

Chapter 1

Introduction

The Member States of the Association of South East Asian Nations (ASEAN) set themselves the ambitious aim of establishing a region-wide economic community by 2015, and to deepen it in the context of the ASEAN Economic Community (AEC) Blueprint 2025. In striving to achieve such ambitious objectives, there are strong reasons, both internal to ASEAN's own integration process and linked to the region's deepening ties with a dense layer of external economic partners, to believe that service sector reforms – and trade and investment in services more particularly – will occupy a place of choice in the region's policy pantheon.

The region's rapid economic advance and the steady rise in living standards that have been achieved in recent decades have largely been anchored in a growth model assigning to external demand and insertion into global value chains, particularly in manufacturing, dominant roles. Such progress could not have proven possible without marked improvements in the efficiency with which the region's underlying services infrastructure has sustained productivity growth in upstream and downstream industries, from natural resource extraction and agriculture to manufacturing and services themselves. For the most part, however, such efficiency gains appear to have resulted more from unilateral policy benevolence than from concerted collective action initiatives, though negotiated and more institutionalized policy

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approaches have exerted an increasing influence on policy trajectories in recent years, particularly in the wake both of the 1997–98 financial crisis that engulfed several ASEAN Member States and as a more recent response to the growing economic and political ascendancy of China and India as regional powers.

The AEC Blueprint spells out a comprehensive set of treaty-based objectives through which Member States aim to work together in freeing up trade and investment in services. To date, they have pursued such objectives under the ASEAN Framework Agreement on Services (AFAS), an incomplete framework of rules and market opening commitments that is set to be deepened under the proposed development of an ASEAN Trade in Services Agreement (ATISA) as well as through the ASEAN Comprehensive Investment Agreement (ACIA).

This volume takes stock of the experience of ASEAN Member States (AMS) in pursuing trade and investment liberalization in services. It identifies a number of the challenges that the regional grouping can be expected to encounter on the way to realizing the AEC Blueprint 2025 aims. The volume is structured as five chapters. Following a brief introduction in Chapter 1, Chapter 2 situates the role of services and services trade in the ASEAN economic landscape, providing a range of contextual metrics with which to gauge the contribution that services and services trade are making to the region's insertion into regional and global value chains and the overall regulatory and institutional setting in which such efforts proceed. The chapter further investigates the *actual* (as opposed to *negotiated*) degree of openness of service regimes

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maintained in a sample of leading AMS, using a database developed by the World Bank Group.¹

Despite the considerable progress that has been achieved under AFAS, as well as under a growing network of preferential trade and investment agreements entered into by AMS with countries in the immediate neighbourhood and beyond (trends which Chapter 4 probes in detail), the empirical evidence adduced on *applied* regulatory regimes in Chapter 2 depicts a region that paradoxically still ranks among the world's most restrictive in the services field alongside South Asia and the Middle East and North African region, with a policy stance towards services trade that is some 38 per cent more restrictive than the world average. ASEAN is also, alongside Sub-Saharan Africa, the integration process that displays the greatest intra-regional policy variance, suggesting that the various liberalization packages that have been pursued under AFAS have yet to translate into significant region-wide policy convergence.

Chapter 3 explores whether ASEAN displays the attributes of an optimal regulatory convergence area for services, examining a number of factors likely to challenge the pursuit of an integration agenda in policy environment characterized by a continued aversion towards more institutionalized forms of normative convergence and the regional pooling of regulatory sovereignty that a sustained commitment to deep integration generally requires in the services field.

¹ See the World Bank's Services Trade Restrictiveness Index at <http://iresearch.worldbank.org/servicetrade/home.htm>

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As intimated above, Chapter 4 offers readers a detailed reading of the progress achieved to date in the *negotiated* opening of services markets under both AFAS and preferential trade agreements (PTAs) entered into (or currently being negotiated) with third parties both by ASEAN as a whole and by individual AMS. The discussion uncovers a rich and novel trajectory of progressive liberalization under AFAS, with extensive recourse made to an evolving set of negotiating parameters designed explicitly to account – and respond to the political demand – for variable geometry in market opening given prevailing ASEAN-wide income and implementation gaps. ASEAN’s development of various formula-based approaches to market opening stands out among the regional grouping’s most innovative contributions to services rule-making – one that has been increasingly replicated in other PTAs as well as at the World Trade Organization (WTO) level.

Chapter 4 further discusses the need for AMS to revisit and complete a rule-making template in services that has remained incomplete and is likely to be no longer attuned to the exigencies of modern tradecraft in a sector that has experienced significant structural change since the AFAS rule-book was designed and adopted in the early days of the WTO’s General Agreement on Trade in Services. This is presumably what ASEAN Member States aim to achieve under ATISA. Chapter 4 concludes by exploring the iterative relationship between internal (i.e. intra-ASEAN) and external liberalization of services markets, highlighting some of the challenges and risks arising from ASEAN’s negotiation of a multiplicity of potentially overlapping agreements,

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culminating most recently with the Comprehensive and Progressive Trans Pacific Partnership (CPTPP) whose WTO and AFAS+ content is sure to exert an important influence on both the nature and pace of future intra-ASEAN integration in the services field.

Chapter 5 chronicles the richness of the European Union's (EU) journey on services trade and investment, drawing possible lessons for the future of ASEAN institutional design in this area. The chapter retraces the historical origins and jurisprudence-led evolution of the internal market rules governing trade and investment in services among an expanding group of advanced nations, and explores how the experience gained in building the internal market both influenced and paralleled the EU's engagement with the rest of the world in services trade. In particular, Chapter 5 documents how the EU experiment helped to shape the nascent multilateral body of rules governing services trade in the WTO, which was subsequently replicated in a large number of services PTAs, including AFAS.

The depth and range of legal instruments and institutions deployed in the EU in pursuit of market integration objectives in services markets knows no equivalent. Such uniqueness needs to be borne in mind in pondering whether, how and to what extent lessons from the EU's ongoing experiments in market integration are replicable in other regional settings and policy contexts, including within ASEAN.

In most instances, the analysis on offer in Chapter 5 suggests that the EU model is not easily transposable, resting as it does on a degree of pooling of regulatory sovereignty that few regional groupings appear willing to replicate or even

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aspire to. This most certainly is the case for ASEAN. Chapter 5 also recalls that EU advances relate in no small measure to the Union's first-mover advantages, with progress rooted in over six decades of policy- and rule-making experimentation on the internal front and close to three decades of external experimentation. Such a path afforded all key EU stakeholders – Member States, the European Commission, regulatory agencies and the European Court of Justice (ECJ), as well as private actors – considerable space in which to learn by doing, make mistakes, learn from them and iterate an evolving governance regime for services production, trade and investment.

Chapter 6 closes the work by offering a number of concluding remarks.