

## ASEAN Framework Agreement on Services: AFAS

### 1. Background and Rationale

ASEAN Framework Agreement on Services: AFAS is identified as one of the key elements of a single market and production base. It aims to eliminate substantially restrictions to trade in services by extending the depth and scope of liberalization beyond those undertaken by World Trade Organization: WTO under General Agreement on Trade in Services: GATS

AFAS aims to provide free flow of trade in services covering 12 key sectors and 128 sub-sectors by 2015 and eliminate substantially restrictions to trade in services amongst Member States, and allow ASEAN investors to hold 70% shares extending to 10 years in providing services subject to ASEAN Economic Community Blueprint 2025 after Leaders of ASEAN members mutually signing “Kuala Lumpur Declarations on the Establishment of ASEAN Community (AEC) 2015” (Official Announcement of ASEAN Community (AEC) on 31 December 2015) and “Kuala Lumpur Declarations on ASEAN 2025” (including Vision and Working Plan of the ASEAN Community (AEC) during 2016-2025).

Thus far, negotiations on the free flow of trade in services since 1996 have concluded 9<sup>th</sup> Package. These packages are implemented via Protocols signed by ASEAN members initially covering only two sectors; tourism and travel-related and transport services, being undertaken by five member States. The round of negotiations in 2013 extended to 10<sup>th</sup> Package. Thailand increased service sectors to 101 sectors and 25 sub-sectors to achieve its goals.

### 2. Key issues of the agreement

The principle of ASEAN Framework Agreement on Services: AFAS

- 1) To be a single market and production base; merger of key sectors of ASEAN;
- 2) To improve the efficiency and competitiveness: the ASEAN member States are committed to enhance the policy and law concerning competition, consumer protection, cooperation on property rights of ASEAN, development of basic infrastructure, tax and e-Commerce;
- 3) To be an equally economic-developed region;
- 4) To be a region that is integrated completely with world economy; building integration towards external economic reaction and enhancing participation in global supply network.

The substance of AFAS agreement is divided into two parts: general principle (Section 14) and Schedule of specific commitments under AFAS.

Regarding the general principle, the members agreed to apply the principle of General Agreement on Trade in Service (GATS) regarding Non-discrimination, Most favored nation: (MFN) and National treatment: (NT), but allowed the members to provide MFN

Exemptions under prescribed regulations, while applying registration commitments list particularly for market access by eliminating substantially all existing discriminatory measures affecting trade in services, issued by public sector, central government, local government and private sector envisaged from the public sector for supervision thereof.

Moreover, Mode of supply including definitions provided under GATS agreement have been applied as Mode in AFAS agreement.

Therefore, the Mode of services under the AFAS agreement has been prescribed in the following 4 Modes:

- Mode 1: Cross-border supply;
- Mode 2: Consumption abroad;
- Mode 3: Commercial presence;
- Mode 4: Presence of natural persons.

The provision of commitments on market access applied the Services Sectoral Classification List which was provided on 24 May 2001 in consistent with the Provisional Central Product Classification: CPC of The UN Statistical Office which classifies the trade in services into 12 Sectors. Each of those Sectors are classified into Subsectors and from the Subsectors into Activities related to each services. Codes of each Subsectors are also prescribed under the following key Sectors related to:

- 1) Business Services
- 2) Communication Services
- 3) Construction and related Engineering Services
- 4) Distribution Services
- 5) Educational Services
- 6) Environmental Services
- 7) Financial Services
- 8) Health-related and Social Services
- 9) Tourism and Travel related Services
- 10) Recreational, Cultural and Sporting Services
- 11) Transport Services
- 12) Other services not included elsewhere

### **3. Considerations of Parliament**

According to the Letter of the Ministry of Commerce, No. 0802/2783 dated 2 June 1997 on the ratification of ASEAN Agreement on Services to notify Secretary-General of the Cabinet, the Ministry informed the Cabinet of consultation with the Ministry of Foreign Affairs in relation to the ratification of AFAS. The Ministry of Foreign Affairs stated the facts thereto that “regarding ratification of any agreement if the law involving the compliance of that ASEAN Framework

Agreement prior to being party, and initial person shall propose an agreement for approval of the Parliament. However, if the agreement prescribes commitment for that state party to improve the law to comply with the commitment after being the party thereof, there shall not be an approval of the Parliament. Moreover, the Ministry of Foreign Affairs also gave opinions thereto that “if AFAS has not yet effected on any amendment of laws until negotiation shall be ended, such ratification could be implemented without an approval of the Parliament, but the Ministry of Commerce should submit that issue to the Cabinet for acknowledgment and seeking an approval to ratify the agreement before informing the Ministry of Foreign Affairs for further ratification.

The Ministry of Commerce considered that regarding the compliance of the ASEAN Framework Agreement on Services, there shall not be any amendment of laws prior to being party thereof and proposed that to the Cabinet for an approval of that ratification.

The Cabinet approved the ratification on 30 June 1997 proposed by the Ministry of Commerce.

#### **4. Status of the Agreement**

##### **4.1 Entry into force**

This Agreement as provided in Rule 14 of the Agreement Framework shall enter into force after the deposit of the instrument of ratification or acceptance from ASEAN Member States with the Secretary-General of ASEAN.

##### **4.2 Ratification Status**

The Kingdom of Thailand had signed the Agreement on 15 December 1995 in Bangkok and deposited the instrument of ratification or acceptance with the Secretary-General of ASEAN on 30 July 1997.

(Source: <http://agreement.asean.org/home/index/12.html>, retrieved on 12 June 2018)

Currently, the 10 ASEAN Member States have deposited the instrument of ratification or acceptance with the Secretary General of ASEAN:

- 1) The Republic of Singapore  
Ratification on 29 December 1995
- 2) The Republic of Indonesia  
Ratification on 30 December 1995
- 3) The Republic of the Philippines  
Ratification on 18 March 1996
- 4) The Socialist Republic of Vietnam  
Acceptance on 20 February 1997

- 5) The Lao People's Democratic Republic  
Accession on 23 July 1997
- 6) The Republic of the Union of Myanmar  
Accession on 23 July 1997
- 7) The Kingdom of Thailand  
Ratification on 30 July 1997
- 8) Brunei Darussalam  
Ratification on 12 August 1998
- 9) The Kingdom of Cambodia  
Accession on 30 April 1999
- 10) Malaysia  
Acceptance on 22 March 2002

(Source: <http://agreement.asean.org/agreement/detail/189.html>, searched on 12 June 2018)

#### **4.3 Date of Entry into force**

The Agreement entered into force on 12 August 1998

### **5. Agreement Implementation and Progress**

#### **5.1 Negotiation and Progress of Package of Commitments**

In implementing the negotiation to set out package of commitments, Coordinating Committee on Services: CCS who includes representatives from all ASEAN Member States set the related procedures and methods by preparing Manual for the submission of the AFAS Package and Threshold Compliance Assessment which prescribes concretely rules and guidance to set a schedule of packages and assess effect of prescribed negotiations and packages; particularly, setting restrictions for market access and National Treatment.

After the AFAS Agreement has come into force, the ASEAN Members set out separately two negotiations; one by the CCS ASEAN Ministerial Economic Forum and another one the negotiation on financial services and air transportation which was carried out by working groups under ASEAN Ministerial Financial Forum and ASEAN Transportation respectively. Method and format have been improved to be consistent with preparedness and necessity for specifying sector for market access and finally Common Sub-sector Approach was selected. Only two or more Members were permitted for agreement in specifying market access among them not binding on other Members who did not agree thereto, which is called ASEAN minus X.

Meetings under the AFAS Framework Agreement have been concluded in Packages of Commitments since 1996 as follows:

### **Initial Package of Commitments (1<sup>st</sup> Package)**

An initial round of negotiations was held during 1996-1998 in Kuala Lumpur, Malaysia applying Request-offer approach, including 9 Member States (including new Members: Myanmar and Lao People's Democratic Republic). The Members concluded a set of commitment embodied in the Protocol to implement the Initial Package of Commitments for market access called 1<sup>st</sup> Package or the 1997 Initial Package (signed on 15 December 1997) by submitting Lists of Commitments for access to services market covering only tourism and travel-related and transport. The 9 Members specified the market access only on tourism and travel-related, and only 5 of 9 Member states also specified the market access on transport. Moreover, the Philippines opened the market on business services for Audit Subsector whereas Vietnam also opened for Telecommunication Sector.

### **Second Package of Commitments (2<sup>nd</sup> Package)**

Carrying out subsequent negotiations round of negotiations to provide the 1998 Package or the Protocol to Implement the Second Package of Commitment for market access (2<sup>nd</sup> Package) in Hanoi, Vietnam, where all Member States opened the market on Business Service Sector, Construction and Engineering related to construction Sector, Financial Service Sector (except Indonesia not opening the market), and Communication Sector (except Myanmar and Vietnam not opening Telecommunication Sub-sector). Moreover, all Member States (except Brunei) committed to extend services on tourism, travel-related and transport covering more Sub-sectors and activities. The Kingdom of Cambodia had joined the membership in 1999 and submitted commitments opening 4 Service Sectors: Business Services, Financial Services, Tourism Services and Transport Services.

### **Third Package of Commitments (3<sup>rd</sup> Package)**

This round of negotiations was held during 1999-2001 not focusing on opening other more service sectors, but balances of "Marginal Effort" and practices of each Member State to open for its most readiness sector, and also avoiding the negotiations on sensitive issues. Therefore, the agreement to the protocol to implement the third package has not made more progress and it became the 2001 package/ Ad referendum.

However, the 7<sup>th</sup> ASEAN Summit in the late of 2001 in Banda Seri Begawan, Brunei Darussalam was concluded to initiate Mutual Recognition Arrangements (MRAs) to facilitate the market access of Mode 4 on professional qualifications of service providers to be consistent with AFAS agreement and commitment for opening market as annexed in the Agreed Commitments Schedule. It was subsequently developed to achieve agreement under the MRA on professions of engineering, nursing, architecture, survey, accounting, doctor, dentist and tourism in 2005, 2006, 2007 and 2009 respectively.

#### **Fourth Package of Commitments (4<sup>th</sup> Package)**

This round of negotiations was agreed and prepared the Protocol to implement the Fourth Package of Commitment for market access to trade in services in Jakarta, The Republic of Indonesia ( 3 September 2004). It was concluded for the following key issues: timeline to liberalize complete trade within 2020 and provide the application of ASEAN minus X. Some or more than two Member States who are well-prepared in market access for some service sectors can hold the negotiation on Reciprocal basis with a party or more than one parties, but not causing difficulties for other Member States who are not in the agreement. Moreover, Modified common sub-sector approach was guided; however, the negotiations for market access to other more sectors were not held during this period and it was not prescribed directly in the Protocol when other Member States would apply the ASEAN minus X formula.

#### **Fifth Package of Commitments (5<sup>th</sup> Package)**

Due to previous negotiations which did not make any more progress, this round of negotiations was opened during 2005-2006, and the Member States agreed to prepare particular commitments for market access to only two services sectors: Financial Services and Air Transport Services. The negotiation was also held for market access to sectors related to Public Services and Public Regulations namely Educational Services, Distribution Services, Environmental Services (garbage management in particular) and Recreational Services.

After the negotiation, the Member States concluded to prepare the Protocol to implement the Fifth Package of Commitments for market access in Cebu Island, Republic of the Philippines on December 2006, preparing the Amendment Agreement on Priority Sectors, providing procedures on the negotiations and the priority sectors, eliminating restrictions prescribed in the previous List in Mode 1 and Mode 2 by 2008 and restrictions on foreign investment prescribed in Mode 3 by 2010.

#### **Sixth Package of Commitments (6<sup>th</sup> Package)**

This round of negotiations was continued from the fourth round, and the Member States concluded a set of commitment embodied in the Protocol to implement the sixth Package of Commitments for market access in the Republic of Singapore (19 November 2006) by submitting Lists of Commitments for access to services market called "GATS-Plus" which improved Lists of Commitments for access to services market, namely, Indonesia and Malaysia, including Lao People's Democratic Republic who reserves to be committed in market access to Environmental Services in the previous round had initiated market access to some Environmental Services Sub-sectors in this round.

The negotiations put an emphasis on key sectors and concluded a set of commitment embodied in the Protocol to implement the 6<sup>th</sup> Package of Commitments for Air Transport Sectoral Negotiations under the ASEAN Framework Agreement on Services and the ASEAN Sectoral Integration Protocol for the Logistics Services Sectors, or shortly called the ASEAN Logistics Protocol, specifying the Logistics Services Sector in the fifth of previous priority sectors, and also separating the Logistics Services Sector from other sectors clearly.

### **Seventh Package of Commitments (7<sup>th</sup> Package)**

The round of negotiations has been continued since 2007 (being the fifth round of negotiation) until present. It was consistent with AEC Blueprint (approved by ASEAN Summit in November 2007). Initially, it achieved market access trade in services in specified sectors and achieved goals within the timeframe.

During 2007-2009 the Members achieved the negotiations held at Cha-am District, Phetchaburi Province, Thailand on 26 February 2009 providing a set of commitment embodied in the Protocol to implement the seventh Package of Commitments for market access for trade in services, covering 147 Sectors. Particularly, to set clear goals for market access in services of 4 sectors consisting of Health Sector, Information Technology Sector, Tourism and Travel-related Sector, and Air Transport Sector. However, the Logistics Sector is a priority sector for liberalization before 2015 to meet the objectives of free flow services within the timeline prescribed in the AEC Blueprint.

### **Eighth Package of Commitments (8<sup>th</sup> Package)**

The Members achieved an agreement on 28 October 2010 held in Hanoi, Vietnam, providing a set of commitment embodied in the Protocol to implement the eighth Package of Commitments for market access, lessen restrictions on foreign investment, permit foreigners to hold more proportional shares, particularly in Health Sector, Telecommunication Sector, and Tourism and Travel-related Sector. Foreigners can hold the shares for 70% while they can hold the shares only 51% in other more 80 sectors.

### **Ninth Package of Commitments (9<sup>th</sup> Package)**

This round of negotiations was held during 2012-2013 and achieved goals to sign a set of commitment embodied in the Protocol to implement the ninth Package of Commitments for market access in Naypyidaw, Myanmar during the 46<sup>th</sup> ASEAN Ministerial Economic Meeting and the 12<sup>th</sup> AEC Council Summit.

The ninth Package prescribes Members to submit commitments for market access to 104 service sectors for achieving goal (complete version). If they cannot submit for all sectors, the Members instead subsequently submitted additional service sectors and applied the Protocol to implement the eighth Package of Commitments instead. Thailand had registered the Commitments for market access to 101 sectors and 25 sub-sectors namely

Consultation Services, Accounting Services, Cruise Services, International Cruise Services, Maritime Transportation Services, Maritime Rescue Services, Communication Circle Services, Online Information Services, Product and Terminal Services, and Parking /Parking Areas Services etc..

The Members agreed to prepare a set of commitments specific for Logistics Sector (2013) providing ASEAN Members to invest in business of other Member States for 70% and eliminated all restrictions impeding the liberalization of market access of Logistics Services.

In summary, since the initial round of negotiations, the Members concluded a set of commitments embodied in the Protocol to implement 9 Packages of Commitments for market access to trade in services, and concluded on more 7 Packages in Financial Services and 6 Packages in Air Transport Service. Moreover, the Members signed the ASEAN Agreement on Movement of Natural Persons (MNP) as well as prepared Mutual Recognition Arrangements: (MRAs) to facilitate the movement of professional workers/high-skilled labor.

It is to be noted that during the negotiations for preparing a set of commitment embodied in the Protocol to implement the Initial Package of Commitments for market access, the 44<sup>th</sup> ASEAN Ministerial Economic Summit was hosted on August 2012 in Siem Reap, Cambodia. The meeting agreed to provide ASEAN Trade in Services Agreement (ATISA) instead of AFAS, but the negotiations was not from AFAS and prescribed all Member States to accomplish the 10<sup>th</sup> Package of Commitments for market access to ASEAN trade in services under AFAS.

Moreover, there was a progress of the negotiations on Insurance Sector and Financial Services Sector, mutually drafting framework and timeline for the Insurance Sector and other sub-sectors. The negotiation should be accomplished by 2020, beginning from the General Insurance sector, whereas the progress on Financial Services was reviewed in relation to the Annex on Financial Service under AFAS to be consistent with ATISA, and arranged for improving the List of Commitments on market access for Financial Services.

At the current status (since 2014) the Members had negotiated to achieve the 10<sup>th</sup> Package by lifting up the restrictions on the liberalization of all services as set goal to cover not less than 120 Sectors and to achieve the 11<sup>th</sup> Package through market access to complete 128 Services Sectors.

## **5.2 Relevant sector(s)**

5.2.1 The Ministry of Commerce

5.2.2 The Ministry of Foreign Affairs



## 6. Review on Impact

### 6.1 Opportunities and Threats towards Thai Entrepreneurs

The ASEAN Member States are neighboring countries. They have close border and share some culture. They also have trade and services that contribute to each other or similar goods and services. If they cooperate, they can strengthen their negotiation power which results in an important movement of trade and economy, promoting the extension of trade and investment in Thailand, driving to apply measures which lead to lifting up or lessening burdens for market access, whether tariffs or non-tariffs measures. The Members seek coordination to lessen or eliminate those obstacles, and to facilitate the trade and investment among each other. Therefore, a merger into single market will attract more foreign direct investments to ASEAN including Thailand.

Moreover, the Thai entrepreneurs who are in advantage sectors of Thailand, namely Tourism, Health Service and Information Technology require to adapt themselves and take advantage from lessening trade burdens and investments in order to improve people's living by following the Work Plan on Burdens Lessening on Trade and Investment and Equal Economic Development.

According to the Sectors that are not ready for competitiveness or not the advantage sectors for Thailand, they may be affected by the liberalization of ASEAN. Public sector has put more efforts to negotiate the issues that will protect advantage, while moving towards building readiness of private sector on basic infrastructure, involved rules and regulations, including raising fund to help the affected sectors to prepare and adapt.

### 6.2 Countermeasures for Thailand

The relevant sectors, particularly the Ministry of Commerce has carried out publication and dissemination of information which include opinions gathering, performance, news through radios, televisions and newspapers as well as sharing knowledge with the entrepreneurs, instructors and teachers from many educational institutions to further share knowledge and experiences with others.

The fund-raising was established for the adaptation of the affected Production and Services Sectors (according to the Cabinet Resolution, dated 8 May 2007) in order to provide an assistance to the affected entrepreneurs.

Moreover, the Government has provided remedial measures under the Project on Assisting the Affected Production and Services Sectors which has been carried out by The Ministry of Commerce.