

รายการอ้างอิง

ภาษาไทย

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ภาคผนวก

မူဝါဒ ၈

ASEAN FRAMEWORK AGREEMENT ON SERVICES

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam, Member States of the Association of South East Asian Nations (hereinafter referred to as "ASEAN");

RECOGNISING the Singapore Declaration of 1992 which provides that ASEAN shall move towards a higher plane of economic cooperation to secure regional peace and prosperity;

RECALLING that the Heads of Government, at the Fourth Summit held in Singapore on 27-28 January 1992 declared that an ASEAN Free Trade Area (AFTA) shall be established in the region;

NOTING that the Framework Agreement on Enhancing ASEAN Economic Cooperation signed in Singapore on 28 January 1992 provides that ASEAN Member States shall explore further measures on border and non-border areas of cooperation to supplement and complement the liberalisation of trade;

RECOGNISING that intra-ASEAN economic cooperation will secure a liberal trading framework for trade in services which would strengthen and enhance trade in services among ASEAN Member States;

DESIRING to mobilise the private sector in the realisation of economic development of ASEAN Member States in order to improve the efficiency and competitiveness of their service industry sector;

REITERATING their commitments to the rules and principles of the General Agreement on Trade in Services (hereinafter referred to as "GATS") and noting that Article V of GATS permits the liberalising of trade in services between or among the parties to an economic integration agreement;

AFFIRMING that ASEAN Member States shall extend to one another preference in trade in services;



HAVE AGREED AS FOLLOWS:

Article I
Objectives

The objectives of the Member States under the ASEAN Framework Agreement on Services (hereinafter referred to as "this Framework Agreement") are:

- (a) to enhance cooperation in services amongst Member States in order to improve the efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN;
- (b) to eliminate substantially restrictions to trade in services amongst Member States; and
- (c) to liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the GATS with the aim to realising a free trade area in services.

Article II
Areas of Cooperation



1. All Member States shall participate in the cooperation arrangements under this Framework Agreement. However, taking cognizance of paragraph 3 of Article I of this Framework Agreement on Enhancing ASEAN Economic Cooperation, two or more Member States may proceed first if other Member States are not ready to implement these arrangements.

2. Member States shall strengthen and enhance existing cooperation efforts in service sectors and develop cooperation in sectors that are not covered by existing cooperation arrangements, through *inter alia*:

- (a) establishing or improving infrastructural facilities;
- (b) joint production, marketing and purchasing arrangements;
- (c) research and development; and

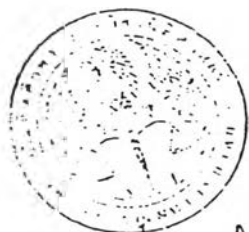
(d) exchange of information.

3. Member States shall identify sectors for cooperation and formulate Action Plans, Programmes and Understandings that shall provide details on the nature and extent of cooperation.

Article III Liberalisation

Pursuant to Article 1 (c), Member States shall liberalise trade in services in a substantial number of sectors within a reasonable time-frame by:

- (a) eliminating substantially all existing discriminatory measures and market access limitations amongst Member States; and
- (b) prohibiting new or more discriminatory measures and market access limitations.



Article IV Negotiation of Specific Commitments

1. Member States shall enter into negotiations on measures affecting trade in specific service sectors., Such negotiations shall be directed towards achieving commitments which are beyond those inscribed in each Member State's schedule of specific commitments under the GATS and for which Member States shall accord preferential treatment to one another on an MFN basis.

2. Each Member State shall set out in a schedule, the specific commitments it shall undertake under paragraph 1.

3. The provisions of this Framework Agreement shall not be so construed as to prevent any Member State from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article V
Mutual Recognition

1. Each Member State may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. Such recognition may be based upon an agreement or arrangement with the Member State concerned or may be accorded autonomously.
2. Nothing in paragraph 1 shall be so construed as to require any Member State to accept or to enter into such mutual recognition agreements or arrangements.¹

Article VI
Denial of Benefits

The benefits of this Framework Agreement shall be denied to a service supplier who is a natural person of a non-Member State or a juridical person owned or controlled by persons of a non-Member State constituted under the laws of a Member State, but not engaged in substantive business operations in the territory of Member State(s).



Article VII
Settlement of Disputes

1. The Protocol on Dispute Settlement Mechanism for ASEAN shall generally be referred to and applied with respect to any disputes arising from, or any differences between Member States concerning the interpretation or application of, this Framework Agreement or any arrangements arising therefrom.
2. A specific dispute settlement mechanism may be established for the purposes of this Framework Agreement which shall form an integral part of this Framework Agreement.

¹ These agreements or arrangements are concluded for Member States only. In the event a Member State wishes to join such agreements or arrangements, it should be given equal opportunity to do so at any time.

Article VIII
Supplementary Agreements or Arrangements

Schedules of specific commitments and Understandings arising from subsequent negotiations under this Framework Agreement and any other agreements or arrangements, Action Plans and Programmes arising thereunder shall form an integral part of this Framework Agreement.



Article IX
Other Agreements

1. This Framework Agreement or any action taken under it shall not affect the rights and obligations of the Member States under any existing agreements² to which they are parties.
2. Nothing in this Framework Agreement shall affect the rights of the Member States to enter into other agreements not contrary to the principles, objectives and terms of this Framework Agreement.
3. Upon the signing of this Framework Agreement, Member States shall promptly notify the ASEAN Secretariat of any agreements pertaining to or affecting trade in services to which that Member is a signatory.

Article X
Modification of Schedules of Specific Commitments

1. A Member State may modify or withdraw any commitment in its schedule of specific commitments, at any time after three years from the date on which that commitment entered into force provided:
 - (a) that it notifies other Member States and the ASEAN Secretariat of the intent to modify or withdraw a commitment three months before the intended date of implementation of the modification or withdrawal; and

² Existing Agreements are not affected as these have been notified in the MFN Exemptions List of the GATS.

- (b) that it enters into negotiations with an affected Member State to agree to necessary compensatory adjustment.
2. In achieving a compensatory adjustment, Member States shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than that provided for in the schedules of specific commitments prior to such negotiations.*
3. Compensatory adjustment shall be made on an MFN basis to all other Member States.
4. The SEOM with the endorsement of the AEM may draw up additional procedures to give effect to this Article.



Article XI Institutional Arrangements

1. The SEOM shall carry out such functions to facilitate the operation of this Framework Agreement and further its objectives, including the organisation of the conduct of negotiations, review and supervision of the implementation of this Framework Agreement.
2. The ASEAN Secretariat shall assist SEOM in carrying out its functions, including providing the support for supervising, coordinating and reviewing the implementation of this Framework Agreement.

Article XII Amendments

The provisions of this Framework Agreement may be amended through the consent of all the Member States and such amendments shall become effective upon acceptance by all Member States.

Article XIII
Accession of New Members

New Members of ASEAN shall accede to this Framework Agreement on terms and conditions agreed between them and signatories to this Framework Agreement.

Article XIV
Final Provision


1. The terms and definitions and other provisions of the GATS shall be referred to and applied to matters arising under this Framework Agreement for which no specific provision has been made under it.
2. This Framework Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.
3. This Framework Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed the ASEAN Framework Agreement on Services.



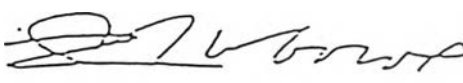
DONE at *Bangkok*, this *15th day of December 1995* in a single copy in the English Language.

For the Government of Brunei Darussalam:



ABDUL RAHMAN TAIB
Minister of Industry and
Primary Resources

For the Government of the Republic of Indonesia:



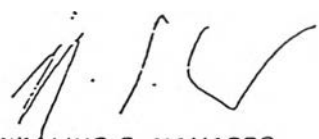
T. ARIWIBOWO
Minister of Industry and Trade

For the Government of Malaysia:



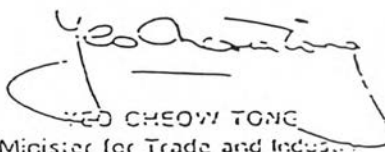
RAFIDAH AZIZ
Minister of International
Trade and Industry

For the Government of the Republic of the Philippines:



RIZALINO S. NAVARRO
Secretary of Trade and Industry

For the Government of the Republic of Singapore:




NEO CHEOW TONG
Minister for Trade and Industry

For the Government of the Kingdom of Thailand:



AMNUAY VIRAVAN
Deputy Prime Minister

For the Government of the Socialist Republic of Vietnam:



LE VAN TRIET
Minister of Trade



THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(For the Second Package of Commitments)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Unless otherwise specified, commercial presence in sectors or subsectors in this schedule is permitted only through a limited liability company which is registered in Thailand and which meets the following conditions:</p> <p>a) Foreign equity participation must not exceed 49 per cent of the registered capital; and</p> <p>b) The number of foreign shareholders must be less than half of the total number of shareholders of the company concerned.</p> <p>4) Unless otherwise specified, temporary movement of natural persons is <u>unbound</u> <u>except</u> in the following categories:</p>	<p>3) Unless otherwise specified, national treatment for this mode of delivery is unbound</p> <p>3), 4) Regarding acquisition and usage of land according to the Land Code of Thailand, foreign nationals or domestic companies which are deemed foreigners are not</p>	

THAILAND

Note: The scope and classification of sub-sectors contained in this schedule, unless otherwise specified, corresponds to the explanatory notes for services listed in the 1991 Central Product Classification (CPC) of the United Nations Statistical Office, while the ordering is based on the Services Sectoral Classification List set out in document MTN.GNS/W/120 dated 10 July 1991.

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(For the Second Package of Commitments)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>a) A natural person who stays in Thailand for not more than 90 days for the purpose of participating in business meetings or contacts, entering into contract to sell or purchase services, visiting of business establishments or other similar activities;</p> <p>b) A corporate transferee of the managerial or executive level or a specialist, provided that such person has been employed by the company concerned outside Thailand for a period of not less than one year immediately preceding the date of his or her application for admission and has satisfied the criteria for management needs¹ stipulated by the Department of Employment. Temporary entry is limited to a one year period and may be extended for a further two terms of not more than one year each.</p>	<p>allowed to purchase or own land in Thailand. However, they may lease land and own buildings. Foreigners are also allowed to own part of Condominium units under the laws and regulations governing the ownership of condominiums.</p>	

¹In considering managerial needs, the following facts shall be taken into consideration by the relevant authority, namely: 1. Size of fully paid-up capital 2. Employment creation 3. Extent of foreign investment 4. Export promotion 5. Transfer of technology 6. Special needs of the management.

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
1. AIR TRANSPORT SERVICES			
a) Selling and marketing of air transport services	1) None 2) None 3) None other than that indicated in the horizontal section 4) As indicated in the horizontal section	1) None 2) None 3) The value Added Tax (VAT) in use comprises 3 rates, namely 10%, 0% and exempted. VAT Collection is based on a reciprocal basis. 4) Unbound	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
<p>2. BUSINESS SERVICES</p> <p>C. Research and Development</p> <p><i>a. Research and Development on Natural Sciences</i></p> <ul style="list-style-type: none"> - Research and experimental development services on physical sciences (85101) - Research and experimental development services on chemical and biology (85102) - Research and experimental development services on engineering and technology (85103) - Research and experimental development services on agricultural science (85104) - Research and experimental development services on other natural sciences (85109) <p><i>b. Research and Development on Social Sciences and Humanities</i></p> <ul style="list-style-type: none"> - Research and experimental development services on economics (85202) - Research and experimental development services on law (85203) - Research and experimental development services on linguistic and languages (85204) 	<ul style="list-style-type: none"> 1) Unbound 2) None 3) None other than that indicated in the horizontal section 4) As indicated in the horizontal section 	<ul style="list-style-type: none"> 1) Unbound 2) None 3) No limitation as long as foreign equity participation does not exceed 49 percent 4) None 	

THAILAND – SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
<p>F. Other Business Services</p> <p><i>c. Management Consulting Services</i></p> <ul style="list-style-type: none"> - Financial management consulting services (except business tax) (86502) - Human resource management consulting services (86504) 	<ul style="list-style-type: none"> 1) Unbound 2) None 3) None other than that indicated in the horizontal section 4) As indicated in the horizontal section 	<ul style="list-style-type: none"> 1) Unbound 2) None 3) No limitation as long as foreign equity participation does not exceed 49 percent 4) None 	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
3. CONSTRUCTION			
a) Pre-erection work at construction work (CPC 511)	1) Unbound 2) None 3) None other than that indicated in the Horizontal section 4) a) As indicated in the horizontal section b) Unbound for civil engineer	1) Unbound 2) None 3) No limitations as long as foreign equity participation does not exceed 49 percent 4) None	
b) Assembly and erection of prefabricated constructions (CPC 514)	1) Unbound 2) None 3) None other than that indicated in the Horizontal section 4) a) As indicated in the horizontal section b) Unbound for civil engineer	1) Unbound 2) None 3) No limitations as long as foreign equity participation does not exceed 49 percent 4) None	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(For the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad. 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
c) Special trade construction work (CPC 515)	1) Unbound 2) None 3) None other than that indicated in the Horizontal section 4) a) As indicated in the horizontal section b) Unbound for civil engineer	1) Unbound 2) None 3) No limitations as long as foreign equity participation does not exceed 49 percent 4) None	
d) Building completion and finishing work (CPC 517)	1) Unbound 2) None 3) None other than that indicated in the horizontal section 4) a) As indicated in the horizontal section b) Unbound for civil engineer	1) Unbound 2) None 3) No limitations as long as foreign equity Participation does not exceed 49 percent 4) None	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
4. FINANCE a) Securities Companies (i.e. securities brokerage, securities dealing, investment advisory service and securities underwriting)	<p>1) Unbound .</p> <p>2) None</p> <p>3) I. None for representative offices II. Market access limited to share acquisition of existing companies only. Unbound for new license III. Maximum foreign equity participation is allowed up to 100 per cent of paid-up capital. However, a securities company which has foreign equity participation equal to or more than 50 per cent of paid-up capital has to comply with the terms and conditions stipulated in the <u>Royal Decree on Permission for Non-Thai to engage in Securities Brokerage Business under Annex A of the Announcement of the Nation Executive Council No.281 dated 24 November B.E.2541</u> and other Regulations.</p>	<p>1) None</p> <p>2) None</p> <p>3) None, except as indicated in the market access column.</p>	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
	<p>IV. For a securities company which has foreign equity participation not exceeding 50 per cent of paid-up capital, one-half of the directors must be Thai national.</p> <p>V For a securities company which has Foreign equity participation equal to or more than 50 per cent of paid-up capital, managing directors and executive directors who are foreign nationals have to be present in Thailand for not less than 60 days per year.</p> <p>4) - For a representative office, the number of foreign personnel is limited to two persons. - For securities companies, as indicated in the horizontal section.</p>	<p>4) None</p>	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
b) Asset management companies Collective investment schemes	1) Unbound 2) None 3) I. None for representative offices. II. Market access limited to share acquisition of existing companies only. Unbound for new license. III. Maximum foreign equity participation is allowed up to 100 per cent of paid-up capital. However, asset management companies which have foreign equity participation equal to or more than 50 per cent of paid-up capital have to be approved by the Ministry of Commerce under the terms and conditions stipulated in the relevant regulations.	1) None 2) None 3) None, except as indicated in the market access column.	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
	<p>IV. For asset management company which has foreign equity participation not exceeding 50 per cent of paid-up capital, one-half of the directors must be Thai national.</p> <p>V. For asset management company which has foreign equity participation equal to or more than 50 per cent of paid-up capital, managing directors and executive directors who are foreign nationals have to be present in Thailand for not less than 60 days per year.</p> <p>4) - For a representative office, the number of foreign personnel is limited to two persons. - For asset management companies, as indicated in the horizontal section</p>	4) None	

** This indicative offer is for negotiation purpose only and Thailand reserves the right to modify, reduce or withdraw the above-mentioned offer in whole or in part at any time on or before the conclusion of the negotiations on financial services if satisfactory offers are not made by other negotiating partners*

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
5. MARITIME TRANSPORT			
a) Freight transportation (CPC 7212) less cabotage transport: as defined below(v-3.1)	1) None 2) None 3) a) Unbound for establishment of juristic person for the purpose of operating a fleet under the national flag of Thailand	1) None 2) None 3) a) Unbound	The following services at the port provided by the government or government enterprise are made available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions: <ol style="list-style-type: none"> 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fueling and watering 4. Garbage collecting and ballast waste disposal

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
	<p>b) Other forms of commercial presence for the supply of international maritime transport services (as defined below-3.2) except branch office: as indicated in the horizontal section</p> <p>4) a) Ship'crews: Unbound b) Other personnel: As indicated in the horizontal section</p>	<p>b) None other than:</p> <ul style="list-style-type: none"> - Shareholders of Thai maritime transport companies with ownership of Thai flag vessels may be granted exemption or reduced rates of income tax leviable on dividends paid by such companies - Exporters or importers of goods shipped from or to Thailand by Thai flag vessels may be entitled to special deduction of not more than 50 per cent of the freight values or other expenses paid in the ordinary course of carriage of such goods from their net income for the purpose of calculation of income tax. <p>4) a) Unbound b) None</p>	<p>5. Port Captain's service</p> <p>6. Navigation aids</p> <p>7. Shore-based operational services essential to ship operations, water and electrical supplies.</p> <p>8. Emergency repair facilities</p> <p>9. Anchorage, bert and berthing services</p> <p>10. Inland transport services (Internal waterways transport services, rail transport services, and road transport services)</p>

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
b) Custom clearance services (as indicated below-3.5)	1) Unbound 2) None 3) As indicated in the horizontal section. In addition a customs broker must be natural person of Thai nationality and must obtain a license from the Customs Department 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) None 3) No limitation as long as foreign equity participation does not exceed 49 per cent. In addition a custom broker must be natural person of Thai nationality and must obtain a license from the Customs Department. 4) Unbound except as indicated in the horizontal section.	

NOTE TO THE SCHEDULE

1. Where road, rail, inland waterways and related auxiliary services are not otherwise fully covered in this schedule, a multimodal transport operator shall have the ability to rent or lease trucks, railway carriages or barges, and related equipment, for the purpose of inland forwarding of cargoes, or have access to and use of these forms of multimodal activities on reasonable and non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations.

2. "Reasonable and non-discriminatory terms and conditions" means, for the purpose of multimodal transport operations, the ability of multimodal transport operator to arrange for the conveyance of its merchandise on a timely basis, including priority over other merchandise which enter the port at a later date.

3. Definitions:

3.1 "Cabotage" : for the purpose of this schedule, means the transportation or towage of passengers or goods, between a port or place located in Thai waters and another port or place located in Thai waters.

3.2 "Other forms of commercial presence for the supply of international maritime transport services" : for the purpose of this schedule, means the ability for international maritime transport service suppliers of other members to undertake locally the following:

- a) Marketing and sales of maritime transport services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself;
- b) The procurement, on their own account of any transport and related services, necessary for the supply of the integrated services;
- c) The preparation of documentation concerning transport documents, customer documents, or other document related to the origin and character of the goods transported;
- d) Setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally with any locally established shipping agency: As indicated in the horizontal section.

3.3 "Maritime freight forwarding services" means the activity consisting of organizing and monitoring shipment operations on behalf of shippers, through the procurement of transport and related services, preparation of document and provision of business information.

3.4 "Customs clearance services" means activities consisting of carrying out on behalf of another party customs formalities concerning the import, export or through transport of cargoes, whether this service is the main activities of the service supplier or a usual complement of its main activities.

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
<p>6. TELECOMMUNICATIONS SERVICES</p> <p>Telecommunications terminal equipment leasing services (CPC 75410)</p> <p>Domestic VSAT¹</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None other than that indicated in the horizontal section</p> <p>4) a) As indicated in the horizontal section b) Unbound for civil engineer</p> <p>1) 1.1 Service providers must use public telecommunication network under national telecommunication authorities 1.2 Radio application service is subject to frequency availability</p> <p>2) None</p> <p>3) a) Shall be a Thai registered company with foreign equity participation not exceeding 40 per cent of the registered capital and the number of foreign shareholders must not exceed 40 per cent of the total number of shareholders of the company</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 49 per cent</p> <p>4) None</p> <p>1) None</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 40 per cent</p>	

¹ Up to the end of 1999, service provider must use THAIKOM satellite.

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
	b) Such company shall be permitted under the built-transferred-operated concept by national telecommunication authorities ² c) Must use public telecommunication network under national telecommunication authorities 4) As indicated in the horizontal section	4) None	

² This condition will be applied for at least 10 years.

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS
(for the Second Package of Commitments)

Modes of Supply : 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
<p>7. TOURISM Convention Center over 2000 participants (The development of a building that consists of Exhibition Halls, Meeting Rooms, a conference hall with more than 2,000 seating capacity, a banquet and a business centre equipped with state of the art telecommunication and teleconferencing facilities to cater for the needs of the convention industry. The centre will also provide adequate carparks, shops and restaurants/cafes to the exhibitors, participants and visitors.)</p>	<p>1) Unbound 2) None 3) None other than that indicated in the horizontal section 4) as indicated in the horizontal section</p>	<p>1) Unbound 2) None 3) No limitation as long as foreign equity participation does not exceed 49 percent 4) None</p>	

Protocol to Implement the Second Package of Commitments Under the ASEAN Framework Agreement on Services

The Governments of Brunei Darussalam, the Republic of Indonesia, Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam, Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN");

NOTING the ASEAN Framework Agreement on Services signed on 15 December 1995 in Bangkok, Thailand, which seeks to enhance cooperation in services amongst Member States, eliminate substantially all restrictions to trade in services amongst Member States and liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the General Agreement on Trade in Services (hereinafter referred to as "GATS") of the World Trade Organization (hereinafter referred to as "WTO");

RECALLING that the Fifth ASEAN Summit called on Member States to enter into a first round of negotiations, beginning on 1 January 1996 and concluding no later than 31 December 1998, on specific commitments on market access, national treatment and additional commitments covering all services sectors and all modes of supply;

HAVING carried out an initial round of negotiations and concluded a set of commitments embodied in the Protocol to Implement the Initial Package of Commitments under the ASEAN Framework Agreement on Services signed on 15 December 1997 in Kuala Lumpur, Malaysia;

HAVING carried out subsequent negotiations pursuant to Article IV of the ASEAN Framework Agreement on Services and finalised the second package of commitments;

SEEKING to ensure that ASEAN Members, who are non-WTO members, are also accorded the same treatment in trade in services that ASEAN Member States, who are WTO members, extend to all members of the WTO;

DESIRING to set out in a schedule, the specific commitments that each Member State shall undertake, for which Member States shall accord preferential treatment to one another on a Most-Favoured Nation basis;

HAVE AGREED AS FOLLOWS:

1. Member States who are WTO Members shall extend their specific commitments under GATS to ASEAN Member States who are non-WTO Members.
2. Member States shall extend to all other Member States preferential treatment in services as set forth in the Schedules of Specific Commitments annexed to this Protocol.

3. The Annexes to this Protocol shall consist of the Horizontal Commitments, Schedules of Specific Commitments and the Lists of Most-Favoured Nation Exemptions.
4. This Protocol and its Annexes shall form an integral part of the ASEAN Framework Agreement on Services.
5. This Protocol shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN, which shall be done not later than 31 March 1999.
6. This Protocol shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each Member State. The Secretary-General of ASEAN shall also promptly furnish notifications of ratifications or acceptances made pursuant to paragraph 5 to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the Protocol to Implement the Second Package of Commitments under the ASEAN Framework Agreement on Services.

DONE at Hanoi, Vietnam, on the 16th day of December in the year One Thousand Nine Hundred and Ninety-Eight, in a single copy in the English language.

For the Government of Brunei Darussalam



ABDUL RAHMAN TAIB
Minister of Industry and Primary Resources

For the Government of the Republic of Indonesia



GINANDJAR KARTASASMITA
Coordinating Minister for Economy, Finance and Industry

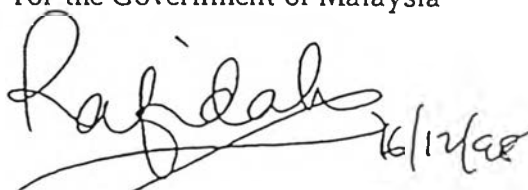


For the Government of the Lao People's Democratic Republic



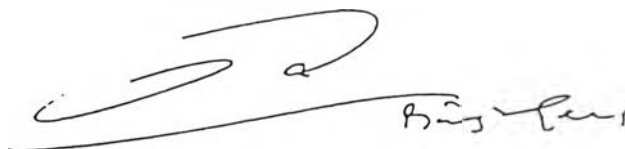
SOULIVONG DARAVONG
Minister of Industry and Handicraft

For the Government of Malaysia



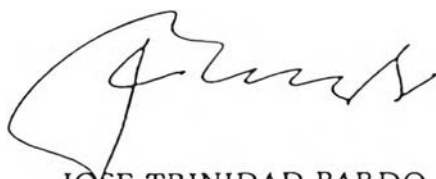
DATO' SERI RAFIDAH AZIZ
Minister of International Trade and Industry

For the Government of the Union of Myanmar



BRIGADIER GENERAL DAVID O. ABEL
Minister at the Office of the Chairman of
the State Peace and Development Council

For the Government of the Republic of the Philippines



JOSE TRINIDAD PARDO
Secretary of Trade and Industry



GUIDELINES FOR AN ALTERNATIVE APPROACH TO NEGOTIATION OF TRADE IN SERVICES UNDER THE ASEAN FRAMEWORK AGREEMENT ON SERVICES

The elements of the Guidelines shall be consistent with the provisions of the GATS and the ASEAN Framework Agreement on Services (amended if necessary) including the scheduling of Specific Commitments.

- I. Objective – that the long-term target for liberalisation of services is to have free flow of services by the year 2020.
- II. Scope – all services sectors and sub-sectors as defined by the WTO will be included. However, services supplied in the exercise of governmental authority, which means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers, shall be excluded.
- III. Free flow is to be achieved through –
 - a) National Treatment: No discrimination for ASEAN services suppliers on the four modes of supply (i.e. “None”);
 - b) Market Access: No barriers to access on the four modes of supply i.e. (“None”);
 - c) Member Countries may maintain domestic regulatory measures relating to qualification requirements and procedures, technical standards and licensing requirements, [and forms of market presence] provided that they are non-discriminatory, based on objective and transparent criteria, that are not more burdensome than necessary to ensure the quality of the service, and are not, in themselves restrictions on the supply of the service. Member Country are encouraged to continually review such regulatory regimes with a view to preventing and eliminating any over-regulation and unnecessary bureaucracy;
 - d) [Other barriers to trades such as constitutional provisions and other restrictions affecting services would also need to be addressed.]¹
- IV. Categories of services sectors/subsectors/modes -
 - a) Track 1: sectors/sub-sectors/modes which will accomplish free flow by 2010; and
 - b) Track 2: sectors/sub-sectors/modes which will accomplish free flow by 2020.

[Some Member Countries are not agreeable to categorisation by “Tracks”.]

¹ Whether this paragraph is retained or removed is subjected to the resolution of the issue of flexibility.

V. Modification of Commitments

- a) A Member State may modify or withdraw any commitment, [including changing the categories of sectors/subsectors/modes from Track 1 to Track 2]², provided that:
 - i) it notifies its intent to modify or withdraw the commitment no less than 60 days before the intended date of implementation of the modification or withdrawal; and
 - ii) it shall enter into negotiations with affected Members with a view to reaching agreement on any necessary compensatory adjustment to be made on an ASEAN most-favoured nation basis;
- b) The withdrawal or modification of the commitment shall not affect the requirement to achieve free flow of services by the year 2020 in that sector/subsector/modes.

[VI. Temporary Exclusion

Notwithstanding Element IV, a Member State may classify a subsector/mode in the Temporary Exclusion List. These subsectors/modes shall not be required to undergo a process of liberalisation. However, the target of free flow must still be achieved by the year 2020 and these subsectors/modes must begin to be phased out from the TEL by the year ____ and undergo a schedule of liberalisation.]³

VII. General Exception/Negative List

Nothing in the Guidelines shall be construed to prevent the adoption or enforcement by any Member State of measures:

- a) necessary to protect public morals or to maintain public order;
- b) necessary to protect human, animal or plant life or health;
- c) necessary to secure compliance with laws or regulations which are not inconsistent with the Guidelines, including those relating to prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts; the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts, and safety;

² The Meeting agreed that there should be a provision for modification of commitments. Should there be no categorisation by tracks, then the bracketed phrase would be deleted from the final Guidelines.

³ Should there be no categorisation by tracks, then the element on Temporary Exclusion would be deleted from the final Guidelines.

- d) inconsistent with National Treatment provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Member States;
- e) inconsistent with Most-Favoured Nation Treatment, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation in any other international agreement or arrangement by which the Member State is bound.

VIII. Definition of sectors/sub-sectors – based on the CPC at the 5-digit level. Where there are no CPC codes, definitions shall have to be provided.

IX. Benchmarks for Liberalisation – benchmarks at specific time periods for progressive liberalisation towards free flow of trade in services in the year 2020 are sector/subsector-specific. These would be developed further by sectoral service experts. Examples of benchmarks could include:

- a) GATS-plus commitments;
- b) binding of existing regimes;
- c) liberalisation of current restrictions;
- d) harmonisation of requirements for commercial presence; and
- e) mutual recognition agreements.

X. Monitoring

For the purpose of reviewing the realisation of free flow of services by the year 2020, the Coordinating Committee on Services (CCS) shall monitor and conduct a regular review of the progress made in the negotiations conducted under this Guideline.

XI. Principles – the following principles would be applied:

- a) binding of existing regimes; [to be raised to SEOM]
- b) standstills, i.e. Member Countries encouraged to refrain from making policy regime restrictions, with minor exceptions of sectors/subsectors/modes;
- c) reciprocity, i.e. this could be made on a sector/subsector/mode basis; [The Secretariat is to follow-up with the WTO Secretariat on the GATS consistency of reciprocity among members of a regional trading arrangement]

- d) notification provisions of changes in services regimes;
 - e) preferential treatment::
 - f) harmonisation of requirements for commercial presence; and
 - g) prevention of backloading.
- XII. Categorization of sectors – of the 7 sectors mandated by the Summit for liberalization, to include a certain percentage of the sub-sectors in Track 1. Other sectors could be selected for Track 1 using the following criteria:
- a) relative impact of ASEAN trade in services;
 - b) supporting the realisation of ASEAN Vision 2020; and
 - c) ease of liberalisation.
- XIII. Non-WTO members - In working to the 2020 target, non-WTO members should make commitments for these sectors/subsectors/modes that are more favourable than accorded to non-ASEAN countries.
- XIV. Approach to negotiations – negotiations should be made on a sectoral or sub-sectoral approach. Cross-sectoral negotiations on a bilateral basis could be made an option as necessary.
- XV. Institutional mechanism – to coordinate more closely with sectoral SOMs and Ministers to expedite sectoral negotiations for liberalisation.
- XVI. Sub-regional approaches – to supplement the above with liberalisation in adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.



ประวัติผู้เขียนวิทยานิพนธ์

นายฉัตรชัย ไชคธีรสวัสดิ์ เกิดเมื่อวันที่ 28 ธันวาคม พ.ศ.2510 สำเร็จการศึกษาในระดับประถมศึกษาและมัธยมศึกษาจากโรงเรียนอัสสัมชัญศึกษา จังหวัดนครราชสีมา และสำเร็จการศึกษาในระดับมัธยมศึกษาตอนปลายจากโรงเรียนวัดทองธรรม สำเร็จการศึกษาในระดับปริญญาบัณฑิตจากคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ เมื่อปี พ.ศ. 2532 และสำเร็จการศึกษาเป็นเนติบัณฑิต จาก เนติบัณฑิตยสภา เมื่อปี พ.ศ.2544 เข้าศึกษาต่อในระดับปริญญาโทมหาบัณฑิตสาขานิติศาสตร์ ภาควิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2541