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ASEAN Economic Community 2015: Capacity-building Imperatives for Services Liberalization

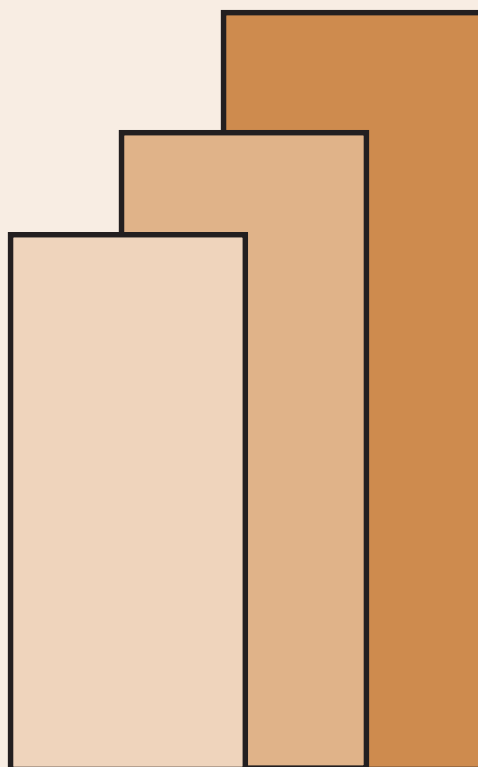
Fernando T. Aldaba and Rafaelita M. Aldaba

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**ASEAN Economic Community 2015
Capacity-building Imperatives for
Services Liberalization**

Fernando T. Aldaba and Rafaelita M. Aldaba

Abstract

The paper aims to assess and determine the capacity building needs required to liberalize trade in services in the Philippines. Through the ASEAN Framework on the Trade in Services (AFAS), the Philippines has committed to liberalize various sectors including air transport, maritime transport, construction, financial services and telecommunications. The country has also signed seven Mutual Recognition Agreements (MRA) in engineering, nursing, architecture, land surveying, medical, dental practice, and accountancy.

The overall progress of services liberalization has been modest compared to trade in goods. Due mainly to Constitutional restrictions, limitations on market access and national treatment are still imposed and foreign service providers continue to be subject to limits on equity participation, participation in the Board of Directors, acquisition of land and practice of professions. Apart from these Constitutional and legal constraints, the other obstacles to services liberalization include high cost of doing business, inadequate infrastructure and governance issues affecting the competitiveness of industries; inefficient coordination among government agencies involved in trade in services; lack of awareness among key stakeholders of the benefits from services reforms; lack of a comprehensive strategy on services liberalization; and lack of capable staff members in key government agencies.

Clear gaps in the capacity of national agencies and regulators to effectively implement the country's services liberalization commitments exist. To address these, the paper suggests capacity building and technical assistance activities covering the crafting of an overall trade in services strategy as part of a more comprehensive trade strategy covering both goods and services; formulating roadmaps for the various services sectors; and enhancing current coordination mechanisms among government agencies and the private/civil society sectors.

Keywords: ASEAN; Services; Capacity Building; Philippines

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Executive Summary

The Services Sector and Previous Liberalization Efforts

The Philippine economy's output structure is characterized by a relatively large services sector. Currently, its average value added share stands at around 48 percent with wholesale and retail trade constituting the bulk of the total. Services has also become the largest provider of employment in recent years contributing about 48% on the average. Average services exports grew by 25% from 2006-2010 with computer and information and other business services becoming our new important export sources. The country is also the fourth largest remitting country in the world with remittances reaching US\$ 18.7 billion in 2010. In terms of FDI inflows, however, the country has lagged behind its neighbors.

Beginning in the late 1980s, the Philippines has pursued unilateral services liberalization. The first wave of reforms started with the opening of the power generation sector. In 2001, the Electric Power Industry Reform Act (EPIRA) restructured the industry by allowing competition in generation and supply and regulating transmission and distribution. Another wave of reforms occurred in the early 1990s with the liberalization of the telecommunications industry. Shipping and air transport were also liberalized along with water, financial and retail trade. In general, these reforms were crucial in introducing competition in these key sectors and in disciplining incumbent monopolies. Deeper reforms are still needed particularly in creating appropriate regulatory framework, strengthening institutions, building supportive infrastructure and enhancing overall policy coordination and coherence.

Through the ASEAN Framework on The Trade in Services (AFAS), the Philippines has committed to liberalize various sectors including air transport, maritime transport, construction, financial services and telecommunications. The country has also signed 7 Mutual Recognition Agreements (MRA) in engineering, nursing, architecture, land surveying, medical, dental practice, and accountancy. However, due mainly to Constitutional restrictions, limitations on market access and national treatment are still imposed and foreign service providers continue to be subject to limits on equity participation, participation in the Board of Directors, acquisition of land and practice of professions. Due to these fundamental legal constraints in the Philippine Constitution, the progress of services liberalization has been modest compared to trade in goods.

Obstacles to Services Liberalisation: Horizontal and Sectoral Constraints

The survey highlighted the Constitutional and legal constraints to the liberalization of services in the Philippines. Article XII, Sections 2,3, 10, 11 and 18 are the primary provisions affecting Mode 3 (foreign investments) in particular. In terms of Mode 4, the Labor Market Test as stipulated in Article 40 of the Labor Code is a prerequisite for legitimate alien employment in the country. The other key constraints and issues identified include:

Competitiveness/Productivity

The private sector's perennial complaint is the high cost of doing business in the country, inadequate infrastructure and governance problems as affecting their competitiveness, efficiency and productivity. To improve the country's overall investment climate, the government needs to immediately focus not only on inadequate infrastructure but also on the country's low institutional quality, corruption and inefficient bureaucracy that continue to constrain doing business in the country.

Institutional/Regulatory Issues

The coordinating system for trade in service is inefficient and characterized by institutional failures such as turf mentality among government agencies, lack of appreciation and capacity for trade research that should inform negotiating positions; unclear delineation of authority; and lack of suitable mechanisms for consultation and feedback on negotiation progress and impact (Pasadilla

2006). One respondent sums it up: “government has not done enough to align positions of various sectors along the national interest”. The threat of regulatory capture extends not only to the functions of regulatory agencies in the executive branch but also to those exercising legislative and judicial functions such as the promulgation of laws and judicial decisions that expand the scope of government.

Communicating to/from the Public Sector

Another major constraints is the lack of awareness and appreciation of the key stakeholders of the benefits that these reforms will bring. Among the bureaucracies involved in the process of liberalization, awareness is very low and for many private groups and organization there is almost “zero knowledge of AFAS, MRAs and MNP” as one respondent described it. The private sector seems to have a negative perception that ASEAN can effectively implement all the agreements it had forged. There is also insufficient mechanism for the government to engage not only the private sector but also civil society groups.

Economic Impact Researches and Studies

Findings from the interviews point out the lack of a comprehensive trade in services liberalization strategy. The main difficulty in crafting such a comprehensive plan is the diversity of sectors involved and the convening of a variety of stakeholders not only among government but also within the private and civil society sectors. For more precise information and empirical based policy-making, there should also be reliable and available statistics and studies on the services sector. Unfortunately, this is another constraint for the country. Aside from this, analytical studies on the services sector especially on sub-sectors are relatively scant.

Human Resources

It has also been observed that key agencies like NEDA and DTI need to recruit more staff members who are capable and competent as the various responsibilities in the process of trade in services liberalization increase from negotiations, technical studies, coordination, to advocacy and information dissemination. They have been constrained by the recent rationalization program of government which prohibit agencies to hire new people. It has also been difficult to maintain good people in government because of their relatively low compensation and vulnerability to being pirated by the private sector and donor organizations.

Financing

The respondents also highlighted the importance of providing resources for various activities deemed important in the process of trade in services liberalization. These include funding for capacity building, coordination and networking and grants for conducting studies and generating consistent and readily available statistics for the government and the private sector. More importantly, financing for “safety nets” i.e. to support alternatives for potential losers in the transition towards liberalization. For long run consideration, financing for research and development (R&D) may also be needed to promote innovation as private sector funds are usually insufficient in this area. Much work still needs to be done to reach adequate financing for these activities.

Sectoral Issues and Constraints

For Wholesale and Retail Trade, foreign ownership is still restricted in small enterprises. It was also only recently that the Supreme Court (SC) upheld the constitutionality of the Retail Trade Liberalization Act of 2000 or Republic Act No. 8762, a decade after it was questioned by lawmakers as supposedly being anti-Filipino. In terms of Tourism, the opening up of air transport is still a key concern even if recently, President Benigno Aquino III has signed two Executive Orders that will liberalize air transport services in areas outside Metro-Manila as the implementing rules are still being drafted. In terms of Medical Tourism, a key ingredient for the success of this sector is openness towards medical professionals in the target markets to practice in the Philippines. In Legal Services, the Philippines only allows citizens who are residents and who acquired legal education in the country to practice the legal profession. For Healthcare in general, there has been rapid migration of doctors and nurse in recent years and fears of the local

healthcare system collapsing. There are also fears in terms of the development of a 2-level health system which may crowd out local patients & divert resources to service foreigners as the health care system is opened up.

The Need for Capacity Building and Technical Assistance

It is evident from the above that there are clear gaps in the capacity of national agencies and regulators to effectively implement the country's services liberalization commitments. The different agencies do not have the financial resources and the technical capability to conduct in-house research to prepare comprehensive strategies, cost-benefit studies and adjustment policies on liberalization. Apart from institution-building, capacity strengthening is needed in trade research and strategy formulation; information, awareness and advocacy campaigns; as well as in basic services trade courses designed for regulators and lawmakers as well as for civil society groups. The following lists the various capacity building and technical assistance needed to facilitate trade in services liberalization in the country

- An overall trade in services strategy as part of a more comprehensive trade strategy
- Roadmaps for the various sectors and sub-sectors
- Enhancing current coordination mechanisms among government agencies and between government agencies and the private/civil society sectors especially in terms of consultations toward the negotiation processes and stances
- In depth studies on the costs and benefits of liberalization on the sectors and sub-sectors
- Information dissemination and awareness raising for key stakeholders in every sector and sub-sector
- More systematic data collection and management for the services sector
- Building constituencies that will promote liberalization reforms in the various sectors and sub-sectors
- The need to further strengthen and enlighten regulatory agencies
- Advocacy campaigns highlighting the benefits that will ensue for the country upon liberalization
- Assistance for adjustments during transition towards liberalization
- Improvements in the competitiveness and efficiency of the private sector
- Capacity building and training programs for negotiators
- Market linkages and technology transfer for the private sector

Recommendations

Trade in services is an important component of the country's development path. Developing an efficient services sector is also crucial given its inherent linkages with manufacturing and agriculture. The development of a competitive services sector would entail, among other necessary conditions, the removal of policy barriers. Our ASEAN commitments to services liberalization in 2015 could serve as an external pressure that could facilitate the implementation of necessary reforms to strengthen the sector.

Aligned to the approaches of regional and multilateral liberalization in services is a sustained process of domestic unilateral policy reforms and regulatory changes aimed at expansion and innovation of key services. To achieve this however, government must effectively partner with the private sector to formulate an over-all strategy for developing Philippine services and to address the numerous constraints to help realize the substantial benefits and opportunities possible from liberalization. At the ASEAN level, AMS and the Secretariat must work together to ensure among the community serious acceptance of achieving the AEC.

Priority Areas of Capacity Building and Technical Assistance

- Crafting a comprehensive services sector development strategy
- Enhancing the coordinating mechanism among government agencies in implementing services sector strategy
- Enhancing the collection of statistics and conduct of researches and studies on the services sector; strengthening a consortium of research institutions and think tank researching on

the services sector e.g. possibly through the Philippine APEC Study Centre Network (PASCN)

- Building a mechanism for continuous engagement between government and the private and civil society sectors e.g. reviving the Philippine Services Coalition
- Helping build capacity and competitiveness of the private sector
- An ASEAN level information dissemination campaign to make stakeholders aware of ASEAN agreements and secretariat activities in monitoring agreements and in assisting AMS in the process of liberalization and integration

Delivery Modes for Capacity Building and Technical Assistance

A coordinated mechanism for selection of capacity building programs and beneficiaries

If possible, government agencies involved in trade-related issues and matters should establish a special mechanism to coordinate capacity building and:

- determine actual needs of various agencies and their key personnel;
- ascertain delivery mode - available workshops, policy dialogues, e-learning or training programs;
- coordinate with donors interested in providing capacity building programs;
- select and match key personnel to these programs; and
- if programs are not available, it may tap training and academic institutions to design customized programs in partnership with donors.

More effective needs analysis and post-capacity building monitoring and evaluation

Proper needs analysis should be undertaken for each key agency. Thus, the program should be clearly targeted and capacity building program adequately evaluated by the participants or institution concerned.

A responsible agency: sense of ownership and ability to sustain efforts for capacity building

For capacity building programs to be sustainable specific agencies must take responsibility for continuous implementation. Programs must be initiated by the agency receiving the technical assistance and there should be a sense of ownership for the project.

Importance of research cum policy dialogues and forums

More in-depth research using quality data is needed on services liberalization. Policy proposals must be thoroughly examined and dissected in various forums attended by key stakeholders.

Enhancing and/or building institutions

Sometimes enhancing/building an institution or a coordinating mechanism is needed rather than providing specific capacity building programs. For example, financial support to enhance a research institution (grants for research studies) could be preferable than providing specific training programs for individuals. Also, support to institutionalize a dialogue mechanism such as the Philippine Services Coalition may provide an important platform for advocacy, networking and even future capacity building programs.

Non-conventional Forms: E-learning, Advisory Services, Mentoring, Market Linkage and Technology Transfer

E-learning uses the internet to deliver training programs. Advisory services would cover concept note, memos, policy options but with regard to mentoring, a resource person/expert would guide & coach. Meanwhile, assistance to the private sector in terms of developing actual market linkages technology transfer and providing market studies and information may develop new trade possibilities.

ASEAN Economic Community 2015 Capacity Building Imperatives For Services Liberalisation in the Philippines¹

Fernando T. Aldaba and Rafaelita M. Aldaba²

I. Introduction

Recognizing the importance of the services sector in the ASEAN economies, the ASEAN Economic Ministers (AEM) and ASEAN country officials embarked on a services liberalization project by signing the ASEAN Framework Agreement in Services (AFAS) in December 1995 in Bangkok. Liberalisation of trade in services through the AFAS is critical to the formation of the ASEAN Economic Community (AEC). This will necessitate a critical mass of stakeholders of public officials, private and civil society sector leaders aware of the significant economic gains to individual countries from liberalisation. Member countries also need to adopt appropriate regulatory environment (particularly in less developed ASEAN Member States), strong institutions, supportive infrastructure, and enhanced policy coordination and coherence. A further requirement is effective capacity building among ASEAN members across a broad and diverse range of relevant areas to realise this goal.

The paper aims to assess and determine the capacity building needs required to liberalise trade in services in the Philippines. This will be done from a systemic, institutional and sectoral perspective, highlighting selected sectors and cross-cutting and/or economy-wide issues. The paper will propose activities and methods of delivery to address the capacity building needs according to identified “binding constraints” to key services (and associated investment) liberalisation. The key specific objectives of the paper are: (i) to identify and examine capacity obstacles or bottlenecks to promoting a detailed awareness and understanding of the economic benefits of services (and investment) liberalisation among stakeholders; (ii) to identify the associated capacity building needs; and (iii) develop measures and approaches on how these can most effectively be met and delivered.

A survey interview of major stakeholders from the government, private sector, and academe was carried out in order to gather information on their view, opinions, and experiences on the impact of previous services liberalization, identify issues and constraints and suggest possible capacity-building activities to facilitate the country's services commitments under the AEC. The major respondents included former government officials and senior-level representatives from the country's planning, trade and industry, foreign affairs, and labor and employment departments as well as research think tanks and exporters' group, chamber of commerce, as well as researchers and other members of the academic community.

The report is divided into six sections. Section I analyzes the trends in the services sector's growth and structure. Section II discusses the country's foreign direct investment policy along with FDI flows and composition. Section III reviews the country's services liberalization policy with focus on our ASEAN services commitments. Section IV examines the current institutional arrangement; assesses the horizontal issues affecting liberalization such as human resources, technology, competition, financing, and private-sector-government dialogues and discusses sector specific issues in sectors such as wholesale and retail, tourism, consulting/legal services, telecommunications, and health. Based on these results, Section V identifies the capacity gaps and technical assistance needs and suggests possible measures on how these could be

¹ This country study is part of an ASEAN wide “Services Diagnostic and Needs Assessment Study” (SDNAS) of the ASEAN Australia Development Cooperation Program II (AADCP) for the ASEAN Secretariat.

² Professor, Ateneo de Manila University and Senior Fellow, Philippine Institute for Development Studies (PIDS), respectively.

addressed. The final section summarizes the highlights of the analysis and presents the paper's recommendations.

II. The Services Sector in the Philippine Economy³

Since the 1980s, the services sector has been a major source of economic growth for the Philippines. On the average, the growth rate of the sector increased continuously particularly in the last two decades as its growth increased from 3.6% in the 1990s to 5.7% in the 2000s. Broad growth took place in the sector as most of its sub-sectors registered consistently rising growth rates during the same periods. In contrast, both agriculture and industry, experienced sluggish growth in the 1980s and 1990s with modest gains were registered in the current period (see Table 1).

Table 1: Average Growth Rates by Sector (in %, at constant 1985 prices)

Year	1951-60	1961-70	1971-80	1981-90	1991-00	2001-09
Gross Domestic Product	6.2	4.8	5.7	1.7	3.0	4.4
1. Agriculture, Fishery, Forestry	4.8	4.2	3.9	1.1	1.8	3.39
Agriculture industry	4.8	1.0	5.7	2.0	2.2	3.41
Forestry		2.6	-3.6	-9.1	-16.7	2.96
2. Industry Sector	7.1	5.5	7.6	0.3	3.0	3.19
Mining & Quarrying	8.7	7.1	6.1	1.9	-0.2	12.90
Manufacturing	9.4	5.7	5.9	0.9	2.5	3.15
Construction	-0.6	4.2	14.1	-3.1	4.3	1.57
Electricity, Gas and Water	4.3	5.4	11.6	4.1	5.6	3.60
3. Service Sector	6.7	4.7	5.2	3.3	3.6	5.71
Transport, Comm'n & Storage	7.6	5.6	7.2	3.4	5.1	7.29
Trade		4.9	5.7	3.0	3.5	5.33
Finance*	6.4*	-16.5	8.7	2.2	4.4	7.55
Dwellings & Real Estate		1.4	1.6	2.4	1.9	3.59
Private Services	7.2	-1.8	5.0	5.0	3.6	6.69
Government Services		7.6	4.3	3.6	2.9	2.93

Source of basic data: National Accounts of the Philippines, National Statistical Coordination Board

*figure refers to combined finance and trade sectors

Within the services sector, the transportation, communication, and storage as well as finance and private services sub-sectors have registered continuously rising growth rates since the 1980s. In the current period, finance posted the highest average growth rate of 7.5 percent. Transportation, communication, and storage was next with an average growth of 7.3 percent. This was followed by private services with an average growth rate of approximately 6.7 percent.

It is also evident from Table 2 that the Philippine economy's output structure is characterized by a relatively large services sector. The share of the services sector's share continued to increase from an average of 37 percent during the 1970s to 40.4 percent in the 1980s, 42.4 percent in the 1990s and to almost 48 percent in the most recent period. Trade constituted the bulk of the services sector followed by transportation, communication, and storage and private services sub-sectors. Since the 1980s, all services sub-sectors except for government services experienced rising shares. Meanwhile, both agriculture and manufacturing experienced a declining trend in their value added shares.

³ Portions of this section are derived from the paper of Rafaelita M. Aldaba entitled Philippine Trade Liberalization and Industrialization, Twenty years presented in the GEP Workshop held on October 14, 2010 at the University of Nottingham Malaysia Campus.

Table 2: Value Added Structure by Major Economic Sector

Year	1951-60	1961-70	1971-80	1981-90	1991-00	2001-09
<i>Agriculture, Fishery, Forestry</i>	32.5	29.7	25.6	23.9	20.8	19.1
Agriculture industry	32.5	26.5	20.7	22.1	20.5	19.1
Forestry		8.2	4.9	1.8	0.3	0.1
Industry Sector	30.6	32.6	38.3	38.0	34.1	33.0
<i>Mining & Quarrying</i>	1.2	1.1	1.4	1.7	1.3	1.6
Manufacturing	22.3	25.6	28.2	26.3	24.3	23.8
Construction	6.1	5.0	7.1	7.3	5.5	4.4
Electricity, Gas and Water	1.1	1.0	1.7	2.7	3.0	3.2
<i>Service Sector</i>	38.3	38.4	36.6	40.4	42.4	47.9
Transportation, Communication & Storage	3.7	4.0	4.7	5.5	6.0	8.4
Trade		13.0	12.8	14.4	15.0	16.7
Finance*	24.6*	15.8	3.4	3.6	4.4	5.4
Private Services	9.9	8.3	5.1	6.6	6.8	8.2
Government Services		4.6	4.5	4.8	5.0	4.5

Source of basic data: National Accounts of the Philippines, National Statistical Coordination Board

*figure refers to combined finance and trade sectors

In terms of employment contribution, the services sector has become the largest provider of employment in the most recent period (Table 3). The share of the labor force employed in the sector consistently increased, from around 32 percent in the mid-1970s to about 48 percent in 2001-2009. The share of industry to total employment has been almost stagnant at 15% from the mid 1970s to the most recent period under review.

Table 3: Structure of Employment (in percent)

Major Sector	1975-78	1980-89	1990-99	2000-09
Agriculture, Fishery and Forestry	52.83	49.60	43.16	36.58
Industry	15.23	14.49	15.98	15.20
Mining and Quarrying	0.46	0.66	0.59	0.39
Manufacturing	11.29	9.93	10.01	9.24
Electricity, Gas and Water	0.35	0.36	0.44	0.39
Construction	3.13	3.54	4.94	5.19
Services	31.87	35.90	40.94	48.21
Wholesale and Retail Trade	10.32	12.55	14.54	18.40
Transportation, Storage & Communication	4.08	4.45	5.80	7.47
Financing, Insurance, Real Estate & Business Services	4.55	1.79	2.18	3.34
Community, Social & Personal Services	14.05	17.11	18.42	19.00
Industry not Elsewhere Classified	0.49	0.02	0.05	0.00

Sources: Yearbook of Labor Statistics (1980-2000) and Current Labor Statistics (2001-2002), Bureau of Labor and Employment Statistics, Department of Labor and Employment and Employed Persons by Major Industry Group, National Statistics Office Labor Force Survey (1970, 1975-1976, 1977-1978, 2003-2009).

Based on the Philippine balance of payments accounts, services average exports growth increased substantially from 5% during the years 2000-2005 to 25% during the 2006-2010 period. Net services trade balance shifted from continuous deficits during the first half of the 2000s to surpluses during the last five years. As Table 4 shows, a change in the structure of services exports is evident as exports of travel, transportation, and communication services declined in importance towards increases in the average shares of computer and information and other business services. Business process outsourcing, an important source of services export receipts, is under other business services.

Table 4: Trade in Services (in million US dollars)

Indicator/Year	2000	2005	2006	2007	2008	2009	2010	2000-2005	2006-2010
Services	-1870	-1340	137	2249	1438	2114	1946	-1873	1577
EXPORTS	3377	4525	6444	9766	10194	11014	13243	5%*	25%*
IMPORTS	5247	5865	6307	7517	8756	8900	11297	2%*	14%*
Transportation	-1588	-2163	2301	2521	-2887	-2508	-3578		
Exports	464	962	1151	1323	1368	1153	1351	22%	13%
Imports	2052	3125	3452	3844	4255	3661	4929		
Travel	514	986	2269	3270	2175	-368	-606		
Exports	2156	2265	3501	4933	4388	2330	2783	53%	38%
Imports	1642	1279	1232	1663	2213	2698	3389		
Communication	121	407	477	418	257	231	151		
Exports	182	522	575	517	404	354	305	11%	5%
Imports	61	115	98	99	147	123	154		
Construction	-27	59	54	92	57	58	100		
Exports	97	66	69	113	90	78	121	2%	1%
Imports	124	7	15	21	33	20	21		
Insurance	-143	-186	-209	-229	-241	-176	-234		
Exports	12	17	21	22	18	59	77	0	0
Imports	155	203	230	251	259	235	311		
Financial	47	-40	-24	-123	-23	-55	-36		
Exports	80	53	101	87	59	70	38	1%	1%
Imports	33	93	125	210	82	125	74		
Computer & Information	-23	27	28	243	320	1657	2042		
Exports	76	89	95	305	400	1748	2151	1%	8%
Imports	99	62	67	62	80	91	109		
Royalties & License Fees	-190	-259	-343	-380	-382	-419	-441		
Exports	7	6	6	5		2	4	0	0
Imports	197	265	349	385	382	421	445		
Other Business Services	-495	-114	263	1605	2376	3923	4797		
Exports	285	525	898	2439	3446	5186	6372	9%	34%
Imports	780	639	635	834	1070	1263	1575		
Personal, Cultural & Recreational Services	-14	11	19		-5	-8	-18		
Exports	18	20	27	22	21	34	41	0	0
Imports	32	9	8	22	26	42	59		
Government Services	-72	-68	-96	-126	-209	-221	-231		
Exports						0	0	0	0
Imports	72	68	96	126	209	221	231		

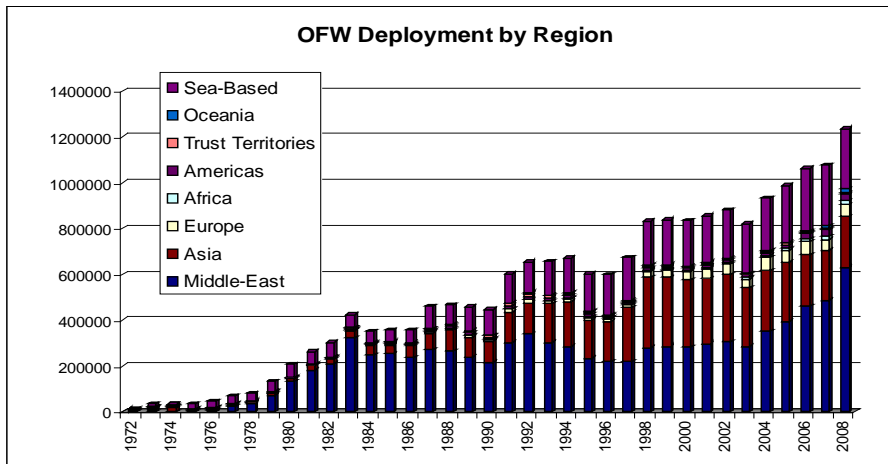
Source: PIDS and Bangko Sentral ng Pilipinas (Balance of Payments Accounts).

Note: numbers with * represent % change, otherwise these refer to average shares.

Overseas workers' remittances are another major source of services export receipts. After China, India, and Mexico, the Philippines is the fourth largest remitting country in the world. From 2006 to 2008, the deployment of overseas workers breached the 1.2 million mark (see Figure 1). A recent estimate by the Commission on Filipinos Overseas (CFO) on the stock of overseas Filipinos shows

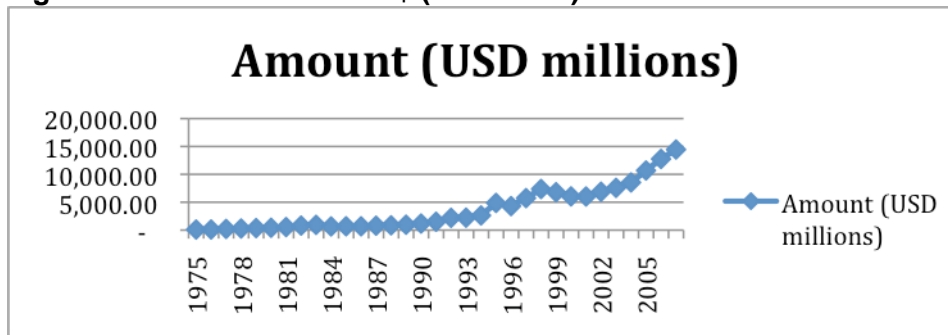
that around 8.7 million are working abroad. About 47.36% or 4.13 million are temporary workers while permanent residents account for 42.31% or 3.69 million. Irregular⁴ workers meanwhile comprise 10.32% of the total or 0.9 million. These workers are scattered across all continents. Remittances have also been rising rapidly from 1975 and increased to more than US\$ 14 billion in 2007 (see Figure 2). More recently, remittances have reached US\$ 16.4 billion in 2008, US\$ 17.3 billion in 2009 and US\$ 18.7 billion in 2010. Note that remittances records do not distinguish between remittances from Filipino workers abroad and emigrants.

Figure 1: Overseas Filipino Workers (OFW) Deployment by Destination



Source: Philippine Migration and Development Statistical Almanac (2009)

Figure 2: Remittances in US\$ (1975-2007)



Source: Philippine Migration and Development Statistical Almanac (2009)

III. Foreign Direct Investment Policy Reforms, Performance and Remaining Barriers

Beginning in the 1990s, Philippine foreign direct investment policy has changed considerably from a restrictive and complicated regulatory system towards a more open one. In June 1991, the country accelerated the FDI liberalization process through the legislation of Republic Act 7042 or the Foreign Investment Act (FIA). The FIA liberalized the existing regulations by allowing foreign equity participation up to 100% in all areas not specified in the Foreign Investment Negative List (or FINL, which originally consisted of three component lists: A, B, and C)⁵. Prior to this, 100% eligibility for foreign investment was subject to the approval of the Board of Investments. The FIA

⁴ These are workers without valid visas or those who entered host countries illegally

⁵List A: consists of areas reserved for Filipino nationals by virtue of the Constitution or specific legislations like mass media, cooperatives or small-scale mining.

List B: consists of areas reserved for Filipino nationals by virtue of defense, risk to health and moral, and protection of small and medium scale industries.

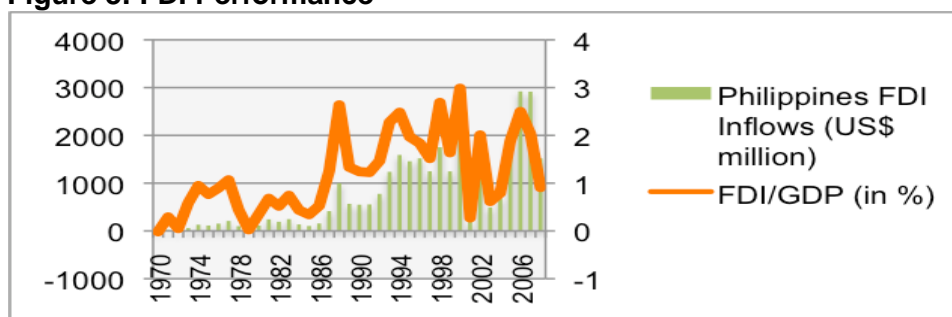
List C: consists of areas in which there already exists an adequate number of establishments to serve the needs of the economy and further foreign investments are no longer necessary.

was expected to provide transparency by disclosing in advance, through the FINL, the areas where foreign investment is allowed or restricted. It also reduced the bureaucratic discretion arising from the need to obtain prior government approval whenever foreign participation exceeded 40%.

Over time, the negative list has been reduced significantly. In March 1996, RA 7042 was amended through the legislation of RA 8179 which further liberalized foreign investments allowing greater foreign participation in areas that were previously restricted. This abolished List C which limited foreign ownership in “adequately served” sectors. Currently, the FIA has two component lists (A and B) covering sectors where foreign investment is restricted below 100% under the Constitution or those with restrictions mandated under various laws.

While the investment policy reforms and opening up of more sectors to foreign investors in the past decade resulted in improvements in FDI inflows to the country, on the overall, FDI inflows to the Philippines have been limited; hence the country’s performance has lagged behind its neighbors in Southeast Asia. Inflows from the 1970s to the 1980s were small and erratic, due mainly to the political and economic instability that characterized the country in these decades (see Figure 3). As a result, it failed to take advantage of the rapid growth of Japanese FDI in the mid-1980s following the 1985 Plaza Accord. In the 1990s, overall FDI inflows improved substantially as well as in the 2000s. However, competition has become much fiercer especially given China’s growing share. FDI as percentage of gross domestic product (GDP) reached almost 3% in 2000, and about 2.5% in 2007, however, the ratio dropped to 0.9% in 2008 primarily due to the global economic crisis.

Figure 3: FDI Performance

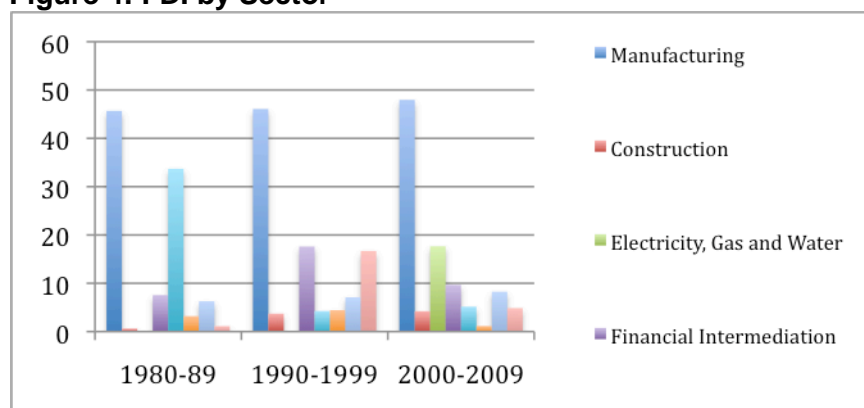


Source of basic data: Bangko Sentral ng Pilipinas

Figure 4 presents a breakdown of FDI⁶ by sector for the three periods 1980-1989, 1990-1999, and 2000-2009. As Figure 3 shows, manufacturing FDI dominated total FDI inflows with its share of 46 percent during the 1980s and the 1990s. This increased to about 48 percent in the 2000s. The share of the financial sector rose from 8 percent in the 1980s to 18 percent in the 1990s but declined to about 10 percent in the recent period 2000-2009. Transport, storage and communication sector also witnessed an increase in its share from 1 percent to 17 percent between the 1980s and the 1990s, but this declined to 5 percent in the current period. The share of mining and quarrying was reduced from 34 percent in the 1980s to 4 percent in the 1990s. This went up slightly to 5 percent during the 2000s. Wholesale and retail witnessed a slight increase in share from 3 percent to 4 percent between the 1980s and the 1990s, but this was reduced to 1 percent in the 2000s. Electricity, gas and water registered a share of 13 percent in the most recent period. Construction share also rose from less than 1 percent in the 1980s to 4 percent during the 1990s and the 2000s. Real estate, renting and business services’ share went up from 6 percent in the 1980s to 7 percent in the 1990s and to 8 percent in the 2000s.

⁶ The total FDI does not include “Others, Not Elsewhere Specified” defined as non-residents’ equity capital investments in non-banks sourced from the cross-border transactions survey and in local banks, no sectoral breakdown is available.

Figure 4: FDI by Sector



Source of basic data: Bangko Sentral ng Pilipinas. (Note that this does not include “Others not elsewhere classified”).

Table 5: Remaining FDI Barriers

List A	Sector
No foreign Equity	1. Mass Media except recording 2. Practice of all professions 3. Retail trade enterprises with paid-up capital of less than US\$2,500,000 4. Cooperatives 5. Private Security 6. Small-scale Mining 7. Utilization of Marine Resources in archipelagic waters, territorial sea, and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons 8. Ownership, operation and management of cockpits 9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons 10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines 11. Manufacture of firecrackers and other pyrotechnic devices
Up to 20% Foreign equity	12. Private radio communications network
Up to 25% foreign equity	13. Private recruitment, whether for local or overseas employment 14. Contracts for the construction and repair of locally-funded public works 15. Contracts for the construction of defense-related structures
Up to 30%	16. Advertising
Up to 40%	17. Exploration, development and utilization of natural resources 18. Ownership of private lands 19. Operation and management of public utilities 20. Ownership/establishment and administration of educational institutions 21. Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products 22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation 23. Project Proponent and Facility Operator of a BOT project requiring a public utilities franchise 24. Operation of deep sea commercial fishing vessels 25. Adjustment Companies 26. Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation
Up to 60%	27. Financing companies regulated by the Securities and Exchange Commission (SEC) 28. Investment houses regulated by the SEC

List B	
Up to 40%	1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance: 2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance: 3. Manufacture and distribution of dangerous drugs 4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks posed to public health and morals 5. All forms of gambling, except those covered by investment agreements with PAGCOR and operating within PEZA zones 6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 7. Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in- equity capital of less than the equivalent of US\$100,000

Source: Executive Order 858 (8th Regular Foreign Investment Negative List, Feb. 5, 2010)

While substantial progress has been made in liberalizing the country's FDI policy, certain significant barriers to FDI entry still remain (see Table 5). The current 8th Foreign Investment Negative List which was issued in February 2010 did not differ substantially from the previous List (7th issued in December 2006). The sectors with foreign ownership restriction include mass media (no foreign equity), land ownership (foreign ownership is limited to 40%), natural resources, firms that supply to government-owned corporations or agencies (40%), public utilities (40%), and Build-Operate-Transfer (BOT) projects (40%). Constitutional change is necessary to remove these barriers.

IV. Liberalization in the Services Sector

A. Unilateral Approach

Unlike goods, services are generally intangible and their imports do not have tariffs. Instead, service industries are characterized by government-imposed restrictions such as the regulation of both market access and the nature and scope of operations of service providers. Considerations relating to consumer protection, high fixed (sunk) costs (increasing returns to scale), prudential supervision, and regulatory oversight, often induce governments to put in place measures that regulate the cross-border trade in services, require domestic establishment by foreign providers in certain service sectors, or reserve activities for government-owned or controlled entities (Hoekman 2006).

In general, barriers to trade in services are classified in terms of whether they restrict market access in general (e.g., a policy that limits the number of service providers) or specifically affect foreign services suppliers by refusing them national treatment (e.g., a policy that limits foreign equity ownership). Regulatory restrictions can reduce competition and efficiency in the services sector. Entry barriers reduce competition and allow incumbent firms to engage in rent-seeking behavior.

In the Philippines, the first wave of unilateral reforms in the services sector took place in 1987 with the opening up of generation under the power sector. This abolished the monopoly of the government-owned National Power Corporation by allowing private sector to invest and participate in augmenting generation capacity. In 1990, the first build-operate-transfer (BOT) in Asia was passed. In 2001, the Electric Power Industry Reform Act (EPIRA) was legislated. It restructured the industry by allowing competition in generation and supply and regulating transmission and distribution. Another wave of reforms occurred in the early 1990s with the liberalization of the telecommunications industry which was dominated by a private monopoly for more than half a century. The shipping industry was also liberalized with the deregulation of first and second class

passage rates. Subsequently, surcharges for insurance premiums were abolished while freight rates for cargoes were deregulated.

In the mid-1990s, the air transport industry was also deregulated thus challenging the supremacy of the country's only designated flag carrier, Philippine Airlines. Restrictions on domestic routes and frequencies and government controls on rates and charges were eliminated. In the late 1990s, the water sector was privatized through competitive bidding won by two firms which were granted concessions to bill and collect water and sewerage services in two separate areas for 25 years.

As early as the 1980s, the financial sector was undergoing reforms through the liberalization of interest rates and the easing of restrictions on the operations of financial institutions. In the mid-1990s, Republic Act 7721 (1994 Foreign Bank Liberalization) allowed the establishment of ten new foreign banks in the Philippines. With the legislation of Republic Act 8791 (General Banking Law) in 2000, a seven-year window was provided allowing foreign banks to own up to 100 percent of one locally-incorporated commercial or thrift bank (with no obligation to divest later).

In March 2000, Republic Act 8762 (Retail Trade Liberalization Law) allowed foreign investors to enter the retail business and 100% ownership as long as they put up a minimum of US\$7.5 million equity⁷. A lower minimum capitalization threshold of US\$250,000 is allowed to foreigners seeking full ownership of firms engaged in high-end or luxury products. R.A. 8762 also allowed foreign companies to engage in rice and corn trade.

In general, these reforms were crucial in introducing competition in these sectors as well as in disciplining incumbent monopolies. In assessing the impact of financial reforms on competition in the banking sector, Pasadilla and Milo (2004) found that firms were behaving competitively with the entry of foreign and domestic banks increasing banking competition. Another study by Manlangit and Lamberte (2004) found that small banks seemed to be more profit- and cost- efficient than large banks. They also found that foreign banks were more profit and cost efficient than domestic banks with the gap between domestic and foreign banks declining after the reforms.

The initial efforts to liberalize the airline industry allowed the entry of new airlines in the industry which was dominated by only one airline, Philippine Airlines, for 22 years. Austria (2002) noted that with greater competition on the major routes, domestic travel has grown rapidly after deregulation. Competition arising from promotional and discount fares has continued to open the air industry to travelers who could not afford to travel by air prior to deregulation. Competition has intensified resulting in lower airfare, improvement in the quality of service and overall efficiency in the industry.

In 2003, the Strong Republic Nautical Highway (SRNH) program was inaugurated through Executive Order (EO) 170 which aimed to improve existing ports to facilitate a road-roll-on, roll-off (Ro-Ro) terminal system (RRTS). Combining roads, ports and shipping routes to create a highway through the sea using RORO ferry terminals and vessels, the SRNH would link the islands of Luzon, Visayas and Mindanao. Along with other legislations, the RRTS would be integrated into the national highway system. The Ro-Ro facilities have reduced handling time and stevedoring costs leading to faster transport of goods. The development of the RRTS enabled firms to cut down their transportation and logistics costs with savings of up to 50% compared to traditional liner shipping costs (Basilio 2008).

Generally, in sectors such as telecommunications, power, ports, and shipping; the absence of clear rules and appropriate regulatory framework as well as efficient regulators have limited the impact of reforms on competition. In telecommunications, interconnection still remains a regulatory challenge and strengthening the National Telecommunications Commission as an independent regulatory body would be crucial. In air transport, reforms need to be deepened through a complete open skies policy. In ports, a regulatory framework that would separate Philippine Ports

⁷ Singapore and Hong Kong have no minimum capital requirement while Thailand sets it at US\$250,000.

Authority's regulatory responsibilities from its development and operations functions. In shipping, strengthening MARINA is necessary so that it can effectively implement the competitive reforms provided by the law. In both ports and shipping, institution building is important to promote greater competition and effective regulation. This would entail developing new skills, institutional capabilities and practices in regulating unfair or anticompetitive practices.

Moreover, there are domestic legal barriers to entry and investment in these sectors that must be addressed particularly constitutional restrictions limiting foreign equity participation to 40%. Table 6 summarizes government restrictions and regulations affecting the services sectors. Cabotage, for instance, prevents foreign firms from competing with domestic shipping firms in providing shipping services since they are only allowed to directly transport passengers or cargo to designated international ports like Manila International Container Port, Manila South Harbor, Batangas, Limay and Davao. Foreigners are also not allowed to own land but can lease for a maximum of 75 years.

Table 6: Government Restrictions and Regulations in the Services Sector

Sector	Government Restrictions/Regulations
Wholesale and retail trade	<ul style="list-style-type: none"> -Foreigners are not allowed to own land but can lease for a maximum of 75 years. -Foreign investment is not allowed in certain categories such as retail trade enterprises with paid-up capital of less than US\$2.5 million or less than \$250,000 or retailers of luxury goods. Full foreign participation is allowed for retail trade enterprises with paid-up capital above these levels. -Foreign investors are also required to comply with performance requirements: the Retail Trade Liberalization Act 2000 requires foreign retailers, for ten years after the bill's enactment, to source at least 30% (for retail enterprises capitalized at no less than US\$2.5 million) or 10% (for those specializing in luxury goods) of their inventory, by value, in the Philippines. -The Philippine Constitution limits foreign ownership to 40% -Foreigners are restricted from serving as executives or managers of telecommunications companies -The proportion of foreign directors in telecommunications companies may not exceed that of the foreign component of a company's capital stock -Foreign equity in private radio communications networks is constitutionally limited to 20%
Telecommunications	<ul style="list-style-type: none"> -Operation of cable television and other forms of broadcasting and media are also reserved for Philippine nationals.
Maritime	<ul style="list-style-type: none"> -Foreign equity limits to 40%
Air Transport	<ul style="list-style-type: none"> -Monopolistic structure of public ports controlled by the Philippine Ports Authority
Road	<ul style="list-style-type: none"> -Foreign equity limits to 40%
Electricity	<ul style="list-style-type: none"> -Foreign equity limits to 40%
Water	<ul style="list-style-type: none"> -Foreign equity limits to 40%
Health services	<ul style="list-style-type: none"> -Foreign equity ownership limited to 40% for hospitals -Full foreign ownership allowed for HMOs
Postal services	<ul style="list-style-type: none"> -Government Monopoly

The country's liberalization experience has highlighted the importance of unilateral reform initiatives in promoting domestic policies that foster domestic efficiency. This is seen as a necessary condition in preparation for the country's participation in regional and multilateral agreements. With the collapse of the Doha round and the impasse in most WTO initiatives, the Philippines was compelled to be part of these regional and bilateral free trade agreements (FTAs) especially those involving the ASEAN. The government considered regional and bilateral FTAs as

essential building blocks. As it participates in regional economic integration, there are many challenges confronting the country. These include not only improving industry competitiveness and attracting investment flows but also addressing binding constraints to services trade and investment liberalization as well as pursuing large infrastructure investments to promote an efficient transportation network and telecommunications systems and reduce utilities cost particularly power.

B. Regional Approach

Since 1997, ASEAN has emphasized the need to liberalize services trade through the adoption of the ASEAN Framework on The Trade in Services (AFAS). The AFAS aims to substantially eliminate trade restrictions in services among member countries and promote efficiency and competitiveness of ASEAN service suppliers. Aside from the main obligations of market access and national treatment, AFAS establishes general guidelines for mutual recognition, denial of benefits, dispute settlement, institutional mechanism and other areas of cooperation in the services sector. Similar to the GATS, the AFAS adopts a “positive list or bottom-up” approach in service trade liberalization such that only those sectors which they are ready to liberalize are listed by Member Countries. For each sector or sub-sector on the positive list, commitments are made for market access and national treatment across each of the 4 modes⁸ of supply. Trade in services liberalization under AFAS is directed towards achieving commitments beyond Member Countries’ commitments under GATS. Presently, ASEAN has concluded eight Packages of Commitments.

Table 7 lists the various sectors included in the commitments that the Philippines made from the 1997 first package up to the 2009 seventh package. The specific sector commitments are listed in Appendix 1 of this report. There has been an expansion in the services sectors covered particularly from 2006 to 2009. With only two sectors covered in its maiden package in 1997 i.e. Business Services and Tourism, the Philippines has expanded its offered sectors starting the second package in 1998 to include air transport, maritime transport, construction, financial services and telecommunications. It further widened sector coverage in the fifth package of 2006 which now included all transport and auxiliary services, computer services, distribution, rental and leasing, environmental, health related and social services. The sixth package added research and development, real estate, services related to energy and power generation, audiovisual services, recreational, cultural and sporting services. The seventh package of 2009 added more sub-sectors plus religious services. However, upon examining the seventh package, many of the sub-sectors are still unbound in terms of modes 3 and 4. Furthermore, there are limitations on market access and national treatment for many of the sub-sectors especially for modes 3 and 4.

In the seventh package, under market access and national treatment, upon recommendation of the concerned Professional Regulatory Board (PRB), the PRC may approve registration of and authorise 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,

- a) 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 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;
- b) That the Commission may, upon recommendation of the Board concerned, authorise the issuance of a certification/ license or special temporary permit to:

⁸ Mode 1: Cross-Border Supply, where services cross border independent of the suppliers or consumer

Mode 2: Consumption Abroad, where consumers cross border to consume services

Mode 3: Commercial Presence, where suppliers and capitals cross borders to establish local offices or subsidiaries and Mode 4: Movement of Natural Persons, where the suppliers are physically present in a country on a temporary basis.

- Foreign professionals who desire to practice their professions in the country under reciprocity and other international agreements.
- Consultants in foreign funded, joint-venture or foreign assisted projects of the government
- Employees of Philippine/ foreign private firms/ institutions pursuant to law, or health professionals engaged in humanitarian mission for a limited period of time

c) Agencies/organisations/ individuals whether public or private, who secure the services of a foreign professional for reasons aforementioned shall be responsible for securing a special permit from the PRC

In the interview with the current Chair of the Professional Regulation Commission, the guidelines for these exceptions are still to come out though. But this is already in process and will be released soon.

Table 7: Philippine AFAS Commitments

AFAS Package	Sectors Covered
First Package (1997)	<ul style="list-style-type: none"> • Business Services • Tourism
Second Package (1998)	<ul style="list-style-type: none"> • Air Transport • Business/Professional Services • Construction • Financial services • Maritime Transport • Telecommunications • Tourism
Third Package (2001)	<ul style="list-style-type: none"> • Transport Services
Fourth Package (2004)	<ul style="list-style-type: none"> • Transport Services • Maritime Services
Fifth Package (2006)	<ul style="list-style-type: none"> • Business Services • Computer Services • Rental/Leasing Services without operators • Telecommunication Services • Construction and Engineering Related Services • Distribution Services • Environmental Services • Health Related and Social Services • Tourism and Travel related Services • Maritime Transport • Rail Transport Services • Road Transport Services • Services auxiliary to all modes of transport
Sixth Package (2007)	<ul style="list-style-type: none"> • Business Services • Computer Related Services • Research and development services • Real estate services • Rental Leasing Without Operators • Other Business Services • Services Related to the supply of energy • Services Related to Power generation • Communication Services • Telecommunication Services • Audiovisual services • Construction and Engineering Related Services • Distribution Services • Environmental Services • Health Related and Social Services • Tourism and Travel related Services • Recreational, Cultural and Sporting Services • Maritime Transport • Rail Transport Services • Road Transport Services

Seventh Package (2009)	<ul style="list-style-type: none"> • Services auxiliary to all modes of transport • Business Services • Computer Related Services • Research and development services • Real estate services • Rental Leasing Without Operators • Other Business Services • Communication Services • Telecommunication Services • Audiovisual services • Construction and Engineering Related Services • Distribution Services • Retailing Services • Environmental Services • Health Related and Social Services • Tourism and Travel related Services • Recreational, Cultural and Sporting Services • Maritime Transport • Rail Transport Services • Road Transport Services • Pipeline Transport • Services auxiliary to all modes of transport • Services Related to the supply of energy • Services Related to Power generation • Religious Services
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Source: ASEAN Secretariat website

The Philippines has also signed into seven Mutual Recognition Agreements (MRA) in the following professional services:

- Engineering services (9 December 2005)
- Nursing Services (08 December 2006)
- Architecture (19 November 2007)
- Land Surveying (19 November 2007)
- Medical Practice (26 February 2009)
- Dental Practice (26 February 2009)
- Accountancy (26 Feb 2009)

Challenges facing the various professional organizations include some feeling of reluctance in implementing the the MRAs as many are still unfamiliar with the MRAs and the liberalization of trade in services as envisioned in the ASEAN Economic Community. There are still some laws and regulations that need to be updated to align and support the specific MRAs. Some also mention the lack of budgetary support by lead stakeholders and inadequate collaboration among the public and private sectors. Some professional organizations, however, like the accountants have commenced bilateral negotiations with counterpart bodies, taking into account the various differences educational system, legal framework, institutional mechanism and socio-economic conditions.

Despite all these liberalization efforts, recent studies concluded that the various rounds of negotiations⁹ that took place so far have not produced substantive preferential liberalization as the Philippines AFAS commitments rarely go beyond what the Philippines bound in its GATS Schedule of Specific Commitments at the end of the Uruguay Round. Comparing the Philippine commitments under the GATS and AFAS, the coverage and depth of the two frameworks is substantially similar, with the AFAS only minimally going beyond what the Philippines bound at the multilateral framework (Poretti et al ,2009 and Trin Tanh and Bartlett, 2005).

⁹ 8 packages were already done when this study was conducted.; however there are still no details on the Eighth Package

V. Institutional Arrangements and Constraints Affecting Services Liberalization

A. The Institutional Arrangement for Trade

Currently, efforts to design and implement services policies along with negotiation of commitments in the WTO and ASEAN have been exceedingly complex and challenging. Trade policymaking in the Philippines is done by consensus through the Tariff and Related Matters (TRM) Committee. The TRM was organized in 1987 to advise the President and the National Economic Development Authority (NEDA) Board on tariff and related matters (to include trade and investment agreements and shipping matters) and on the impact of international developments on the country as well as to coordinate national agency positions and recommend the country's positions for international economic negotiations. The TRM is composed of three levels: first is the Committee Proper which is made up of the different Department Secretaries; second is the Technical Committee which consists of the Undersecretaries and Directors; and third are the four Sub-committees on (i) trade and investment agreements, (ii) economic and technical cooperation agreements, (iii) shipping, and (iv) tariff and non-tariff measures. The TRM Committee is chaired by the Department of Trade and Industry (DTI) and co-chaired by NEDA. The following Departments have seats at the Committee Proper: Foreign Affairs, Agriculture, Finance, Environment and Natural Resources, Budget and Management, Agrarian Reform, Labor and Employment, Tariff Commission, and Central Bank.

There is a special Technical Committee on WTO Matters (TCWM) whose main function is to discuss and recommend Philippine positions/strategies on issues regarding the implementation of our WTO commitments and continuing participation in the multilateral trading system. The DTI-Bureau of International Trade Relations (DTI-BITR) provide technical support to the TCWM. Note that the main Technical Committee receives support from NEDA. The TCWM has four interagency subcommittees: agriculture (led by the Department of Agriculture), services (headed by NEDA), investments, and rules (both led by DTI). Different agencies handle trade policy depending on which international body or trading partner the Philippines is negotiating with. A separate committee was created that falls under NEDA to handle ASEAN and APEC matters. For JPEPA, another committee was organized to act as the lead working group and it falls under the DTI-BITR.

For services, the NEDA, being the lead agency of the TCWM's Services Sub-Committee, acts as the main coordinator. The other agencies (Environment and Natural Resources, Transportation and Communication, Trade and Industry, Tourism, Labor and Employment, Energy, Central Bank, Professional Regulatory Commission, and Commission on Higher Education) handle trade issues affecting their particular sectors. While it appears that this institutional structure handling trade policy and negotiation is not different from what other countries have in place, in practice, Pasadilla (2006) argues that the system is inefficient and characterized by institutional failures such as: (i) turf mentality among government agencies that tends to paralyze interagency committees in formulating an overall position that fully acknowledges trade-offs; (ii) lack of appreciation and capacity for trade research that should inform negotiating positions; (iii) unclear delineation of authority; and (iv) lack of suitable mechanisms for consultation and feedback on negotiation progress and impact. Given these weaknesses, Pasadilla (2006) suggests the creation of a government body that is responsible for all international trade negotiations, coordinating with other government agencies and designing final trade strategies and positions for negotiations. What is important is that such body will have a strong mandate not only to coordinate but lead these processes¹⁰.

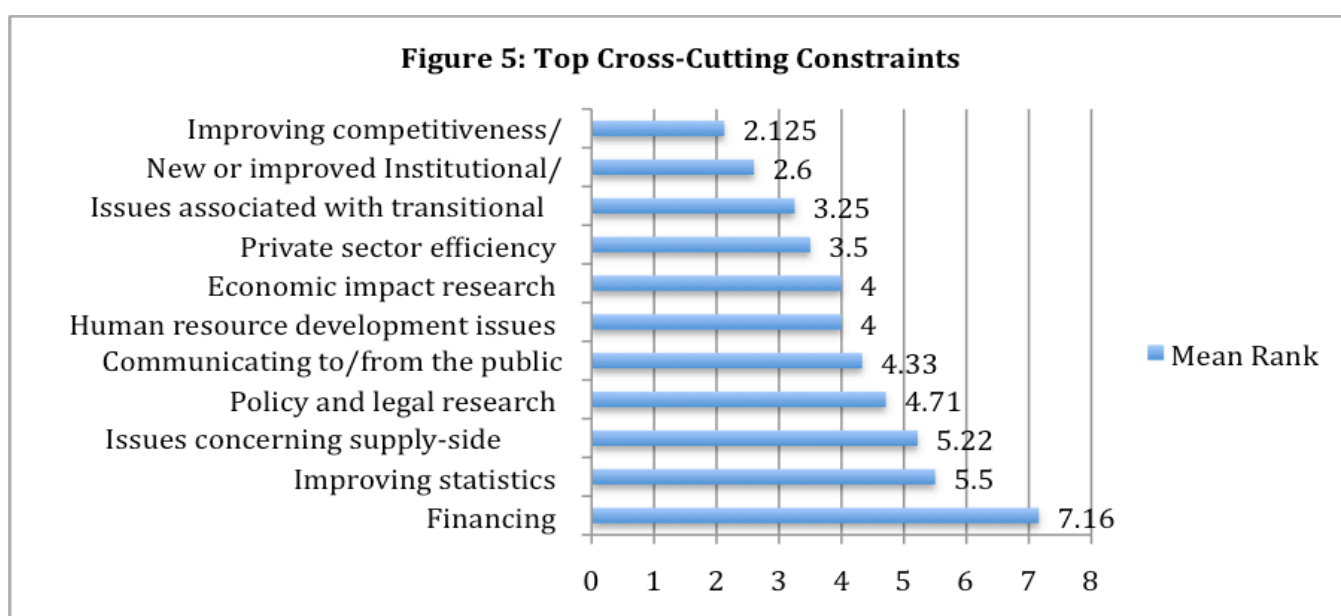
B. Obstacles to Services Liberalisation: Horizontal Issues and Constraints

The respondents highlighted the Constitutional and legal constraints to the liberalization of services in the Philippines. The so-called nationalistic provisions in the Constitution i.e. Article XII, Sections

¹⁰ The problem with a pure coordinative role is that agencies are not obliged to follow the "anointed coordinator" because they treat each others as peers.

2,3, 10, 11 and 18 are the primary provisions affecting Mode 3 (foreign investments) in particular¹¹. While substantial progress has been made in liberalizing the country's FDI policy, certain significant barriers to FDI entry still remain (see Table 5). In terms of Mode 4, the Labor Market Test as stipulated in Article 40 of the Labor Code is a prerequisite for legitimate alien employment in the country.

The respondents were asked to rank the different cross-cutting constraints affecting services liberalization. Figure 5 shows that the top most important issues - (i)improving competitiveness/productivity, (ii)new or improved institutional/regulatory issues, (iii)issues associated with transitional adjustment costs from liberalization, (iv)private sector efficiency, (v)economic impact research and human resource development issues and (vi)communicating to/from the public sector. The respondents indicated that these key cross-cutting issues are the same affecting the specific sectors: logistics, healthcare, telecommunications, and legal services.



Competitiveness/Productivity

Together with private sector efficiency, competitiveness and productivity are seen as the most important constraint affecting services liberalization¹². The private sector's perennial complaint is the high cost of doing business in the country. Firms need to be competitive in order to face heightened competition that would arise from liberalization. At the same time, the environment in which firms operate must also be conducive to the growth of productive and efficient firms and industries. The government must create an enabling environment for firms to survive and realize their potentials given a more open environment. This is a crucial precondition for private sector investment (domestic or foreign). Good infrastructure and logistics that lower production cost are important. The government must continue to pursue policies to lower power and communication costs, provide sufficient port systems, reduce travel time, and offer travel and shipment options. To improve the country's overall investment climate, the government needs to immediately focus not only on inadequate infrastructure but also on the country's low institutional quality, corruption and inefficient bureaucracy that continue to constrain doing business in the country.

Institutional/Regulatory Issues

As earlier discussed, the respondents indicated the same institutional weaknesses and lack of coordination among the different national agencies that are responsible for formulating services policy and implementing our services commitments. One private sector leader sums it up:

¹¹ <http://www.gov.ph/aboutphil/constitution.asp>

¹² Many respondents argued that private sector efficiency and firm's productivity and competitiveness are directly related.

“government has not done enough to align positions of various sectors along the national interest”. While the National Economic Development Authority (NEDA) is the lead agency for coordinating negotiations and other affairs related to the services sector, many stakeholders seem to agree that coordination for matters regarding trade in services has been weak. A major reason for this is the diverse nature of the sector as many government agencies are actually involved in the coordination and regulation of the sub-sectors i.e. the Department of Trade and Industry (DTI), the Department of Foreign Affairs (DFA), the Department of Labor and Employment (DOLE), the Professional Regulatory Commission (PRC), the Department of Health (DOH), the Department of Tourism (DOT), Civil Aviation Board (CAB), National Telecommunications Commission (NTC), Bureau of Immigration (BOI), National Commission for Culture and the Arts (NCCA), etc.

Stakeholders have different views on which agency should be the lead, whether it is NEDA or DTI. DTI is seen by some private sector representatives as the agency that should take the lead role in coordination since it deals directly with the stakeholders and their markets. DTI should be involved in a bigger way because they are the direct link with the private sector and professional organizations that will be greatly be affected positively or negatively by the services sector liberalization. A respondent stated, “you need actual market promotion to advance the services sector and only DTI can do this.” Some interviewees also noted that legislators must be involved in policy discussions as they are the ones crafting and amending laws pertaining to the sector. This lack of coordination may result in policy incoherence which further derails the speed of liberalization efforts.

The respondents also pointed out the generally weak institutions and governance failure in the Philippines. The country continues to suffer from a reputation for bureaucratic inefficiency, excessive red tape, and widespread corruption. In the 2011 *Doing Business* ranking, for example, the Philippines placed 156 out of 183. After three decades of trade-policy reform, it rates relatively well in “trading across borders”. Its ranking for “starting a business”, “closing a business”, “dealing with construction permits”, and “protecting investors”, however, leaves much to be desired (respectively, 156th, 153rd, 156th, and 132nd). The country also ranks poorly in international comparisons of the enforcement of law and contracts, and competition measures.

Property rights in the countryside are also insecure especially in the remaining areas under land reform. Risks to large-scale investments can also arise from the bias, incompetence, or outright corruption on the part of some regulatory agencies and other oversight bodies, as well as a culture of litigiousness, encouraged by misplaced judicial activism. Less sensationally but with not less damage, local governments impose their own share of arbitrary requirements and demands for corruption rents, which take a toll especially on the investment and employment decisions of many small- and medium-scale enterprises¹³.

The threat of regulatory capture extends not only to the functions of agencies in the executive branch but also to those exercising legislative and judicial functions such as the promulgation of laws and judicial decisions that expand the scope of government. Regulatory weakness and/or capture has also been a major characteristic of oversight agencies for the various services sectors in different administrations. The extent of regulatory capture varies from administration to administration¹⁴. This is related to the clout of the private sector especially those related to wealthy families who are able to contribute greatly to the campaign kitty of politicians. Because of this, they are able to influence appointments in key regulatory agencies¹⁵. The role of private and civil society watchdogs is important in thwarting regulatory capture. These groups demand transparency in the process of leadership appointments to multi-stakeholder consultations as key to arriving at major policy decisions or directives. Advocacy towards a freedom of information law¹⁶ is still being championed by various NGOs and business organizations.

¹³ These were statements from the draft Philippine Development Plan 2011-2016.

¹⁴ Some political analysts say that this peaked during the last administration but no formal studies have been done to verify this.

¹⁵ For example, the Philippine Ports Authority, MARINA, National Telecommunications Commission, Civil Aviation Board are usually vulnerable to capture because of the strong lobby of the regulated firms.

¹⁶ This law will require all government agencies including regulatory agencies to share key information to the public when demanded.

Communicating to/from the Public Sector

One of the major constraints in the facilitation of services liberalization is the lack of awareness and appreciation of the key stakeholders of the benefits that these reforms will bring. Even among the bureaucracies involved in the process of liberalization, awareness is very low. For many private groups and organization there is almost “zero knowledge of AFAS, MRAs and MNP” as one respondent described it. Understanding liberalization and its national economic benefits among the private sector will soften the protectionist stance of key professions lawyers and doctors. Lack of awareness also happens because of government’s failure to sustain an information drive or simply to become transparent in its processes particularly in disseminating its negotiation stances. This has to start with the government laying out its main strategy for the development of the services sector. Unfortunately, because there is no comprehensive strategy to begin with, information reaching the various stakeholders will also vary in content and appreciation. There is also a need for more effective mechanisms for fruitful engagement with the various stakeholders in the services sector. It might be useful to revive and strengthen the Philippine Services Coalition (PSC) as the diverse services sector needs to be more organized.

With respect to ASEAN credibility, the private sector seems to have a negative perception that ASEAN can effectively implement all the agreements it had forged. In each round of negotiations, each country tries to preserve space and finds difficulty in committing any additional package and the main argument is that the offer would require amendment of laws. There is also a perception that the leadership in ASEAN is weak relative to the original founders who were visionaries. The Secretariat is also seen as not focused enough to be able to effectively implement agreements. It would help if multi-stakeholder forums are regularly held¹⁷ to discuss issues related to trade in services as those held in Vietnam in 2005 and in Singapore in 2007. These series of forums could update key groups and sectoral organizations from each member country on the status of AFAS and it could tackle the various issues from the perspectives of important stakeholders.

Government must also be coordinating not only with the private sector but also with civil society groups which has taken a more active role in these issues recently. In many instances, they provide stiff opposition to services liberalization and are able to reach and convince the public more effectively. Government must be able to comprehend the nature and motivations of civil society groups and to manage their public demands.

Economic Impact Researches and Studies

Some respondents pointed out the lack of an overall trade in services liberalization strategy. Although the country’s Development Plan mentions several sectors in services sector (e.g. Business Process Outsourcing, IT related services, Tourism and Construction) as key towards sustained economic growth, details of a comprehensive strategy cannot be found. Moreover, details on how the country will address issues confronting the sectors once these are opened up with respect to the AFAS commitments and the fulfilment of the ASEAN Economic Community by 2015 are absent. The interviewees mentioned that this is an important constraint because any other specific plan or program for the services sectors must emanate from such overall strategy.

The main difficulty in crafting a comprehensive plan is the diversity of sectors involved and the convening of a variety of stakeholders not only among government but also within the private and civil society sectors. An efficient coordinating mechanism is required to organize such gathering. The comprehensive strategy must have the following elements:

- in depth analyses of the impact of sector liberalization (cost and benefit analyses)
- package of policy reforms and programs to facilitate the liberalization process
- strategy for information dissemination, constituency building, networking and advocacy
- adjustment alternatives and capacity building initiatives in the transition towards liberalization
- strategy for resource mobilization to finance adjustments during the transition

¹⁷ Annually at least

For more precise information and empirical based policy-making, there should also be reliable and available statistics and studies on the services sector. Many stakeholders have mentioned this gap as an important constraint. Aside from this, analytical studies on the services sector especially on sub-sectors are scant. The most recent literature on the sector in the Philippines are those of Pasadilla (2006) and Poretti (2009). It has been a practice of the statistical agencies in the country to create special committees on important sectors. A committee on trade statistics could be established to assess the current state of collection and generation and to fill in possible gaps.

Human Resources

The respondents noted that both NEDA and DTI need to recruit more staff members who are capable and competent to cope with the various responsibilities in the process of trade in services liberalization increase - from negotiations, technical studies, coordination, advocacy and information dissemination. These have been constrained by the recent rationalization program of government which prohibit agencies to hire new staff. It has also been difficult to maintain good people in government because of their relatively low compensation and vulnerability to being pirated by the private sector and donor organizations. While consultants are able to assist in some of these needs, dependence on them will not be fruitful in the long run.

Financing

The respondents also highlighted the importance of providing resources for various activities deemed important in the process of trade in services liberalization. These include funding for capacity building, coordination and networking and grants for conducting studies and generating consistent and readily available statistics for the government and the private sector. More importantly, financing for “safety nets” to support programs for potential losers in the transition towards liberalization. Financing for research and development (R&D) may also be needed to promote innovation as private sector funds are usually insufficient in this area.

In tandem with promoting awareness on the importance of trade in services liberalization, there should be advocacy for increased government allocation for activities facilitating liberalization. As the government budget is always insufficient to meet these financial requirements, it might be useful to effectively coordinate available donor funding for the purposes mentioned above. More importantly, it would be good if there could be a more systematic resource mobilization strategy in partnership with the private and civil society sectors.

C. Sectoral Issues and Constraints

Internal Trade (Wholesale and Retail)

Foreign ownership is still restricted in small enterprises. Under Republic Act (RA) 8762, foreigners can own enterprises with capital over \$7.5 million, or those that provide luxury products with capital over \$250,000. It was also only recently that the Supreme Court (SC) upheld the constitutionality of the Retail Trade Liberalization Act of 2000 or Republic Act No. 8762, a decade after it was questioned by lawmakers as supposedly being anti-Filipino. Petitioners argued that RA 8762 violated provisions in the Constitution which places the national economy under the control of Filipinos to achieve equal distribution of opportunities, promote industrialization and full employment, and protect Filipino enterprise against unfair competition and trade policies. The high court noted that the petitioners were unable to show that the implementation of the law would prejudice them or inflict damage to them as taxpayers or legislators. What would be needed is to continue advocating for reforms allowing small and medium sized foreign retailers through amendments to the law. However, an important component of this is to have strong consumer groups which the country currently does not have.

Tourism and Air Transport

A major issue in the tourism sector is the need to improve infrastructure like airports and roads. The opening up of air transport is a key concern. More recently, President Benigno Aquino III has signed two Executive Orders that will liberalize air transport services in areas outside Metro-Manila

in to boost the tourism industry. Aquino's twin directives are contained in Executive Orders 28 and 29, which he signed on March 14, 2011. Executive Order 29 refers to the Aquino government's "open skies policy" in which foreign airlines would now be allowed to add flights to other parts of the country outside of their regular trips in a bid to "promote domestic tourism by providing travellers with more and varied choices of access to the Philippines through improved and increased aviation services. However, the implementing guidelines are not out yet as strong lobby groups are still trying to oppose the executive order. Thus, there is a need for a sustained campaign on the benefits of an open skies policy.

Tourism and Health Care

Another issue important to tourism is the promotion of health care, retirement and wellness as one of the "rising sector" identified by the local and foreign chambers. A key ingredient for the success of this sector is openness towards medical professionals in the target markets to practice in the Philippines. It has been argued by hospital administrators for instance that they need these professionals to attract foreign clients (e.g. Japanese and European). They argue that this would not create a massive flow of foreign medical doctors to the country as income differentials are still wide. What is needed is to convince local medical practitioners that the benefits to openness far outweigh the costs. Thus, the conduct of market studies, dialogues, seminars and workshops would be required.

*Legal Services*¹⁸

Section 14, Article XII of our Constitution states that "[t]he practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law." As one law dean mentioned, "many Filipino lawyers have a protectionist mind" and they view the right to practice in the local Bar is an adjunct of sovereignty. Currently, the Philippines only allows citizens who are residents and who acquired legal education in the country to practice the legal profession. A sensitive topic is the applicable code of conduct that applies to a lawyer engaged in cross-border practice. Since most nations have adopted their own legal codes of conduct, the question arises whether such codes bind the foreign lawyer practicing in that country, or whether the foreign lawyer remains bound to her or his own national code. The emergence of cross-border practice, not only as potentially adopted by the Philippines, but also as currently engaged in by Filipino lawyers abroad, may necessitate adjustments as well as in the curriculum of Philippine law schools. The ASEAN Law Association, in its 2003 General Assembly, identified the need to train lawyers who are commercially relevant in an era where cross-border transactions are increasingly the norm and to sensitize law students to the larger issues of globalization such as human rights and the environment. Legal practitioners involved in providing international legal services are generally interested in providing "producer" or intermediate services concerned with commercial transactions and not "consumer" services which are typically final services i.e. family, matrimonial, estate, personal injury, etc. Foreign lawyers are also not interested in obtaining a right of audience in courts of host jurisdictions except for a right to appear in international commercial arbitration. Generally, a foreign lawyer's interest is in providing advisory legal services in home country law, third country law and international law. These advisory legal services comprise less than 20% of all the activities of the law profession. Supreme Court jurisprudence, however, recognizes the possibility of liberalization of the legal profession; in the case *Tanada vs. Angara*, the highest court ruled that the country's membership in the WTO results in the derogation of its sovereignty but this is done in exchange for greater benefits.¹⁹

As cross-border practice becomes more prevalent worldwide, the need will arise for the adoption of international agreements governing the code of conduct of lawyers in cross-border practice. There should also be revisions in law school curricula to include greater emphasis on international and comparative laws. Government could also enhance Mode 3 mechanisms where foreign entities are able to practice law and accounting through a commercial presence that ties up with local firms and also Mode 4 processes as the country already had previous experiences in having its lawyers

¹⁸ Derived mostly from the speech of Supreme Court Justice Dante O. Tinga at the Commencement Exercises of the Ateneo de Manila School of Law on April 27, 2008 except for bullet 5 which came from Prof. Harry Roque of the UP College of Law.

¹⁹ Roque (undated)

contracted by foreign firms to represent them in projects implemented in other Asian countries while private firms and the government itself has hired foreign lawyers for representation in international cases²⁰. Lawyers' groups could also use *Tanada vs. Angara* as legal basis for liberalization of legal profession (Roque, undated).

*Healthcare*²¹

There has been rapid migration of doctors and nurses in recent years and fears of the local healthcare system collapsing. Filipino healthcare professionals are underpaid compared to their counterparts in the region. Such problem results in the exodus of substantial healthcare professional for employment overseas. There are also fears in terms of the development of a two-level health system which may crowd out local patients & divert resources to service foreigners as the health care system is opened up. The country lacks the necessary data and information to help manage the plight of industry and promote its potentials. Stakeholders noted that the country's healthcare statistics on key information such as number of hospitals, current and needed investments in healthcare, number of professionals in the country and deployed abroad, among others are not available. Existing mechanisms for industry-government dialogues are informal. Oftentimes, issues of the industry are not heard on a regular basis. Stakeholders also complained about the lack of consultations as well as the ability of certain negotiators to formulate a more holistic negotiations agenda for healthcare investments and services. Stakeholders noted the need to strengthen regional cooperation at the sectoral level to better appreciate regional developments in relation to professional development and regulation in the healthcare industry. In addition, stakeholders noted the need to enhance mutual recognition and licensing standards to allow competitive Filipino professionals to compete evenly and at the same time encourage investments and technology transfers.

Sustainability of the local healthcare industry will depend to a great extent on how migration is managed and improvements in the quality of education, healthcare delivery and financing. The public and private sector must be mobilized for health and wellness advocacy campaign for health tourism and the establishment of health and retirement zones in the country.

VI. Technical Assistance and Capability Building

A. Capacity Gaps and Needs for Technical Assistance

It is evident from the above that there are clear gaps in the capacity of national agencies and regulators to effectively implement the country's services liberalization commitments. The different agencies do not have the financial resources and the technical capability to conduct in-house research to prepare comprehensive strategies, cost-benefit studies and adjustment policies on liberalization. Often these agencies rely on the academe or think tanks to conduct these studies, which are usually funded by foreign organizations. Apart from institution-building, capacity strengthening is needed in trade research and strategy formulation; information, awareness and advocacy campaigns; as well as in basic services trade courses designed for regulators and lawmakers as well as for civil society groups. Table 8 lists the various capacity building and technical assistance needed to facilitate trade in services liberalization in the country according to the various constraints addressed.

Table 8 Key Constraints and Capacity Building Needs

Constraints to Services Liberalization	Capacity Gaps and Technical Assistance Needs	Capacity Building Program and Technical Assistance	Possible Delivery Modes
Lack of Competitiveness and	- lack of activities and programs to reduce cost	- public-private sector dialogues to tackle	- institution building

²⁰ Roque (undated)

²¹ Derived mostly from Poretti et al (2009)

Productivity; Private Sector Inefficiencies	of doing business - lack of activities and programs to promote entrepreneurship and innovation - lack of activities and programs advocating investment friendly macro-environment	issues related to cost of doing business and investment friendly environment - programs to boost entrepreneurship, R&D and innovation	programs - establishment or enhancement of public-private sector mechanisms like consortium, coalition, etc. - workshops, for a on related issues - studies on how to reduce costs of doing business and improve investment environment - market linkages, market studies, technology transfers
Institutional and regulatory weaknesses	- lack of a comprehensive strategy on services sector liberalization plus sectoral and sub-roadmaps - weak coordination among government agencies in issues related to the services sector - weak public-private engagements especially at the sectoral and sub-sector levels	- crafting a comprehensive strategy on services sector liberalization plus sectoral and sub-roadmaps - activities to strengthen coordination among government agencies in issues related to the services sector - enhancing public-private/civil society engagements especially at the sectoral and sub-sector levels	- institution building for strengthening the coordination mechanism among government agencies through planning workshops, training programs, writeshops etc. - institution building program for establishment or enhancement of public-private sector mechanisms like the Philippine Services Coalition - planning workshops, secretariat support, etc.
Inadequate Communication to/from the Public	- lack of stakeholder and public awareness on the benefits of services liberalization - lack of information campaigns on the benefits of services liberalization Lack of key statistics on the services sectors - weak public-private engagements especially	- enhancing public-private/civil society engagements especially at the sectoral and sub-sector levels - studies on benefits and costs of liberalization - strengthening data collection and management for the	- institution building program for establishment or enhancement of public-private sector mechanisms like the Philippine Services Coalition - planning workshops,

	at the sectoral and sub-sector levels - negative perception on ASEAN's capacity to deliver	services sectors - ASEAN wide activities to inform stakeholders and discuss important issues	secretariat support, etc. - institution building program for research institutes (e.g. Philippine APEC Study Centers Network) - research grants, policy dialogues, grants to improve statistical data collection, etc. - ASEAN wide workshops and fora
Human Resource Issues	- need to recruit more staff members who are capable and competent as the various responsibilities in the process of trade in services liberalization increase - from negotiations, technical studies, coordination, advocacy and information dissemination - lack of negotiating skills for some of the agencies involved with the services sector	- crafting a strategy for human resource development for agencies involved in the services sector - capacity building program for negotiators	- inter-agency planning workshops and writeshops - actual training workshops, e-learning, mentoring
Financing Issues	- Lack of funding for capacity building, coordination and networking and grants for conducting studies and generating consistent and readily available statistics for the government and the private sector - sustainability of institutions and capability programs	- mechanism for donor coordination - strategies for resource mobilization	-coordinated mechanism for capability programs and technical assistance - workshops and seminars on resource mobilization and financial sustainability

B. Recent Capacity Building and Technical Assistance Programs

Training programs for policy makers and private sector leaders were held in the recent past. Donors like the European Union (EU)²², United States Agency for International Development (USAID) and International Trade Centre (ITC) have provided grants and funding for capacity building, workshops and training programs. The EU has funded a training workshop on the Movement of Natural Persons and Mutual Recognition Agreements (MRAs) for employers, workers and professional groups in partnership with the Department of Labor and Employment (DOLE). It has also made possible the conduct of a study to craft policy on Labor Market Test. Private sector groups like the Universal Access to Competitiveness and Trade (U-ACT) have conducted workshops, participated in e-learning and fora to discuss services sector liberalization in different

²² Trade Related Technical Assistance to agencies like the Department of Trade and Industry (DTI) and the Department of Labor and Employment (DOLE)

parts of the country. Another group, the Philippine Services Coalition (PSC) established by former Undersecretary of Foreign Affairs Edsel Custodio²³ also sponsored various fora and training programs to promote services sector competitiveness. He also initiated various studies on the competitiveness of the service sectors in partnership with the Philippine Institute for Development Studies (PIDS). GTZ also made possible the publication of a series of studies on Education, Health Services, Audiovisual Services, Information and Communication Technology, Business Process Outsourcing through the PIDS in 2006.

C. Lessons Learned from Previous Technical Assistance/Capacity Building Activities in Promoting Liberalization

The following five cases (RORO, Freedom to Fly Coalition, Philippine Services Coalition, Phillexport TAPS, and Philippine Global Trade e-Learning Program) illustrate key lessons from past technical assistance and capacity building activities in liberalizing the services sector. Experiences in conducting these five capacity building activities highlight the importance of multi-stakeholder support and solid empirical based studies; high profile advocacy; building institutions, finding alternative options for stakeholders; and learning institutes.

1. Multi-stakeholder support and empirical based studies for successful advocacy: The RORO case²⁴

Careful analysis and studies done by The Asia Foundation and its local partners in the Philippines found that substantial efficiencies could be accomplished by a policy shift away from containerized shipping to a “roll-on, roll-off,” or “RO-RO” system. This will enable trucks, buses, and cars to roll on and roll off the vessel without unloading, eliminating the need for time-consuming and costly cargo-handling and portside equipment, and burdensome regulatory procedures. To promote the RO-RO policy reform, the Foundation and its local partners worked with those affected by the high cost of sea transport: the Department of Agriculture, the Development Bank of the Philippines, the National Economic Development Authority, the Mindanao Business Council, the Philippine Chamber of Commerce and Industry, and the Supply Chain Management Association of the Philippines. The Research, Educational and Institutional Development Foundation (REID) provided direct technical assistance to the Philippine government, with support from The Asia Foundation and USAID. Although some RO-RO routes already existed before the assistance, President Gloria Macapagal-Arroyo formally introduced a comprehensive RO-RO policy to the Philippines in 2003, with the inauguration of the Strong Republic Nautical Highway. The RO-RO policy has transformed the maritime sector in the Philippines, vastly improving inter-island economic linkages, increasing competition, and driving down costs with minimal public investment. The support for the studies and networking among the partners proved to be important inputs to this successful advocacy.

2. High Profile Advocacies: DAI-AGILE, Freedom to Fly Coalition and Open Skies

The Freedom to Fly Coalition (FFC) was organized by various stakeholders and groups that believed that an open skies policy will boost economic activities in the country. The coalition was funded by the Development Alternatives, Inc.- Accelerating Growth Investment and Liberalization with Equity (DAI AGILE) Project of the USAID to advocate for air transport policies. Through the efforts of FFC and other partners, the coalition achieved some success, including resumption of air flights to Taiwan and the increase in seat capacity to key markets like Malaysia and Singapore. However, during Arroyo’s term, no open skies policy was implemented. It was only during Aquino’s term that the pocket or selective open skies policy has been ordered. DAI-AGILE’s successful and high profile forays in various policy reform issues²⁵ led to oppositors’ charge that as an American consulting firm, it was already intervening in the internal affairs of the country. Thus, the Senate even called for hearings as the Freedom to Fly Coalition was accused of promoting US interest. The main lesson here is that technical assistance in terms of policy reform and advocacy must be clearly coursed through and owned by local agencies and organizations. DAI-AGILE’s

²³ Also former Philippine Ambassador to the WTO in Geneva, see more discussion below on the Coalition

²⁴ Based on an Asia Foundation Newsletter entitled, “Roll on Roll off Transport: Connecting Maritime Southeast Asia”, November 2010

²⁵ AGILE was also involved in other liberalization efforts e.g. financial market reforms

visibility in the policy reform process attracted attention among those that opposed liberalization reform. Thus, the legitimate efforts of groups like the Freedom to Fly Coalition became vulnerable to anti-nationalism accusations.

3. *Building Institutions: Lessons from the Philippine Services Coalition*²⁶

Established in May 2005, the Philippine Services Coalition (PSC) aimed to promote Philippine trade in services by enhancing public and private consultation. As a partnership among key stakeholders from government, private sector and the academe, PSC provided a focal point for the ongoing activities related to trade in services. The first Services Congress held on 28 June 2006, was a gathering of government policy makers, the academe, private sector representatives of industry and trade associations, service providers and consumers, and representatives of an external support network led by the International Trade Center. The Coalition commissioned various sectoral studies on twelve (12) sectors and subsectors namely, health and wellness (3 subsectors), accountancy (2 subsectors), engineering (2 subsectors), interactive media, shipcrewing and shipmanagement, franchising, education and trade policy and negotiations. The objectives of the coalition was to develop awareness and understanding of the services trade. The coalition also aimed at crafting a strategic framework for development of Philippine Service Exports specifying the roadmap which will define the country's vision in the global services trade, the roles that will be played by the private sector, the academe and government in the concerted national effort to maintain, and increase, competitiveness in services exports. Unfortunately, the PSC has been moribund after the retirement of its founder, Undersecretary Edsel Custodio and the drying up of donor funds for the coalition. It was hoped that the private sector or academe will continue the work of the coalition but this did not occur. It was also supposed to be housed at the Department of Foreign Affairs (DFA) but it seems that a budget for it was not institutionalized in the agency.

4. *Finding Alternative Options for Stakeholders: Philexport Experience*

In the mid 90's, the Philippine Confederation of Exporters (Philexport) received a sizeable grant from USAID to implement the Trade and Investment Policy Analysis and Advocacy Support Program or TAPS for short. This support from USAID was also given to indirectly strengthen PHILEXPORT, a coalition of exporters, in its advocacy towards the liberalization of different sectors including the wholesale and retail trade. Grants were given not only for policy studies but also to sponsor study tours for retailers (potential losers in the liberalization) who were searching for alternative activities like franchising in case their businesses will be affected negatively when liberalization takes place. Their opposition to liberalization weakened and curiously, the franchising sector started to boom during the implementation of new law on retail trade liberalization²⁷. The main lesson here is to assist groups and stakeholders in searching for options and adjustment programs during the transition to liberalization. Technical assistance and grants involving technology transfer, market linkage and study tours will be helpful in this regard.

5. *Learning Institutes: Philippine Global Trade e-learning Program*

This capacity-building technical assistance from USAID aimed to

- increase the capacity of the Philippine government to participate in international trade discussions and negotiations;
- upgrade the capability of the legislative staff to appreciate the relationship between the rules of international trade rules and national policy;
- augment the understanding of the members of the judiciary on local legislation that provide remedies in pursuance of international trade rules; and
- enhance the appreciation of civil society of the rules of economic integration in order to achieve a higher level of engagement between civil society and government.

The core courses include "WTO Basics: Introduction to the Multilateral Trading System and History of the Multilateral Trading System", "Basic Principles of the Multilateral Trading System and

²⁶ <http://www.philippineservicescoalition.com/>

²⁷ Based on the interview with Mr. Sergio Ortiz-Luis, President, Philexport; the Philippines is one of the most successful franchising area in the region

Enforcing International Trade Rules". Optional Courses offered were "Trade in Services", "Agreement on Agriculture", "National Legislation Implementing International Trade Rules", "Protocols Pending approval", and "Trade Facilitation". An integration course discussed the Doha Development Round, the Singapore Issues and the Hong Kong 2005 Agenda. The program employed the blended learning model, which is a combination of instructor-led web-based training, and face-to-face lectures and workshops. There are several benefits to this innovative model of learning. By making learning available 24 hours a day, 7 days a week via the internet, e-learning saves the time of both instructors and learners as it allows them to fit learning into their busy schedules. It also allows more learners to avail of the learning than would otherwise be possible. A total of 214 participants completed all 8 PGTEP courses. Another 53 participants completed at least 5 courses, which meant that they have completed the foundational courses. However, this e-learning program has not been continued, according to a private sector graduate who wants to pursue a similar undertaking in his organization. Again the issue of sustainability crops up. Once the grants have dried up, the sustainability of the program becomes problematic.

D. Capacity Building and Technical Assistance Issues

The respondents identified the following issues in the delivery and implementation of capacity building and technical assistance programs:

Selection of Participants in Training

To maximize learning and gains from training workshops, participants must be carefully selected by key decision makers. Otherwise, the trainings will just be wasted as the participant will not be able to use his or her learnings in actual work situations. It may be wise if a centralized mechanism be established to carefully select participants in important workshops and trainings offered by various institutions. This mechanism must be linked to the multi-agency coordination mechanism for the services sector chaired by the National Economic and Development Authority (NEDA).

Donor-driven capability building and training programs

Many training and capacity building workshops are offered to policy makers and bureaucrats but some of these are designed poorly and are not based on the actual needs of participants. Pragmatic examples and actual case studies are needed to maximize learning. Appropriate technologies and methodologies must also be considered especially if participants come from developing countries where the existence of such technologies may not be available.

Echo-training sessions

It is also ideal if participants undertake echo sessions with colleagues in the same line of work. This would give the training workshop a multiplier effect and also capacitate the participant to absorb more deeply the learnings he gained. Oftentimes, the insights and learnings remain with the participant and not shared with colleagues. New insights may even be generated with echo seminars. To institutionalize this, participants must sign an agreement with the implementor of the capability program and his/her agency to conduct an echo seminar within a certain duration after he /she finishes the program.

Sustainability of capacity building programs

Government agencies typically launch training programs often funded by donor agencies. Unfortunately as funds dry up, the training programs also end. It might be useful if these agencies built into their budget, funding for training and capacity building programs that need to be sustained. If the private sector is the client, then user fees may be charged for sustainability. Or the concerned government agency may partner with an academic or training institution which may be able to mobilize resources even after grants from donors have lapsed.

Sustainability of institutions and mechanisms established for networking and advocacy

The Philippine Services Coalition was an important organization for the services sector as it provided the venue for various organizations and government agencies to discuss issues related to the sector. Unfortunately, it was not sustained as funding dried up and no government agency or private sector group took up the challenge to sustain the organization. Donors must build in to their grants, plans for the sustainability of such institutions. Or a key part of the capacity building program is to empower the institution to generate its own resources for long-term sustainability. Workshops and training/mentoring sessions on resource mobilization, diversification and efficient use of resources could be arranged. There should also be a definite but sufficient timetable²⁸ for donor support such that organizations do not become vulnerable to dependency.

E. Key Considerations on Delivery Modes for Capacity Building Programs

The respondents suggested the following characteristics of a good capacity building program:

Need for a coordinated and centralized mechanism for selection of capacity building programs and beneficiaries²⁹

If possible, government agencies involved in trade-related issues and affairs should establish a special mechanism to coordinate capacity building. This mechanism would :

- determine actual needs of various agencies and their key personnel
- determine delivery mode - available workshops, policy dialogues, e-learning or training programs
- coordinate with donors interested in providing capacity building programs
- select and match key personnel to these programs
- if programs are not available, the committee may opt to tap training institutions to design customized such programs in partnership with donors

This mechanism is important to avoid duplication of programs. The mechanism can also help in allocating training programs equitably among government agencies especially if these are given in limited numbers. More importantly, the mechanism should ensure that programs implemented are useful for those who participate in them.

More effective needs analysis and program monitoring and evaluation

Following the above, the mechanism must also ensure that proper needs analysis be undertaken for each key agency. For example, one of the expressed needs of government personnel is training on negotiations. Thus, any capability building program should be clearly targeted and should have a “rifle rather than a shot-gun approach”. Also, the committee must ensure that proper evaluation be made by the selected participant or institution on the concerned capacity building program e.g. training or workshop attended, whether learnings have been shared with colleagues and whether there have been opportunities for them to apply the knowledge gained.

A responsible agency: sense of ownership and ability to sustain efforts for capacity building

Capacity building programs that need to be sustained must have specific agencies that take responsibility for its continuous implementation. If it is donor funded at the start, counterpart funds from the agency's budget must be made available. Other resource mobilization strategies may be undertaken by the responsible agency whether it be in the form of user fees or grants from other donors. In addition, it is important that there is a sense of ownership on the part of an agency implementing the program.

Importance of systematic data collection, research cum policy dialogues and forums

More in depth researches using good quality data are needed for policy inputs to facilitate the process of services liberalization. However, results of such studies should be utilized by policy

²⁸ Support must not be short-term but should at least be for a number of years e.g. 5 years which gives the organization sufficient time to develop its capability to generate its own resources

²⁹ In the past, the NEDA had a multi-agency committee on scholarships and trainings which screened participants and recipients.

makers and not remain in the shelves. Policy proposals must also be thoroughly discussed and dissected in various forums attended by key stakeholders.

Enhancing and/or building institutions

Sometimes what is needed is to enhance or build an institution or mechanism rather than provide a specific capacity building program. For example ample financial support to enhance a research institution (grants for research studies) could go a long way instead of specific training programs for individuals. Also, support to institutionalize a dialogue mechanism like the Philippine Services Coalition may be an important platform for advocacy, networking and even future capacity building programs. Another interesting example was the support of a donor to strengthen PHILEXPORT, a coalition of exporters, in its drive towards the liberalization of wholesale and retail trade as described above. Flexible grants wherein recipient agencies are allowed to implement a variety of programs can also be used to strengthen such institutions.

Non-conventional Forms: E-learning, Advisory Services, Mentoring and Market Linkage

E-learning uses the internet to deliver training programs³⁰. Participants need not go to a specified venue but only to a specific website. Advisory service would cover concept note, memos, policy options but with regard to mentoring, a resource person/expert will be there to mentor & coach. During implementation, this person will be there “holding the hand” of the trainee. The best way to learn is to do - learning by doing and the mentor will be the guide. Depending on the needs of an agency, advisory services and mentoring may be first best rather than trainings and workshops. Meanwhile for the private sector, assistance in terms of actual market studies, information and linkage plus technology transfer will develop new trade possibilities.

VII. Conclusion and Recommendations

Trade in services is an important component of the country’s path towards development and thus, the impetus towards full ASEAN Services Liberalization in 2015 should further strengthen the sector. Aligned to the approach of regional and multilateral liberalization in services is a sustained process of domestic policy reforms and changes in the regulatory environment which will promote expansion and innovation among the various players in the Philippine services sector. To achieve this, government must effectively partner with the private sector to craft an overall strategy for Philippine services. They should also work together in addressing the various constraints capacity gaps and technical assistance needs to help realize the substantial benefits and opportunities that can be gained from services trade liberalization. At the ASEAN level, ASEAN Member States (AMS) and the ASEAN Secretariat must work together to impress among their constituents, their seriousness in achieving the AEC.

The more detailed recommendations of the study are as follows:

Crafting and Implementing a Comprehensive Trade in Services Strategy

- Drafting a comprehensive strategy for trade in services liberalization aligned with the Philippine Development Plan of 2011-2016
- Strengthening the sharing of information within the government bureaucracy
- Enhancing government-private sector/civil society coordination to conduct studies and statistical development towards a database that would provide information for policy-making and drafting sub-sectoral roadmaps
- Broadening public awareness and undertaking an information campaign on the GATS, AEC, AFAS and its opportunities for export of services as it relates to regional integration

³⁰ USAID funded an e-learning program for government, private and civil society sectors called Global Trade e-Learning Program, http://pdf.usaid.gov/pdf_docs/PDACJ191.pdf

Building the Capacity of Private Sector

- Government to coordinate the creation of roadmaps for each sub-sector including identifying benchmarks towards enhancing their global competitiveness
- Provision of technical assistance - assisting the private sector to organize road shows, fairs and exhibitions; designing /innovating new services export delivery systems as “solutions” to the needs of services customers: e.g., networking, one-stop-shop, bundling, and value added concepts; utilizing technological developments to improve competitiveness of the private sector especially SMEs
- Promoting a culture of entrepreneurship and innovation
- Helping organize services providers into a consortium to synergize competencies; strengthen market intelligence, data gathering and support for the management of information useful for sectoral development.

Enhancing Institutions Supporting Trade in Services

- Addressing internal policy coordination weaknesses; institutionalizing public-private sector mechanism to deliberate on services strategy; one possible framework is the US model of industry trade services advisory committees (ITACs) inputting to the USTR (there are 30 ITACS with some for services sectors); these ITACs are legally mandated and have influence so that their inputs are properly evaluated for inclusion in strategies and postures in negotiations
- Strengthening coordination mechanisms and linkages among government agencies to support the competitiveness drive of various services sub-sectors
- Training and capacity building for government negotiators

Priority Areas of Capacity Building and Technical Assistance

- Crafting a comprehensive services sector development strategy
- Enhancing the coordinating mechanism among government agencies in implementing services sector strategy
- Enhancing the collection of statistics and conduct of researches and studies on the services sector; strengthening a consortium of research institutions and think tank researching on the services sector e.g. Philippine APEC Study Centre Network (PASCN)
- Building a mechanism for continuous engagement between government and the private and civil society sectors e.g. reviving the Philippine Services Coalition
- Helping build capacity and competitiveness of the private sector
- An ASEAN level information dissemination campaign to make stakeholders aware of the Secretariat's activities in monitoring agreements and in assisting AMS in the process of liberalization and integration

Delivery Methods for Providing Technical Assistance and Capacity Building³¹

- A coordinated mechanism for selection of capacity building programs and beneficiaries
- More effective needs analysis and post-training monitoring and evaluation
- A responsible agency: sense of ownership and ability to sustain efforts for capacity building
- Non-conventional forms: e-learning, advisory services, mentoring, market linkage and technology transfer
- Importance of research cum policy dialogues and forums
- Enhancing and/or building institutions and coordinating mechanisms

³¹ For a more detailed discussion, please revert to the section on delivery modes

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