, 1998). In response to experiences in interest rate liberalization, airfare deregulation, and demonopolization of telecoms, companies tried to enhance allocative, operational and dynamic inefficiency. There were observed new entities in the form of take-overs, merger, or new business set-ups. The rise in the number of company failures following the deregulation of these industries may thus be due to the intensification of competition, hence the elimination of inefficient production. Reform might also bring about an increase in industry concentration, but which may not necessarily imply economic inefficiencies. An increase in prices may also ensue (e.g. the rise in airfares following airline deregulation), together with a decline in the quality of services (e.g. perceived decline of convenience, reliability or less frequent connections outside the main routes) but these may not necessarily be perceived as anti-competitive³⁰.

²⁹ See for instance Brown et al, 1996; Benjamin and Diao, 1998; Hertel et al, 1999; Robinson et al, 1999; Dee and Hanslow, 2000; Chadha et al, 2000, World Bank, 2001, 2002; Hoekman et al (eds) 2002; McGuire, 2002; Locke and Spinanger, 2004; WTO, 2004.

³⁰ Passengers were found to prefer higher to lower prices, if these are accompanied by attractive discounts or a more convenient because efficient reservation system; moreover, they were not too concerned with less frequent connections to remote places.

Despite the promised dividends of trade and regulatory reforms, sequencing of internal deregulation and external opening is still important. Several studies on financial liberalization maintain that premature liberalization of capital flows, especially when countries experience macroeconomic instability, may lead to exchange volatility and eventually capital flight. However, in reasonably stable economies deregulation was found to proceed smoothly. All in all, however, the studies point to the 'learning points' for both the private sector and the policy makers on the issue of deregulation.

But in general, studies point to the strong evidence of post-deregulation price reductions, quality improvements, and widening product variety. Where economic gains can be had, the researchers have argued that the gains surpass those from liberalization in goods trade and that the biggest gainers will be those economies with the greatest restrictions. Moreover, the real economic gains go beyond the service sector itself and into the economy's performance and trade. Many researchers have argued that protection against foreign sources of service supply is a "tax on production" because of the role of many services as producer services', intermediately demanded because they are inputs into production processes of firms.. Such services include banking, finance, insurance, business services – various professional services such as accounting, legal, management consulting, computer – transportation, storage and communication services. Likewise, protection in services, constitute a tax on consumers because it reduces the supply of these services and raise prices. This can be worsened by the presence of market imperfections such as imperfect competition or monopoly. (Marchetti, 2004)

Where greater competition is allowed, improvements have been observed in services performance, increases in infrastructure investment and service coverage, improvements in service quality, and prices more aligned to costs. For instance, where telecommunications have been freed, telecommunications coverage has been boosted, repair requests lowered, call completion rates increased, and time needed to receive a telephone line reduced. Where competition has been introduced to ports, waiting time for vessels have been shortened; to railroads, locomotive availability increased, and to electricity, energy losses, outages per customer, and rates of plant unavailability have been reduced.

Part of the uncertainty is the continued use by member countries of policies that are overtly discriminatory of foreign suppliers, protectionist of incumbents, and cost inefficient, such as those revealed in the preceding two chapters. Even more confounding is the inconsistencies in stance of some member economies that resist opening up some sectors while being liberal in other sectors.

To be sure, there are many convenient justifications that may be invoked by a country unwilling to eliminate a restrictive policy or substitute it with one that causes less distortions. The OECD (1996), for example, lists the following rationalization of some trade restrictive policies:

- Nationality requirements ensure familiarity with local rules and loyalty to domestic clients. Moreover, it provides a country with a trade negotiating tool to seek reciprocity arrangements with another.
- Residency requirements afford consumers of assurance to obtain redress in case of professional misconduct.
- Restrictions on incorporation are aimed at making professionals personally liable for their practice.
- Limitations on non-professional ownership are upheld to prevent individuals not imbued with professional responsibility from undermining the independence of professionals in the organization.
- Fees and advertising regulations are designed to avert cutthroat competition among service providers that may lead to low quality of service.

The above justifications were echoed by some of the key informants in this study when asked why their economies are reluctant to remove trade restrictive policies. Malaysia, for

example, is said to require foreign firms to partner with locals in providing architectural services as a way to reduce public risk since the government could hold the local partner responsible for the work of the partnership. On legal services, the nationality requirement is claimed essential to the practice of profession because local professionals have better understanding of a country's culture, laws and mores. Thus, many traditional regulators would hesitate on say, removing nationality and residency requirements or licensing foreign professionals, on grounds of perceived risk that these measures could loosen consumer protection or reduce standard of performance.

Trade negotiators in Thailand are also said to argue against unilateral liberalization as it may weaken the Thai position in negotiations for bilateral trade agreements that it is currently pursuing with various economies. Indeed nationality requirement is commonly used as a negotiating tool to justify providing reciprocity.

Box VI.2 Developing Countries and Liberalizations of Services Trade

A number of studies on the liberalization of services trade focus on the market opportunities of developing countries. McGuire (2002) pointed out that developing countries have a clear comparative advantage in labor services, such as tourism, construction and transport services, etc. But while it is true that developing economies have a stake in low-skilled labor services, some developing countries have developed their pool of semi-skilled, knowledge-based service providers. Potential comparative advantage may lie in such business services, as computer services, professional services, technical assistance for other developing economies, cultural or linguistic services. Aside from benefiting from market access opportunities in both developed and developing countries, these services also constitute substantial generators of new employment. Unfortunately, restrictions abound – and not only in the importing countries – that limit the opportunities of developing countries.

Yet developing countries have only participated half-heartedly, if not defensively, during the Uruguay Round of services commitments. Commitments to market access had been minimal, and when made, did not go further than the binding of the status quo (Marchetti, 2004). A study of the commitments in force showed that developing countries generally have committed substantially less than developed economies, and transition economies, have refrained from making commitments on key infrastructure sectors (.e.g. maritime transport, courier and distribution services) as well as business services, including various professional services, have tended to make more restrictive commitments in Mode 3 (commercial presence) than the developed, transition, and LDC economies. While it cannot be denied that they have actively participated in the negotiations, in general, developing countries are said to have approached these negotiations “with caution and defensively” (Marchetti, 2004).

B. Strategies to Overcome Liberalization Constraints

In light of the strong positions taken by some member economies against lifting or even modifying existing trade restrictive policies, some simple, concrete and practical measures are needed to see through the liberalization of business services market in the region.

Strategy 1: Seek incremental, qualitative improvements in AFAS commitments

A major achievement of AFAS 5 is the substantial increase in the number of sectors included in each member's schedule of commitments. Given the quantitative improvement in commitments that have been achieved, it is suggested that the next logical stage is to push for qualitative, albeit **incremental**, improvements in commitments. Some possible directions that member countries may consider **collectively** to improve their commitments to market liberalization are the following:

- Make countries articulate explicitly the economic and social motivation for nationality and residency requirements.
- Consider that the objectives of nationality and residency requirements may be achieved by less discriminatory measures such as requiring foreign service providers to undergo professional assessment when nationality requirement is used as a tool to ensure professional competence and appointing a representative agent or liability insurance in lieu of physical presence or residency requirement
- Minimize restrictions on forms of establishment. Where prohibition on incorporation is absolute such that only sole proprietorship and partnership are allowed, consider introducing “safeguards” on corporate forms that will ensure professionals are made accountable for their service, e.g., by requiring professionals to secure liability insurance, or stipulating that majority of directors be professionals.
- Make transparent the criteria and procedures for applying economic needs test and other equivalent policies. Set timeline for easing and ultimately abolishing the policy.
- Where investments by nonprofessionals are not allowed, consider relaxing the prohibition and substituting it with less restrictive policies such as requiring professionals to have control of operations.
- Relax absolute prohibition on foreigners from forming partnership with local professionals by requiring instead that foreign and local partners be jointly and severally liable, and their liability for the partnership’s debts be unlimited.
- For each sector, stipulate clearly the core activities that are objects of regulation. Make explicit that activities outside of the core are exempt from regulation.
- Provide for transparent and consistent framework for accepting professionals with foreign qualifications.
- Review and consider adjustments in policies where the social and economic motivations are ambiguous, such as restrictions on the number of offices or branches, requirement of membership in local professional association, mandatory partnership with, or hiring of, locals of same profession within same area of competence.
- Where foreign professionals are completely barred from practicing, incrementally recognize professional qualifications from other member countries that are deemed to have standards at par with local standards.

Strategy 2: Monitor changes in commitments and actual market reforms using index measures such as RIBS

In the ASEAN community where decision- and rule-making are based on consensus, the only means to attain the ambitious target of free trade in services by 2015 is to have objective measures of how far member countries have actually delivered on their commitments of progressive liberalization of the sector. These measures should be acceptable to all member countries as they could serve as basis for monitoring and

enforcing existing commitments, and for negotiations for new commitments. Two measures are suggested here for institutionalization in the ASEAN community.

One is a trade restrictiveness index, such as RIBS, that can be used to characterize the state of market liberalization of the sector based on information gathered from policymakers, service providers and users. While the index per se is not economically meaningful, it allows for cross-country comparison and analysis of the nature of restrictions and their potential impact on capital flow, price, cost and efficiency of the sector, as illustrated in the preceding chapter.

Another suggested measure is to quantify the coverage and depth of AFAS commitments, using also the index methodology. This is akin to the measure of GATS commitments pioneered also by Hoekman (1995, 1996) and extensively used in the WTO. The purpose for this measure is not only to measure the improvements obtained in each AFAS package, but also to minimize window dressing of schedules, i.e. adding new sectors to the schedule to make it appear that the new schedule is more comprehensive than previous, but actually making no qualitative improvements in commitments. Moreover, it could also induce member countries to bind existing policies.

As in RIBS, however, the issues in constructing this measure of AFAS commitments are the scoring system (i.e., the scale to be used in differentiating full, partial and no commitments) and the weights assignment on the different modes of supply and sectors, e.g., whether greater weight should be assigned to mode 3 than mode 2, or to some sectors relative to others.

When these two measures are institutionalized, a useful exercise is to compare them to assess whether a country's market policies are consistent with its commitments, or if a country is likely to deliver on its commitments in the future given its current state.

Strategy 3: Separate policies on temporary service providers from the normal immigration procedures and negotiate for trade-friendly policies on permanent movement of professionals.

Some member countries do not have written, clear and binding policies on handling the entry of temporary service providers that should be distinct from those that apply to permanent movement. In addition, special exemptions to usual immigration procedures are often made for intra-corporate transferees, senior managers and specialists, but none for independent professionals.

The suggestion here is for ASEAN members to agree on some degree of harmonization of entry and immigration policies for temporary service providers and independent professionals. Some measures to facilitate their movement are the following:³¹

- Agree on a common classification of temporary, contractual and permanent service providers and establish special visa processing procedures for each category
- Streamline visa application processes and set strict timeframes for granting visa
- Improve transparency on visa processing

³¹ These suggestions are adopted from proposals made by developing countries to the WTO for the liberalization of movement of natural service suppliers (Winter 2005). Among the proponents are India, the Philippines and Thailand.

- Agree on safeguard mechanisms to prevent temporary service providers from entering the domestic labor market on a permanent basis
- Codify economic needs tests and agree on minimum standards for applying the tests.

Strategy 4: Consider a shift from ‘positive list’ to “negative-list’ approach of negotiating trade liberalization commitments.

The AMCs had adopted a negotiating modality similar to that of the GATS, that is, they adopted a ‘positive list’ approach. This means that the AMCs list their schedule of commitments, specifying the type of conditions under which foreign service suppliers can enter a market (market access) or the type of treatment that will be granted them in certain sectors (national treatment). These commitments can be modified or withdrawn after a certain lapse of time, subject of course to appropriate compensation. Thus, liberalization can be achieved only after rounds of offers and commitments.

Contrast this approach with a ‘negative list’ (top-down) approach or the NAFTA model undertaken by some 12 Western Hemisphere regional trading arrangements (RTAs). It is a model of comprehensive liberalization for services and investment and promoted by Mexico (bilateral free trade between Mexico, Nicaragua, Chile, Costa Rica, Nicaragua) and adopted by several Latin American countries (e.g. the Andean Community, Group of Three FTA, Central America FTA, Dominican Republic FTA).

When considering binding commitments, the positive approach does not oblige a country to include all the four modes of supply, leading to an emphasis on negotiations by sector or “sectoral reciprocity”. Moreover each country can in effect schedule “restrictions”, rather than “liberalization” so that the GATS allows for the future imposition of restrictions, rather than the locking-in of liberal situations (Hoekman, 1995). In contrast, under the negative-list approach, all sectors are freed from restrictions by countries that enter into the agreement, unless specified in lists of exceptions. Thus, the RTAs of the Western Hemisphere go beyond the GATS as they are obliged to abolish nationality or residency requirements effectively since they must recognize diplomas and grant licenses for the foreign service provider for all professional services within two years of entry into force of the agreement. The agreements also oblige the countries to develop a generic blueprint that defines procedures to help all professions to attain mutual recognition of licenses and certifications.

ASEAN, by choosing a specific negotiating modality, namely the positive-list approach, has locked in a gradual, ‘bottom-up’ approach to negotiations. Thanh and Bartlett (2006) note that, according to Findlay et al (2002) this positive list approach that was adopted by AFAS contains non-transparent elements such as: (1) the usually non-uniform and highly opaque way that members list commitments, so that it becomes difficult to document the actual liberalization that is achieved under these commitments; (2) the lack of information on the restrictions in sectors that are not included in the list of specific commitments; (3) the right of members not to undertake any commitments

But in the final analysis, whether the NAFTA model or the GATS-type approach is chosen, full liberalization of services is not guaranteed (Stephenson, 2002). The length of exclusions under the NAFTA-approach may be comparable to the number of sectors that are not included under a GATS-type approach. In other words, which approach serves better the liberalization objective will ultimately depend on the degree of liberalization that is sought by parties to the agreement.

The member countries of ASEAN, after having chosen to work within the ‘positive list’ approach can demonstrate that this approach can be made to work in services liberalization

by striking a middle way. One approach that can be taken would be to adopt a 'reciprocal liberalization'. This means that only countries that have liberalized a certain portion of their services trade (for instance, the nationality requirement) are entitled to receive a reciprocal arrangement from other ASEAN countries that have also liberalized that portion. Other countries within ASEAN that have not liberalized the area will be excluded from the liberalizing effort. Thus, other ASEAN countries can be encouraged to liberalize. Another approach that can be tried would be to identify policies according to their restrictiveness to trade and to agree to liberalize them, according to a given time schedule, starting from the least restrictive (and thus easiest to liberalize.).

Strategy 5: Improve transparency and predictability of domestic regulations and use international standards to achieve harmonization

While GATS and other RTAs (such as NAFTA, Mercosur, US-Singapore and Japan-Singapore) have specified disciplines for domestic regulations, there is no such specification in terms of disciplines in AFAS with regard to domestic regulation. This contributes to the lack of transparency in ASEAN.

Lack of transparency in design and in the enforcement of regulations is one of the main barriers to trade. Transparency is needed to reduce transaction costs, promote accountability and good governance as well as facilitate international trade transactions (Thanh and Bartlett, 2006). For instance, foreign investors who do not see clearly the design of regulations or how they are enforced in a host country might be discouraged (Yi, 2002). Thus countries must look at this aspect to make sure that the regulations and rules are clear, accessible, and predictable. This is the only way that countries can ensure greater inflows of FDI, and with it the growth of employment and competitiveness.

In a number of AMCs, the website of the regulator has been used to disseminate information on rules and regulations. This is in spite of the fact that the AFAS has no provisions on the establishment of AFAS enquiry points where interested parties can obtain all the information on laws and regulations. In some cases, however, these were available only in the national language, rather than in bilingual (national language and English) versions. Many countries also noted that most of the time regulators solicit comments before the issuance of new regulations. Again, on this point, AFAS does not seem to have any provisions, but it is a matter of good governance.

Apart from establishing a common enquiry point for AFAS, member countries can also agree on some cross-sector measures to improve on the transparency of domestic regulation. The following are expected of a transparent and well-functioning regulatory regime:

- All information pertinent to licensing and accreditation application are made available to the public, including the criteria used by the regulator for approval and timeframes for approval. These information are available on the regulator's website, both in English and national languages.
- All proposed new measures and policy changes, including an explanation on the rationale behind the measures or changes, are published before implementation. Stakeholders' consultations are also conducted prior to implementation.
- Applicants for license and accreditation are given written explanation by the regulator on reasons of rejection of their applications when requested.
- Licensees are given adequate notice and explanation for disciplinary actions to be taken by the regulator.
- A well-functioning appeals mechanism for regulatory decisions exists and is accessible to all stakeholders.

On the matter of divergence of domestic regulations among member countries, particularly on licensing, ownership structure, and technical standards, it is suggested that members harmonize their policies to the extent possible with those of international standard-setting bodies. International standards are being set by the International Federation of Accountants, International Auditing Standard Board and International Organization of Securities Commission for accountancy services, and the Union Internationale des Architectes for architectural services. It is also useful to consult general principles and recommendations issued by the International Bar Association to reduce divergence in regulation in legal services.

It may be useful to share 'templates of regulatory reform' among members. ASEAN member countries can develop – alone or in a group – a template for prudential regulations, to ensure that liberalization of services does not come before effective competition regulations are in place, or that such liberalization does not erode consumer welfare. It is necessary that ASEAN members attest to the 'sequencing of reform' to ensure that policy reform may be gradual and orderly. For instance, capacity-building needed by public officials may be provided before the services liberalization actually takes place. Trade related capacity-building would facilitate greater business services liberalization.

In sectors where regulatory constraints are substantially affecting the conditions of trade, it may be well for ASEAN to create a set of sector-specific disciplines, akin to the Reference Paper in telecommunications sector and GATS Article VI disciplines on accountancy services. Given the value that service providers place on regulatory environment, agreements on sector-specific regulatory disciplines would help in at least ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements are not unnecessarily burdensome as to inhibit trade.

Strategy 6: Vigorously pursue Mutual Recognition Agreements (MRAs) in all regulated professional sectors; in the interim, however, push for reciprocity arrangements.

The GATS, under Article VII, allows WTO members to achieve MRAs with regard to "education or experience obtained, requirements met, or licenses or certificates granted" Recognition may be achieved through harmonization or otherwise, i.e. it may be "based upon an agreement or arrangement with the country concerned or may be accorded autonomously" (Art. VII. No. 1). This is based on the assumption that MRAs can potentially facilitate the movement of professional service suppliers, are instrumental to policy reform, and represent a powerful tool for economic integration. (UNCTAD, 2005, p. 23)³²

MRAs are much more easily concluded in a regional or sub-regional than in a multilateral setting. For instance, the movement of natural persons (Mode 4) may be easier to negotiate among of the smaller group of countries, because market opening in general may be perceived as being less of a threat if concluded among a fewer countries. The AMCs are thus in a good position as an FTA to 'test the waters' of liberalization of services.

However, the requirements of MRAs are many and complex. According the UNCTAD (2005) a country that wants to join the negotiation of an MRA must: have in place a domestic system for regulating the profession at stake, an accreditation system, a national register of professionals, the capability to evaluate standards, compare education and training systems,

³² It is important to assess the outcome of the first MRA in ASEAN, that is, in engineering services, in view of the fact that there are a number of professions for which MRAs are being readied. In general, services liberalization in developing countries brought about considerable GDP gains, but recent analytical work suggests that liberalization in some services may not always bring about gains for developing countries. (see Whalley, 2003).

and formulate positions. All these need the human and financial resources because the negotiations for MRAs may take several years. This raises the urgency of formulating harmonized standards, best practices and guidelines for specific professions. These will facilitate the negotiations of MRAs between countries. For instance, the EC has laid down procedures for the mutual recognition of diplomas³³, the NAFTA has required professionals from its three member-countries to be given non-discriminatory access to certification and licensing procedures, The Union Internationale des Architectes (UIA) has laid down recommendations for MRAs on architecture. The US and EU representative bodies in the architectural profession [National Council of Architectural Registration Boards (NCARB) and the American Institute of Architects (AIA) for the US and the Architects' Council of Europe (ACE)] have met in 2001 to 2005 to discuss an MRA on the recognition of educational and professional qualifications between the two countries. The APEC countries have achieved an MRA in architecture and engineering. In contrast, there has been to date no MRA for legal services. Members of international bodies of lawyers, such as the International Bar Association (IBA) and the International Union of Lawyers (UIA) are divided over liberalization issues. The IBA has adopted the "General Principles for the Establishment and Regulation of Foreign Lawyers" and encouraged its members to do so. The UIA, for its part, favours access by foreign lawyers on the basis of an aptitude test, excluding them from the scope of host country law and court representation (GATS, 2004).

There have been criticisms about the progress in MRAs in ASEAN. Those involved in MRA negotiations however are optimistic that in addition to the two MRAs that have already been concluded – that in engineering and nursing – several other agreements may be concluded before 2008, specifically those in architecture, accounting and land surveying. Moreover, since MRAs are usually drawn up by the private sector, the governments should see to it that they are included in negotiations. Governments can likewise mobilize their support by building their awareness of the need for and benefits of services liberalization.

While this study maintains that the MRA route is still appropriate to overcome the trade-inhibiting effects of nationality and residency requirements as well as regulatory divergence, it is suggested however that countries consider adopting a reciprocity policy in the interim. On this score, the recently enunciated policy of the Philippines on movement of professionals is an example.³⁴ The Philippine reciprocity policy, which is also contained in its AFAS 5 schedule reads:

*Upon recommendation of the concerned Professional Regulatory Board (PRB), the PRC (Professional Regulatory Commission) may approve registration of and authorize issuance of certificate of registration/license and professional identification card with or without examination to a foreigner who is registered under the laws of his state/country and whose certificate of registration issued therein has not been suspended/revoked: provided, that **requirements for registration/licensing in said foreign state/country are substantially the same as those required/contemplated by laws of the Philippines and that the laws of such of foreign state/country allow citizens of the Philippines to practice the profession on the same basis and grant the same privileges as those enjoyed by subjects or citizens of such foreign country/state;***

Strategy 7: Increase awareness in AFAS by mobilizing professional associations in the region and making them more actively involved in negotiations.

³³ The requirement of an aptitude test remains, however. This might be the reason why the use of the provision has been minimal.

³⁴ In ANZCERTA, the Protocol of Trade in Services stipulates the right of a person registered to practice an occupation in one of the two countries (Australia and New Zealand) to practice an equivalent occupation in the other country.

The limited survey undertaken for this study among service providers in the region reveals very low awareness about AFAS. Of 41 respondents, all of whom have operations not only in their respective base country but also in other countries within and outside the ASEAN region, only seven professed some degree of awareness about AFAS. And when asked what they think AFAS has achieved for their respective base country in terms of changes in policy or regulation, only two responded positively. One of these respondents ascribed progress on MRA negotiations to AFAS, and another cited information dissemination on regulatory best practices by its government and professional association in relation to AFAS.

This low awareness about AFAS may account for the absence of private sector pressure groups that would have provided greater impetus to the negotiations. Elimination of overtly discriminatory and cost-raising regulations in the sector might be facilitated more if the network of professionals in the region is made aware of the potential benefits that would accrue them when the flow of services trade in the region is made freer.

C. Final Word

Given the 2015 commitments made at the ASEAN Economic Ministers meeting in Vientiane, there is much progress to be made if ASEAN members are to successfully address a range of restrictive trade measures that are still in place. The good news is that if members utilize the step by step, cooperative approach to well regulated liberalization of trade in business services that we have outlined, then there is much to be gained.

For ASEAN to achieve its aim of “a free trade area in business services”, it is now appropriate to take strong measures to fast-track the elimination of restrictive policies and regulations affecting trade in business services. However measures that diverge too far from the ASEAN tradition of consensus-building may be counterproductive, at least in the short-term. The strategies outlined in this final section aim to work within those constraints while harnessing the countless opportunities to maximize economic growth, business investment and consumer welfare in an appropriate ASEAN way.

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APPENDIX 1. SURVEY QUESTIONNAIRE FOR KEY INFORMANTS

I. Profile of the Respondent

Name of respondent : _____
Institution represented: _____
Position in the institution: _____
Email address: _____
Tel. no. _____

Sector: Accountancy
 Legal
 Architectural
 Management Consulting
 Computer and Related Services

II. Profile of the Sector

Please provide information or data source for the following:

- a) Definition of sector in official statistics
- b) Number of service providers, individuals and establishments
- c) Growth rates of service providers, individuals and establishments, during the past five years
- d) Top five service providers (establishments): name, nationality of ownership, size, gross sales
- e) Indication of degree of market competition, e.g., share of top five firms in sectoral revenue
- f) Regulatory body
- g) Standard-setting body
- h) Professional Associations

III. Regulations on the practice of profession

1. What are the licensing and accreditation requirements for local professionals?
(Please check all that apply.)
 - Minimum years of schooling (up to tertiary level): _____
 - Higher education, i.e., beyond minimum years
 - Professional examinations
 - Frequency of examinations (e.g., annual, semi-annual, quarterly)

 - May be taken online? Yes No
 - Compulsory membership in professional association

Others (*pls. specify*): _____

2. Are there nationality or citizenship requirements to practice the profession?

Yes No

- Please specify nationality/citizenship requirements.

- Exemptions to the above nationality requirements.

3. Are there residency and local presence requirements to practice the profession?

Yes No

- Please specify residency and local presence requirements.

- Exemptions to the above residency and local presence requirements

- Does having a representative office suffice to satisfy the local presence requirement? Yes No

4. Are there restrictions on advertising, marketing and solicitation?

Prohibition of advertising, marketing and solicitation is absolute.

Restrictions apply only to some groups or activities.

- Which groups or activities? _____

No restrictions

5. Are there restrictions on legal form of establishment in which to practice the profession?

Incorporation is prohibited.

Some form of incorporation is allowed.

- Under what circumstances? _____

No restrictions

6. Are there restrictions on the size of professional firms?

Yes No

- Describe the form of restrictions (e.g. limits on number of partners or number of engagements or capitalization)

7. Are there limitations on ownership or control by non-professional investors?

Yes

- Maximum equity participation allowed of non-professionals: _____

None

8. Do government procurement rules discriminate against internationally affiliated firms in winning public contracts?

Yes

Yes, on some type of contracts (*pls. specify.*) _____

No

9. Are there restrictions on the number of branches or offices that may be set up by professional establishments?

Yes (*pls. specify number*) _____

None

10. Are there restrictions to multidisciplinary partnerships?

Yes, partnership or association with other professions is prohibited.

Yes, but some exceptions apply (*pls. specify.*) _____

None

11. Are there restrictions on cooperation between professionals?

Inter-professional cooperation of any form is generally forbidden.

Inter-professional cooperation is allowed only between comparable licensed professionals.

Inter-professional cooperation is generally allowed.

12. Does the regulator impose restrictions on professional fees?

Yes, maximum and minimum fees for all groups in the profession

Yes, but restrictions apply only to some groups or activities (*pls. specify*) _____

No.

13. Are local technical standards aligned to international standards?

Yes

Yes, but some local standards are not. (*pls. specify*) _____

No.

IV. Regulations governing relationship between international firm and domestic affiliates

1. Is there restriction on foreign ownership or equity in a local firm?

Yes (*Pls. specify maximum allowed foreign equity.*) _____

None.

2. Are foreigners allowed to take up management positions in local firms?

Yes

Yes, but only in some groups or activities (*pls. specify.*)

No

3. Is there restriction on the use of an international firm or network name?

Yes, restriction is absolute.

Yes, but only in some groups or activities (*pls. specify*)

None.

4. Are foreign firms required to enter into partnership or joint venture with local firms in order to practice?

Yes, partnership or joint venture with local professionals is required.

Partnership with foreign professionals is prohibited.

There is no requirement for foreign firms nor restriction to enter into joint venture with local professionals.

5. Are there restrictions on repatriation of fees, royalties, profits and intra-network payments?

Yes (*pls. specify.*)

None.

V. Restrictions on Movement of Professional Personnel

1. Is temporary entry of professionals allowed?

Yes, up to _____ days

No

2. How long does it usually take to process visa and work permits for professionals?

3. Is entry of foreign executives, senior managers or specialists allowed?

- Yes, without any restriction.
- Yes, but subject to certain conditions (*pls. specify.*)

- No

VI. Regulatory Environment

1. Are rules, regulations and regulatory decisions published?

- Yes, at all times, available in the regulator's website and in bilingual versions
- Yes, but only occasionally and only in national language
- No

2. Does the regulator solicit comments before issuing a new regulation?

- Yes, at all times.
- Yes, but only occasionally.
- No.

3. Are rules and regulations consistently applied?

- Yes, at all times.
- Yes, but only occasionally.
- No.

4. Is there a well-functioning appeals process?

- Yes.
- No.

VII. Regulations on the practice of foreign professionals

1. What are the licensing and accreditation requirement for foreign professionals?
(*Please check all that apply.*)

- Foreign professionals are prohibited from practicing.

- Foreign license and qualifications are sufficient to practice.
 - Local retraining is required for a full license.
 - Local examination is required in all cases.
 - Case-by-case assessment of foreign license and qualifications.
 - Passing of aptitude tests is sufficient.
2. Is there a policy to use quotas or economic needs tests on the number of foreign professionals and firms that would be allowed to practice?
- Yes (*pls. specify mechanics for applying the policy.*)

 - No.
3. Are foreign professional allowed to become members of local professional bodies?
- Yes
 - Yes, but only under certain conditions (*pls. specify*)

 - No
4. Is there requirement on foreign firms practicing in the local market to hire local professionals?
- Yes, (*pls. specify the proportion of local professionals in the organization required by law or regulation.*)

 - None.

VIII. Other issues (for computer and related services)

1. How would you rate the availability of bandwidth in your economy?
- Broadband network is widely deployed.
 - Broadband network is available only in central districts and major cities.
 - Broadband network is not available.
2. How would you rate the reliability of the communications network infrastructure in your economy?

High

Medium

Low

3. Are the costs of communications access and usage in your economy comparable to the costs in

Low income countries?

Medium-income countries?

High-income countries?

4. How would you rate the security of communications network infrastructure in your economy?

Highly secured.

Sufficiently secured.

Not secured.

5. How would you rate the enforcement of intellectual property rights (IPR) in your economy?

Good

Needs Improvement

No IPR legislation yet

6. Is there a payment standards (for online transactions) being followed in your economy?

Yes

Yes, but is not followed consistently.

None.

7. Does your economy impose border tariffs on online sales?

Yes, for all types of transactions

Yes, for some goods and services (*pls. specify*)

No

-end-

APPENDIX 2. SURVEY QUESTIONNAIRE FOR MNC SERVICE PROVIDERS AND USERS

This survey is being administered to a small number of multinational corporations (MNCs) in Australia and the ASEAN region that are either **users or providers** of business services. The purpose of this survey is to solicit your opinion on the relative importance of various market restrictions in business services as they impact on trade in these services. We are particularly interested in five subsectors in business services, namely, accountancy, legal, architectural, management consulting, and computer and related services.

Your opinion is valuable and will be used in evaluating the trade impediments in these sectors that currently exist in ASEAN economies. We request that you based your answers, not just on your experience in the ASEAN region, but in other economies as well. We would like to assure you that all responses will be handled in strictest confidence and used only for the aforementioned purpose.

I. Profile of the Respondent

1. Name of respondent : _____
Company represented: _____
Position in the company: _____
Email address/tel. no.: _____

2. Is the company that you represent a business services user or provider?
 Service provider
 User

3. Which of the five business services sectors would you like to render your opinion? (Please see attached definitions of the sectors.)
 Accountancy
 Legal Services
 Architectural
 Management Consulting
 Computer and Related Services

4. In which countries does your company have operations? (Please check as many as applicable.)
 ASEAN
 Australia and or New Zealand
 Asia-Pacific, outside ASEAN
 Africa

- Middle East
- North America
- South America
- Europe

5. Are you aware of the ASEAN Framework Agreement on Services (AFAS)?

- Yes
- No

If yes, have there been changes in the policies or regulations of an ASEAN member country where you operate that have benefited your firm and that you can attribute to AFAS?

- Yes
- No

If you answered yes in the preceding question, please describe the changes.

II. Ranking of Major Categories of Trade Restrictions

We have grouped the market restrictions that have actual or potential impact on trade in business services. We would like you to rank them according to their importance or significance in limiting trade in business services, not only in the ASEAN region, but elsewhere as well.

The major groupings of trade barriers are the following:

- (A) Restrictions that impede or limit the relationship between an international firm and domestic affiliate firms
- Examples of trade barriers under this group: restrictions on foreign ownership or equity in a local firm, restrictions on involvement of foreigners in local firm management; prescribed form of establishment in which to practice; limitations on the use of international firm or network name; restrictions on international payments such as fees, royalties, etc.; and requirement to enter into joint venture with a local firm in order to practice.
- (B) Restrictions on movement of professionals into and out of a country for purposes of providing services.
- Examples of trade barriers under this group: difficulty, delays and red-tape associated with obtaining visas and work permits; limits on allowable period for temporary entry; restrictions on permanent movement of personnel such as executives, senior managers and specialists.

- (C) Lack of transparency and due process in regulatory decision-making and rule-making
- Examples of trade barriers under this group: non-publication of rules, regulations and regulatory decisions; lack of opportunity to comment on proposed regulations; arbitrary enforcement of rules; absence of an appeals process.
- (D) Restrictions that relate to the practice of profession
- Examples of trade barriers under this group: requirements for licensing and accreditation of professionals; restrictions on advertising, marketing and solicitation; restrictions on legal form of establishment in which to practice profession; restrictions on size of professional firms such as limitations on the number of partners and number of engagements; limitations on ownership or control by nonprofessional investors; nationality requirements; residency and local presence requirements; government procurement rules that discriminate against internationally affiliated firm in winning public contracts; restrictions on the number of geographic location, branches or offices; restrictions on multidisciplinary practices; activities reserved by to the profession; restrictions on setting professional fees; technical standards not aligned to international standards.
- (E) Restrictions that prevent foreign professionals from practicing in a country
- Examples of trade barriers under this group: non-recognition of foreign professional qualifications; quotas or economic needs tests on the number of foreign professionals and firms; impediments to foreigners from becoming members of professional bodies; requirement on hiring local professionals.
- (F) Others restrictions related to network infrastructure and conditions of online sales (for computer and related services)
- Examples of trade barriers under this group: bandwidth availability; low network latency; high costs of communication access and usage; weak enforcement of IPR; weak network security; non-existence of payment standards; border tariff on online sales.

In the table that follows, you will be asked to compare pairwise the five (six, for computer and related services) major groups of market restrictions according to their impact on trade in services. The pairwise comparison proceeds as follow: if you think that the item in column A is more important than the item in column B, i.e., the item in column A restricts trade more than the item in column B, please check the appropriate column to the right of column A to indicate the degree of importance.

If you think that the item in column B is more important than the item in column A, i.e., the item in column B restricts trade more than the item in column A, please check the appropriate column to the left of column B to indicate the degree of importance.

If you think that the item in column A is equally important as the item in column B, i.e., they are equally restrictive, please check the column with the heading of "equal."

Which of the major groups of trade restrictions, listed in columns A and B, do you think has more significant impact on trade in business services? (*Highlighted rows are pertinent only in evaluating trade restrictions in computer and related services*)

Column A	Absolute	Very strong	Strong	Moderate	Equal	Moderate	Strong	Very strong	Absolute	Column B
Restrictions that limit the relationship between international firm and domestic affiliate firm										Restrictions on movement of professional personnel
Restrictions that limit the relationship between international firm and domestic affiliate firm										Lack of transparency and due process in regulatory decision-making and rule-making
Restrictions that limit the relationship between international firm and domestic affiliate firm										Restrictions that relate to the practice of profession
Restrictions that limit the relationship between international firm and domestic affiliate firm										Restrictions that prevent foreign professionals from practicing in a country
Restrictions that limit the relationship between international firm and domestic affiliate firm										Other restrictions related to network infrastructure and online transactions
Restrictions on movement of professional personnel										Lack of transparency and due process in regulatory decision-making and rule-making
Restrictions on movement of professional personnel										Restrictions that relate to the practice of profession
Restrictions on movement of professional personnel										Restrictions that prevent foreign professionals from practicing in a country
Restrictions on movement of professional personnel										Other restrictions related to network infrastructure and online transactions
Lack of transparency and due process in regulatory decision-making and rule-making										Restrictions that relate to the practice of profession

Column A	Absolute	Very strong	Strong	Moderate	Equal	Moderate	Strong	Very strong	Absolute	Column B
Lack of transparency and due process in regulatory decision-making and rule-making										Restrictions that prevent foreign professionals from practicing in a country
Lack of transparency and due process in regulatory decision-making and rule-making										Other restrictions related to network infrastructure and online transactions
Restrictions that relate to the practice of profession										Restrictions that prevent foreign professionals from practicing in a country
Restrictions that relate to the practice of profession										Other restrictions related to network infrastructure and online transactions
Restrictions that prevent foreign professionals from practicing in a country										Other restrictions related to network infrastructure and online transactions

III. Ranking of Specific Trade Restrictions

Please rank the following market restrictions as to their degree of trade restrictiveness, on a scale of 1 to 5, 5 being the most trade restrictive.

Specific Trade Barrier	1	2	3	4	5
A. Restrictions that impede or limit the relationship of international firm and domestic affiliate					
1. Restrictions on foreign ownership or equity in a local firm					
2. Restrictions on involvement of foreigners in local firm management					
3. Restrictions on use of international firm or network name					
4. Requirements of joint venture or partnership with a local firm in order to practice					
5. Restrictions on international payments, such as fees, royalties, profits and other intra-network payments					
B. Restrictions on movement of professional personnel					
1. Limits on allowable period for temporary entry					
2. Difficulty of obtaining visas and work permits (average time for visa processing, i.e.,					

	1	2	3	4	5
Specific Trade Barrier					
from submission of application to release)					
3. Restrictions on permanent movement of professionals (executives, senior managers or specialists)					
C. Lack of transparency and due process in regulatory decision-making and rule-making					
1. Non-publication of rules, regulations, and regulatory decisions					
2. Lack of opportunity to comment on proposed regulations					
3. Arbitrary enforcement of rules					
4. Absence of an appeals process					
D. Restrictions that relate specifically to the practice of profession					
1. Licensing and accreditation of professionals					
2. Restrictions on advertising, marketing and solicitation					
3. Restrictions on legal form of establishment in which to practice					
4. Restrictions on size of professional firms, such as limitations on the number of partners or number of engagements					
5. Limitations on ownership or control by non-professional investors					
6. Nationality requirements					
7. Residency and local presence requirements					
8. Government procurement rules that discriminate against internationally affiliated firms in winning public projects					
9. Restrictions on the number of geographic location of branches or offices					
10. Multidisciplinary practices					
11. Activities reserved by law to the profession					
12. Restrictions on setting professional fees					
13. Technical standards not aligned to international standards					
E. Restrictions that prevent foreign professionals from practicing in a country					
1. Non-recognition of foreign professional qualifications					
2. Quotas or economic needs tests on the number of foreign professionals and firms					
3. Impediments to foreigners becoming members of professional bodies					
4. Requirement on hiring local professionals					
F. Limits on infrastructure and other issues specific to delivery of computer and related services					
1. Bandwidth availability					
2. Low network latency (reliability)					

Specific Trade Barrier	1	2	3	4	5
3. Costs of communication access and usage					
4. Weak enforcement of IPR					
5. Weak network security					
6. Non-existence of payment standards					
7. Border tariffs on online sales					