



Philippine Institute for Development Studies
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Prospects of Services Trade Liberalization in Japan-RP Bilateral Agreement

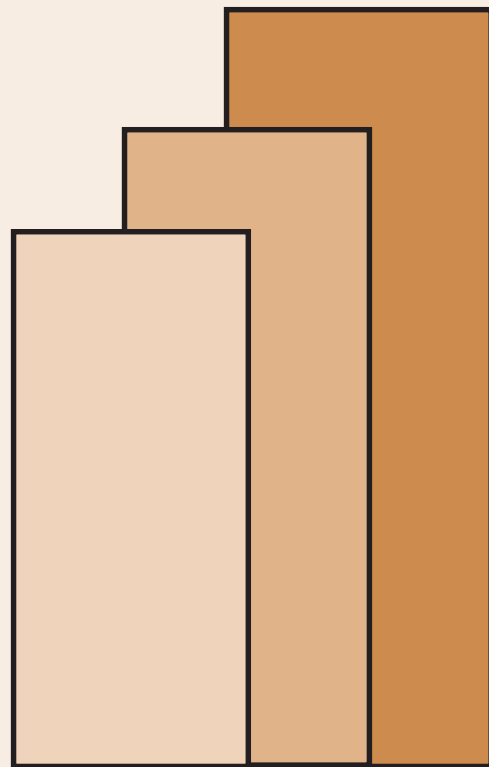
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**Prospects of Services Trade Liberalization in
Japan-RP Bilateral Agreement**

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Prospects of Services Trade Liberalization in Japan-RP Bilateral Agreement

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Abstract

The paper provides a background for services trade negotiations with Japan. It summarizes various discussions on international trade in services, the challenge of further services trade liberalization, and the rise of regional trade agreements. It discusses the different modalities of services trade negotiations that have arisen out of the different regional and bilateral trading arrangements in different parts of the world. The paper also analyses the level of liberalization in services based on existing multilateral and regional commitments of the Philippines and Japan, and suggests a few key points in different services sector that can help the Philippines benefit more from a bilateral trade agreement with Japan.

Prospects of Services Trade Liberalization in Japan-RP Bilateral Agreement

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Introduction

While the multilateral trading rules have focused on creating a free flow of goods across countries for over 50 years, it was only in the last decade or so that the spotlight has focused on services. No doubt, this is in recognition of the increased contribution of services to economic output. Estimates show that total measurable trade stood at some \$2.3 trillion at the end of 2000, representing 7.6% of world output and over a third of total trade in goods and services (OECD, 2001). This figure highlights the commercial significance of the sector worldwide and of the need to progressively remove impediments to services trade and investments.

Although OECD countries dominate global trade and investment in services, developing countries are catching up. In the Philippines, services now take the largest share in GNP, outpacing industry and agriculture. From 1999 to 2002, services sector had an average share of 43%, compared to industry's 32% and agriculture's 19%. Along with other developing countries, the Philippines, thus, has an interest in gaining more market access, particularly for its rapidly expanding labour force.

In the domestic front, liberalization of services also take on greater urgency because of the high interlinkages of services with other sectors of the economy. Because an inefficient service sector acts like a prohibitive tax on the national economy, the economic cost of protecting inefficient service sectors even exceeds the cost flowing from protectionism in the goods sector. For this reason, the Philippines has undertaken regulatory reforms in finance, telecommunications, transport, and energy in recent years to increase competition in service sectors and to improve the competitiveness of manufacturing and agriculture in the world market. These regulatory and market reforms were not viewed as "concessions" to other countries but as preconditions for actualizing the country's tiger potential.

Undoubtedly, more need to be done. Investments are required to upgrade and catch up with the rapid pace of technologies; regulatory reforms which had begun need to be improved; and other services sectors which have yet to benefit from reforms and competition have to experience them. With this view, the Japan-Philippines bilateral agreement negotiations should act as a catalyst. Not because services would be a concession to Japan but because the country, itself, needs much needed investments in this sector to improve efficiency in the rest of the economy.

This paper offers an overview of services trade. It shies away from the discussion of why go bilateral and not multilateral in liberalizing services trade and why with Japan, on the assumption that other papers are tackling these important questions. Suffice it to say that should there be a political decision to sign a trade agreement with Japan or with any other country, it is

best that services are included in the discussion. Complementarities between services liberalization and liberalization of trade in goods make it counterproductive to negotiate in one and not the other.

The paper starts with a discussion on the nature of the sector, the achievement under the multilateral agreement on services or GATS and the many challenges that remain for greater liberalization. One of these major challenges is that services liberalization often involves administrative and institutional reforms that usually requires a more extended timeframe than is the case for liberalization of trade in goods. Section 2 then tackles regional trade agreements and gives a broad overview of the similarities and differences in these various agreements as regards liberalization in services trade. Section 3 analyses how liberalizing these preferential trade agreements have been compared to the WTO for Singapore, Japan, and the Philippines. Section 4 gives a situationer for various services sectors, analyzing common types of restrictions or trade barriers in each, as well as possible progress for the movement of natural persons (mode 4) negotiations.

Broad Overview of Trade in Services

What are services and why would services liberalization be desirable? What is its role to a country's development? These are basic questions that are necessary to be asked and answered before plunging into a bilateral agreement with an avowed goal of opening goods and services markets. To many of us, analysis of services trade is markedly different from the usual analysis of goods trade. There are similarities, of course, but there are many more nuances that need to be grasped to appreciate the difficulties of liberalization commitments in services.

Services are usually portrayed as intangible, invisible and perishable, requiring simultaneous production and consumption. This definition is open to criticism because some services may be tangible (e.g. computer software programme on a diskette), visible (theater production), or storable (automatic telephone answering systems). It may not even require face-to-face contact between producers and consumers (e.g. architectural design).¹ Because of the difficulty of giving exact definition of services, many empirical analyses on services do not use a dogmatic definition, but simply list activities that should be considered as part of services.

For purposes of the Uruguay Round negotiations in services, the WTO Classification List of Services Sector (See Appendix 1) was used as basis for the "positive list" of sectoral

¹ Other ways of distinguishing services include *private* or *public*, *intermediate* or *final*, *knowledge-based* or *tertiary* services. *Intermediate* services can be *distributive services* (wholesale/retail trade, transport, storage and warehousing, communications) or *producer services* (financial, business and professional services), while *final* services can be further subdivided into *social services* (health, education, sanitary services) and *personal services* (household services, recreational and cultural services, hotels and restaurants). Examples of *knowledge-based services* are insurance, professional technical services, information technology, advertising, motion pictures, education, health care and some governmental services, while "*tertiary*" services are leasing, shipping, distribution, franchising, retail trade, travel, some social services, most entertainment and personal services. Knowledge-based services are characterized by relatively high human-capital content and that are often customized. "Tertiary" services are more conventional service activities characterized by lower human capital requirement and more standardized production methods (UNCTAD, 1994).

commitments by Members.² Many countries, however, were flexible as to the services sector they included in their schedule of commitments which either were not in the WTO List or appeared there as a more aggregated sector. The WTO Classification List was also the basis for the Japan-Singapore Economic Partnership Agreement services negotiations, and indeed, for other regional trading agreements which follow the GATS approach

Services role in development

It is widely recognized that efficient services are vital for economic development. Services not only provide direct benefits to consumers, but are also critical elements for the international competitiveness of the industrial and agricultural sectors in the economy. Poor transportation and storage facilities increase losses in agricultural output, substandard communication networks increase operating costs, and poor financial intermediation leads to higher cost of borrowing which impinge on the sector's competitiveness in the global market. Just like trade in goods, restrictions on services trade reduce welfare by creating a wedge between domestic and foreign prices leading to a net welfare loss to the economy. Significantly, because services are, typically, inputs to production, the higher price (and poor quality) of services acts as implicit tax on production. Thus, with the liberalization of goods trade, if services sector is not at the same time liberalized, the reduction in nominal tariffs on manufactured products results in a reduced or even negative rates of protection for some industries.

This explains why many countries have pursued unilateral liberalization and competition-increasing policies in services. Anecdotal evidence of the benefits of liberalization abound. For example, Chile, Mexico, or Singapore have reduced operating costs or saved time for exporters by introducing competition in the provisions of port services. Deregulation in telecommunications in Peru, Philippines, or Venezuela remarkably increased the density of phone users and reduced connection installation waiting time in a rate which decades of strict government regulation and/or ownership have not achieved. In the Philippines, phone installation waiting time was reduced from about 6-8 years to only a few days or weeks. Consumer banking services and risk management in many domestic markets improved because of entry and competition from foreign banks.

Multilateral rules on services

While unilateral market liberalization and strengthening of regulatory institutions in services are, in itself, good for the economy, multilateral engagement creates additional benefits through the usual political economy argument of trade. The idea is that improved access for a country's exports to foreign markets that comes out of international negotiations increases support for liberalization and helps fight against the opposition from those who benefit from protectionist policies. For services, the multilateral rules that regulate trade are contained in the General Agreement on Trade in Services (GATS) which, along with GATT and TRIPs,³ provide the pillars for the World Trade Organization (WTO).

² The WTO Classification List was, in turn, based on the UN Central Product Classification (UNCPC) system which provides a highly disaggregated services classification.

³ General Agreement on Tariffs and Trade (GATT) and Trade-Related Intellectual Property Rights (TRIPs).

The GATS encompasses not only cross-border trade in services but also the movement of capital and labor for the provision of services. The reason is that, unlike goods that are normally traded by crossing borders, some services trade, because of the required simultaneous presence of service provider and consumer, can never take place unless the movement of factors of production is allowed. Thus, the GATS accounts for four different modes of supply, namely: 1) cross-border trade; 2) consumption abroad; 3) commercial presence; and 4) movement of individuals. Mode 1 is analogous to cross-border trade in goods, for example, when computer software is purchased and downloaded directly through the internet. Mode 2 takes place when the consumer travels to the territory of the service supplier and consumes services in that territory, for example, when a patient from one country travels to another for medical treatment. Mode 3 (commercial presence) involves the movement of capital, which is particularly relevant for services, like most banking services, which cannot be traded except through establishment in the country of the consumer. Finally, Mode 4 occurs when independent service providers or employees of MNCs temporarily move to another country. Note that individuals who migrate permanently to another country are not covered by Mode 4. In theory, the GATS is an instrument that could facilitate modal bargaining so that developed countries get greater access for capital (mode 3) in exchange for improved temporary access for service providers (mode 4) from developing countries in which there are surplus labor.

The implementation of the GATS agreement is through the listing of horizontal and specific sectoral commitments in the Members' Schedule. Horizontal commitments on the four modes of service supply apply to all sectors, while specific commitments apply only to listed service sectors and subsectors. This listing of sectors committed for liberalization is the '*positive approach*' of the GATS. In addition, countries have to list non-conforming measures present in the domestic laws and regulations that affect 'market access' and 'national treatment' of foreign service providers for such measures to be WTO-compatible (see Appendix 2 for a sample sector commitment in the GATS by the Philippines). This is the '*negative list*' approach in the GATS schedule. Thus, the GATS is a combination of both positive and negative list approach.

National treatment for foreign service suppliers is conventionally defined as treatment no less favorable than that accorded to *like* domestic services and service suppliers. An example of a measure that requires listing under national treatment is government subsidies granted to certain service sectors which would not be extended to foreign-provided *like* services. On the other hand, GATS does not define market access but rather explicitly prohibits six measures. These market access restrictions are limitations on: 1) number of service suppliers; 2) value of transactions or assets; 3) total quantity of service output; 4) number of natural persons that may be employed; 5) type of legal entity through which a service supplier is permitted to supply a service; and 6) foreign share holding or the absolute value of foreign investment. These six measures would only be considered WTO-compatible if explicitly listed in the country schedule.

There are, however, many criticisms of GATS that explain the relatively little services liberalization attributable to it after the Uruguay Round. First, its liberalizing effect comes, not from tearing down of trade barriers, but mostly from the "stand-still" effect of commitments on government regulatory measures. That is, the listing down of non-conforming measures to market access and national treatment helped forestall the introduction of new distortions or

barriers. The bad news is that this is not foolproof, especially if, as what happened in the GATS negotiations, developing countries bound their commitments at a more restrictive level than what is actually applied. Note that with many countries adopting unilateral liberalization in services, certain services sectors would have faced a relatively more liberal regime, yet the Members' schedule might not have reflected this but, instead, the more restrictive ones.⁴ For example, in the Philippines, the actual foreign investment limit in banking is 60%, yet what is bound in the GATS schedule is a 49% cap in foreign shareholding. The implication of this strategy is that the standstill only applies to the more restrictive bound commitments. There is, therefore, a potential for developing countries to roll back their unilateral liberalization to a lower level of openness.

Besides the more restrictive bound commitments, another problem with the GATS was the positive list approach in the specific sector commitments. Analysis of GATS schedule of commitments of different countries concludes that most countries have listed only a small part of their services sector. What is more, of these committed sectors, numerous non-conforming measures with national treatment and market access have been listed as limitations to the country's commitments. The GATT Secretariat reports that industrialized countries commitments are only about 50% of maximum sector-mode commitments, while developing countries committed only 17% of potential maximum (Hoekman, 1996). The number of commitments without any limitations or qualifications constitute only about 25% of the total industrialized countries' commitments, and 7% of developing and less developed countries' commitments. These numbers illustrate how far away WTO members are from attaining "free trade" in services and the magnitude of the liberalizing task that remains (Hoekman and Primo Braga, 1997).

Challenges in Further Liberalization

While successive rounds of negotiations in services are envisioned in the WTO, there are a number of challenges for further trade liberalization. These challenges owe itself again to the particular nature of the service sector as well as to the paucity of data which could aid proper analysis of services trade liberalization.

Measures affecting services are mostly non-transparent

Unlike in goods trade, most barriers to services trade are not to be found at the border, but are rather hidden deep in domestic regulation. They are typically, non-tariff, regulatory measures, or legislative and administrative practices. Therefore, they are less transparent than tariffs and quotas, and their restrictive impact is more difficult to assess. For example, domestic regulatory environment can be legal barriers to entry for professional legal or accounting services through non-recognition of diplomas. Or, they can be restrictions on foreign direct investment such as local content requirements or joint venture requirements or through a variety of domestic regulations such as technical standards, licensing, and qualification requirements.

⁴ Why countries opt for a more restrictive commitment than what is applied is usually for greater policy flexibility. That is, should the domestic regime require greater restriction on, say, movement of capital and labor, the government would have the freedom to do so without violating its WTO commitments. Another reason, presumably, is to withhold some bargaining chips for future rounds of negotiations in order to negotiate for greater access in other sectors, like other services sectors or manufactured or agricultural goods.

Table 1 lists some of the typical measures that affect market access and national treatment across the four modes of supplying services. The fact is that most governments still have to grapple with all the measures in place in their national economy and understand how they affect trade in services.

Table 1. Restrictive Measures Affecting Services

	Market Access	National Treatment	Others
Mode 1 Cross-border trade	Quantitative restrictions (limit quantity, market share, foreign exchange access)	Price-based measures (tariffs, taxes, and subsidies giving domestic supplier price advantage)	Government procurement policies, discriminatory access to distribution networks
Mode 2 Consumption Abroad	Requirements relating to travel documentation, entry visas	Limits on foreign currency available to the traveller, travel tax, regulations relating to transborder medical insurance, rules on recognition of educational certificates obtained abroad, restrictions on freedom of movement (in country of destination)	General consumer regulations
Mode 3 Commercial Presence	Total or partial prohibition of foreign direct investments, restriction on the geographic location of foreign-services affiliates, restrictions on the number of foreign firms in the market	Limits to the scope of business operations and access to local finance, performance requirements, rules relating to external financial transfers, tax measures	General regulatory framework for services transactions (including prudential regulations, competition policies, and consumer protection laws, and intellectual property rights)
Mode 4 Movement of natural persons	Visa, residence permits, work permits, licensing requirements, recognition of diplomas	Restrictions on rights of dependents, restrictions on overseas remittances, taxation, restrictions on benefits enjoyed by foreign workers, discrimination against foreign workers in the workplace	Rules relating to repatriation, cultural barriers

Source: UNCTAD (1994).

It is important to recognize that many domestic measures which may tend to increase cost for foreign providers would be impossible to eliminate. Consider licensing procedures for medical doctors, for example. No matter how concerned about economic efficiency a government is, it is impossible to conceive that it would auction off professional licenses to foreign doctors on the basis of the highest bidder, or simply impose a tariff on any foreigner who

claims to be a doctor. In this and in other similar cases, governments have to impose a screening or licensing procedure. The issue in services liberalization is not in preventing justifiable domestic regulations to exist but in ensuring that the cost be kept to a minimum while still maximizing consumer protection.

Limitations in services data

Severe limitations of data on services compound the problem because without good data, the economic cost of restricted market access to the domestic economy and potential welfare to be gained from liberalization is hard to quantify. Without these, government decisions to liberalize services are difficult to justify and sell to the general constituencies.

Traditional source of data in services is the country's Balance of Payments statistics. Conventionally, services are recorded in the non-merchandise trade portion of the current account. In the 5th edition of the Balance of Payments Manual, however, the IMF explicitly identifies sectors belonging to services, namely: transportation; travel; communication services; construction services; insurance services; financial services; computer and information services; royalties and license fees; other business services; personnel, cultural and recreational services; and government services, n.i.e. Though this gives an improved reporting of service activities, it is still not completely in consonance with how the WTO categorizes services trade. First, identified services cross-border trade does not capture labor income of nationals working abroad under mode 4 mode of supply, but only those income that are remitted back to the country of origin. Second, it excludes sales of MNCs through foreign affiliates (mode 3) that are established in the host country. Thirdly, the reported merchandise trade value, because they are reported on a free-on-board (fob) basis, incorporates the value of the services required to bring the good to the customs frontier of the exporting economy. To augment the data derived from the balance of payments, some OECD countries have started to collect data on sales of affiliates in host countries.

Perception of external incursion on domestic regulations and denationalization

Because most barriers to services trade are imbedded in regulations affecting the domestic market, services liberalization, at times, implies changing legislations or the rules of government departments that may be unrelated to trade. For example, if educational services were to be liberalized, this would mean, among others, changing some regulations in the department of education, culture, and sports, which, traditionally, had not had any dealing with the WTO. Because of this, liberalization can be perceived as an external incursion on domestic affairs by international organizations. For many countries, commitments to GATS have involved passing of new laws, repeal of old ones which contain measures which violate their multilateral commitments, or even changing the constitution. This becomes very challenging because not many governments are thrilled about the prospects of going into a protracted executive-legislative tussle, unless the gains to be had are indisputable and backed by solid data and analysis.

In addition, many of the sectors which are, usually, in need of liberalization are those which have been the traditional preserve of governments, either because of scale economies or

because of social or non-market objectives (e.g., national security or public service concerns). These sectors include water or electricity provisions, transportation and telecommunication facilities, education and health services. Often, the impact of denationalization of certain cultural industries adds to the complexity of liberalization efforts with respect to services. Fortunately, faced with shrinking government budgets, opening up of some of these service sectors in developing economies to foreign providers have become relatively more acceptable, though difficulties remain, particularly in education and health services.

Free-rider problem in multilateral liberalization

Arguably, part of the difficulties in the multilateral liberalization efforts through the GATS is that any commitment made is automatically extended to all members, creating free-riding incentives to some countries. To a certain extent, commitments become 'costly' in the sense that countries from which a WTO member benefit very little trade from obtain access to its domestic market and are enabled to compete with its domestic service suppliers. This partly explains the proliferation of regional trade agreements in the 1990s, which in many respects, specially in the area of services trade liberalization, complement the multilateral agreements. In significant ways, many regional trade agreements have extended the country commitments beyond what many have been willing to commit in the WTO.

Preferential Trade Agreements

The prevalence of preferential or regional trade agreements can be explained by several reasons. One reason is like-mindedness of governments, especially if these countries have similar cultures, level of development, and geographic proximity. Such like-mindedness makes negotiations, for example on mutual recognition agreements for standards and qualifications, as well as regulatory cooperation easier and more practicable. Thus, for example, mutual recognition of education and professional qualifications is relatively easier in the EU, which is comprised of fairly homogeneous economies, than in a multilateral setting. Another reason is that monitoring of preferential agreements is less costly than multilateral efforts because of the limited number of countries involved. Tradeoffs across issues and sectors are also easier to carry out without the complications of having to protect the domestic market from competitors from free-riding countries. Regional or preferential liberalization can, likewise, be a building block for multilateral liberalization because exposure to competition in the regional market could help prepare firms for global competition through some sort of 'learning-by-doing.' And if the experience is altogether positive, regional liberalization paves the way for the political acceptability of multilateral liberalization.

Preferential trade agreements imply privileged access which can take different forms. For example, countries can allocate a larger proportion of quota to a preferred source (e.g. number of individual service providers allowed inside the country or number of branches or firms allowed to operate). They can relax restrictions on foreign ownership or type of legal entity on a preferential basis. Mexico, for instance, eliminated ownership restrictions for financial institutions that are established in Canada and the US (Mattoo and Fink, 2002). There could be discrimination through taxes and subsidies, or waiving of qualification and licensing requirements for those from preferred countries.

One issue of concern with regard preferential trade is trade diversion. In the context of services, trade diversion takes place if the most efficient service provider is precluded from participating in the domestic market because of special preferences given to less efficient ones. Some, however, contend that trade diversion applies only to certain types of services, particularly *infrastructure-type* services like financial, telecom, energy, and transport, which require large amounts of capital to operate, and large economies of scale to produce to be efficiently supplied (Stephenson, 2002). Preferential liberalization of these activities would, therefore, not make good economic sense as it would limit the ability of a country to draw upon the most efficient suppliers, unless those bound commitments are extended to other WTO members on a Most Favored Nation (MFN) basis.

For other types of services like *business-type* services,⁵ and particularly professional services, the preferential route would be useful because to develop a common set of criteria for the recognition of the equivalence of standards, diplomas, educational and professional training, among a smaller set of countries is easier. Similarly, for *social-type services* (education, health) or recreational and cultural services that are typically quite sensitive to certain national concerns, the preferential trade agreements can facilitate deeper liberalization because it is easier to liberalize these sectors among countries that have comparable levels of development, consumer preferences and backgrounds.⁶

The relative ease in preferential trade negotiations is partly the reason why, while multilateral liberalization has not expanded deeply despite the GATS, many countries have been able to bind services commitments in their regional agreements on a more comprehensive scale (Stephenson, 2002). This is particularly true of NAFTA and many Latin American preferential agreements as well as of the ASEAN where most of the commitments are dubbed as ‘WTO-plus’. Regional or preferential services trade agreements have pushed the liberalization process forward at a deeper level and a faster pace than at the multilateral level.

Approaches to liberalization of services

Many regional trade agreements have innovated over the multilateral approach and followed an ‘integrated’ approach, incorporating disciplines on investment, government procurement, movement of natural persons, competition policy, intellectual property rights and technical barriers to trade that apply to both trade in goods and services alike. From a legal point of view, the integrated approach has led to a legal structure that is coherent and seamless with respect to the application of trade rules (Stephenson, 2002), unlike the WTO agreements where agreements are merely tacked on to earlier ones.

Two approaches to services liberalization can be discerned among the different trade agreements.⁷ These are the “NAFTA-type” or negative list approach and the “GATS based” or

⁵ Examples include distribution, professional services, tourism, construction/engineering services, environmental services.

⁶ Mattoo and Fink (2002) argue that multilateral liberalization is still superior to preferential trade liberalization in terms of its effect on overall economic welfare. But, if multilateral liberalization is elusive to attain, regional or preferential trade in services is better than no liberalization at all.

⁷ Stephenson (2002 and 1997) give an excellent discussion of various regional trading agreements, particularly those in the Western Hemisphere. Stephenson (1997) gives a thorough comparison of the negative and positive list

positive list approach.⁸ Table 2 shows that all trade agreements in the Western Hemisphere, except *Mercosur*, have been inspired by the NAFTA approach, while ASEAN Framework Agreement for Services remain in the GATS mold.

Table 2. Approaches to Services Liberalization

<i>Positive List Approach</i>	<i>Negative List Approach</i>
ASEAN (1997) <i>Mercosur</i> (1997) ⁹	Andean Community (1998) CARICOM (1998) Central America – Panama (2001) Chile-Canada (1997) Chile – Mexico (1998) Chile-Central America (2000) Group of Three (1995) Mexico – Bolivia (1995) Mexico – Costa Rica (1995) Mexico – Nicaragua (1998) Mexico – Northern Triangle (2001) NAFTA (1994)

Source: Stephenson (2002)

The NAFTA-type (negative list) approach does not require the negotiation of schedules of sectoral commitments because liberalization is guaranteed for all sectors and for all service suppliers from Partner countries. Cross-border trade in services and commercial presence are free of restraint for all sectors unless specified otherwise in the lists of reservations. Such lists of reservations contain measures that are not in conformity with the core disciplines of the agreement, primarily the MFN, national treatment, right of cross-border supply, and the removal of discriminatory quantitative restrictions. Thus these preferential trade agreements apply the disciplines on services trade from the ‘top down’ perspective to cover the entire universe of service activities.

In contrast, GATS-type (positive list) approach carry out liberalization through a ‘bottom up’ approach in which gradual liberalization is carried out through incremental rounds of negotiated commitments, subscribed in schedules of commitments. The disciplines of national treatment and market access are of specific application, i.e. they apply only to service sectors included in national schedules of commitments. On the other hand, MFN and transparency disciplines have general application i.e. across all service sectors.

approaches in terms of: 1) principles; 2) provisions and disciplines; 3) negotiating modality; 4) market access; and 5) exceptions. This section draws a lot from these two papers.

⁸ As discussed previously, GATS actually combines both positive and negative listing approaches. The positive list is with respect to the sectors committed, while the negative list is with respect to non-conforming measures affecting market access and national treatment. Here, the use of positive list as being associated with GATS essentially refers to the listing of sectoral commitments.

⁹ Mercosur has a hybrid-type approach. It follows the GATS approach but with a transparency provision or the required listing of all existing restrictions in service sectors (whether included in the positive list or not). Furthermore, it has a status quo provision proscribing the introduction of any new restrictions. This amounts to essentially a NAFTA type of approach.

These two approaches have different implications in terms of transparency, stability of commitments, and trade liberalization that is summarized in Table 3. In terms of transparency, GATS-type is inherently a non-transparent approach compared to NAFTA-type, particularly because of its specific application (as opposed to universal application in the other) and the non-listing of non-conforming measures for sectors that have not been committed. It also provides less stability in commitments because the listing allowed for a bind that is more restrictive than what is actually applied. Furthermore, in NAFTA-type PTAs, many provisions already contain an inherently liberalizing bias. For example, they do not require local presence as a condition for foreign service providers to provide a service, allow firms and individuals to determine the cost-efficient way possible to carry out their trade, eliminated citizenship or permanent residency requirement to license or certify professional service providers of another member. Rules of origin requirement is, likewise, more liberal requiring only substantial business activities and registration with legal domicile in a member country.

Table 3. GATS vs. NAFTA Types of Approaches

	<i>GATS Approach</i>	<i>NAFTA Approach</i>
Application	Specific service sectors (for market access and national treatment)	Universal
Transparency	Less transparent. No information on market access or regulatory practice on non-listed sectors and on listed sectors but with 'unbound' mode of supply commitments. Many barriers are not 'caught' by the schedule.	More transparent. All non-conforming measures and reservations must be listed. List of reservations is at the level of regulatory practice; divided between discriminatory and non-discriminatory measures with the former being subject to eventual removal.
Stability	Binding can be more restrictive than status quo (or less than actual practice). Allows for the possibility of changing regulatory practice to a more restrictive level.	List of reservations and existing restrictions reflect actual level of application. Many agreements with NAFTA model also have explicit status quo provision, precluding introduction of new restrictions on services trade.
Liberalization	Merely amount to 'stand-still' bindings. Few sectoral commitment plus many limitations and qualifications in those few commitments.	Theoretically, can be the same as GATS approach. But in actual agreements, commitments tend to be more aggressive.

Source: Adapted from Stephenson (2002)

Analysis of Japan, Singapore, and Philippine Services Commitments

Within Asia, preferential trade agreements in services have taken shape through the ASEAN Framework Agreement for Services (AFAS)¹⁰ which was signed in 1995 and, for the moment, through the Japan- Singapore Economic Partnership Agreement (JSEPA). Both these agreements are patterned after the GATS.

Right from the outset, the ASEAN trade integration does not follow the NAFTA, not only with respect to approach in services liberalization, but also in the fact that the ASEAN agreements are being drawn up separately instead of being negotiated as one integrated whole. In this, it is closely following the footsteps of the WTO. In the listings of commitments, ASEAN members inscribe only commitments that go beyond the GATS, thus enabling an easy and rapid identification of the GATS-plus element of regional services liberalization. Progressive rounds of GATS-plus negotiations aim to achieve the “free flow of trade in services within ASEAN by 2020.” Philippine sectoral commitments in the WTO and AFAS are listed in Table 4, while a more detailed list of commitments for the AFAS is in Appendix 3. Evidently, as is true of other regional agreements, more sectors have been committed for liberalization in the AFAS than in the WTO. However, to fully understand the liberalizing content of the commitment, an analysis of the modal commitments is necessary because, often, the commitment in the sector is nullified by the very restrictive commitment in the mode of supply.

Table 4. Philippine Commitments in WTO and AFAS

<i>Industry/Groups</i>	<i>WTO</i>	<i>AFAS</i>
Business Services		X
Communications Services	X	X
Construction and Related Engineering Services		X
Distribution Services		
Educational Services		
Environmental Services		
Financial Services	X	X
Health Related and Social Services		
Tourism and Travel Related Services	X	X
Recreational, Cultural, and Sporting Services		
Transport Services	X	X

Source: Philippine Schedule of Commitments

In the JSEPA which was signed in 2002, both Japan and Singapore, likewise, expanded their commitments beyond WTO. Japan committed a total of 135 sectors and subsectors, while Singapore committed 139. Like AFAS and GATS, progressive liberalization is envisioned through periodic review and negotiations, but unlike AFAS, the JSEPA was negotiated as one integrated free trade agreement covering both goods and services and include disciplines on investments, intellectual property rights, government procurement, movement of natural persons, and competition policy. Table 5 shows the similarities and differences among the three

¹⁰ The signatories to the AFAS are: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

agreements –AFAS, NAFTA, and JSEPA. In most respects, AFAS and JSEPA are almost identical. In NAFTA, foreign direct investment is not included as a mode of supply in the services agreement. Instead, a separate chapter is drawn up specifically to address investment issues. Likewise, JSEPA has a similar set of separate chapters covering investments, movement of natural persons, competition policy, etc.

JSEPA and AFAS are similar in terms of discipline governing mutual recognition. Members or Parties to the agreement are authorized to accord recognition of education or experience or licenses granted in another Member state, either autonomously or based upon an agreement or arrangement. In contrast, such recognition is mandated in NAFTA whenever the home country can demonstrate, to the satisfaction of the host country, that its standards adequately fulfill the host country's legitimate objectives.

Quantifying the specific commitments

How liberalizing have the preferential trading agreements been? To assess the schedules, a quantitative measure is required that allows for cross-country and cross-Agreement comparisons. This section follows Hoekman (1996) methodology of quantifying the extent to which measures have been bound. The result does not actually give an assessment of the liberalization implied by the specific commitments in the sense of reducing discrimination and enhancing market access since virtually all commitments are of a standstill nature. Rather, it gives an idea about the extent to which Japan, Singapore, and the Philippines were willing to bind the status quo in the different trade agreements.

Hoekman (1996) methodology used the 155 non-overlapping service sectors in the Group of Negotiations in Services (GNS) classification list, while this paper used only 145 by removing the ambiguous category, 'others', in the different sectors. Multiplying each service sector by the four modes of supply, Hoekman has a total of 620 possible commitments each for market access and national treatment, while the analysis here has a maximum of 580 sector-modes.

To allow calculation of the sectoral coverage commitments, a value of '1' is given where the commitment in a given mode and sector says 'None', because this implies no restrictions on either market access or national treatment. A value of '0' is given in all instances where these countries list 'Unbound' for a sector/mode supply because this means no policies are bound and the country retains maximum policy flexibility. This scaling implies that the scheduling and binding has no value. Finally, a value of '0.5' is given in all instances where specific restrictions or limitations are listed for a sector/mode of supply, implying that the commitment has value, no matter how restrictive the policies that are maintained¹¹. The higher the number, the greater the implied extent of openness cum binding.

¹¹ In some sense, the value comes from the transparency which listing the limitations signify.

Table 5. Comparison of Three Preferential Trade Agreements

	ASEAN- AFAS	Japan- Singapore	NAFTA
TITLE	ASEAN Framework Agreement on Services under the Association of South East Asian Nations Free Trade Area	Japan-Singapore Economic Partnership Agreement	North American Free Trade Agreement
MEMBERS	Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam	Japan, Singapore	US, Mexico, Canada
ENTERED INTO FORCE	1995	2002	1994
OBJECTIVE	To eliminate substantially restrictions to trade in services among member states (by expanding the depth and scope of liberalisation beyond the GATS) with the aim to realizing a free-trade area in services	To remove barriers to trade in services between the Parties	Eliminate barriers to trade and facilitate cross-border movement of goods and services between the Parties; to promote competition; to increase investment opportunities in the territories of the Parties
SECTORAL COVERAGE	Sectors covered according to scheduled commitments	Sectors covered according to scheduled commitments	All service sectors (except air services) as well as measures relating to cross-border trade in services
NEGOTIATING MODALITY	Liberalization to be gradual, and carried out through rounds of negotiated commitments, the results to be made available to all members under a “positive list” approach	Liberalization carried out through rounds of negotiated commitments, the results to be made available under a “positive list” approach.	Liberalization carried out through a “negative list” approach. All measures are subject to liberalization except those part of the country’s list. Non-conforming measures to general liberalization principles should be listed.

1. MOST-FAVORED NATION	May be made subject to sectoral exemptions	Automatic MFN benefit granted to Parties from other agreements signed after the JSEPA (Article 63, par.4a).	Automatic MFN benefit granted to Parties
2. NATIONAL TREATMENT	Covers only scheduled sectors subject to bound commitments	Covers only scheduled sectors subject to bound commitments	Universal principle covering all measures and sectors except those in the negative list.
3. TRANSPARENCY	Not in Treaty	Parties shall make public all measures affecting the operation of the Agreement (Article 2)	Parties shall make public all measures affecting the Agreement.
4. MARKET ACCESS	Provisions on services on cross-border basis and on establishment basis must be scheduled	Provisions on services on cross-border basis and on establishment basis must be scheduled	Universal principle applying to all services sectors except those in the list schedule of exemptions.
5. TREATMENT OF INVESTMENT	Commercial presence covered by specific sectoral commitments	Separate investment disciplines contained in a different chapter. Commercial presence covered by specific sectoral commitments.	Covered in a separate chapter; not part of mode of services.
6. SAFEGUARDS	Provisions exist for Emergency Safeguard Measures for Article XII and Restrictions to Safeguard the Balance of Payments	Provisions exist to safeguard the Balance of Payments and solve external financial difficulties.	Provisions exist to safeguard the Balance of Payments and solve external financial difficulties.
7. MONOPOLY PRACTICES	Not covered.	Disciplines over monopoly practices.	Disciplines over monopoly practices, especially government monopoly.

8. RECOGNITION OF TITLE	Each Member State may recognize the education or experience obtained, requirements met, or licenses or certifications granted in another Member State. Such recognition may be based upon an agreement or arrangement with the Member State concerned or may be accorded autonomously.	Parties may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party. Recognition may be based upon an agreement or arrangement with the Party or may be accorded autonomously (Article 93). Established Joint Committee on Mutual Recognition of Professional Qualifications.	No obligation to accord recognition to education, experience, licenses or certifications obtained in the territory of another Party. But Parties shall afford another an adequate opportunity to demonstrate why the education, etc. should be recognized. (Note: in practice, private certification groups are establishing harmonization criteria)
9. RULE OF ORIGIN (Denial of Benefits)	Benefits are denied to a service supplier who is a natural person of a non-Member State or a juridical person owned or controlled by persons of a non-Member State constituted under the laws of a Member State, but not engaged in substantive business operations in the territory of Member State(s)	Benefits are denied if service is supplied from or in the territory of a non-Party or by a natural person of a non-Party or juridical person owned or controlled by persons of a non-Party constituted under the laws of a Party but not engaged in substantive business operations in the territory of a Party.	
10. GOVERNMENT PROCUREMENT	No Provisions.	Annex 4 of WTO (Government Procurement Agreement) applies, except for some provisions.	
11. MOVEMENT OF NATURAL PERSONS	Not in Treaty	Disciplines on temporary entry of business people, investors, and providers of professional services.	Disciplines on temporary entry of business people, investors, and providers of professional services.
12. DISPUTE SETTLEMENT	A specific dispute settlement mechanism may be established for the purposes of this Framework Agreement which shall form an integral part of this Framework Agreement	Provisions for settling investment disputes. No special provisions for dispute settlement in services.	Dispute settlement procedure is established.

13. EXCEPTIONS	Not in Agreement	Provisions are included for exceptions (Article 69)	Provisions are included for exceptions
14. NON-CONFORMING MEASURES	Listed as part of schedule	Listed as part of schedule	Requirement to list non-conforming measures
15. SPECIAL PROVISIONS	Financial services, basic telecommunications, maritime transport, movement of natural persons, and audio-visual	Financial Services, Telecommunications, Investments, Movements of Natural Persons.	Financial Services, Telecommunications, Transport, Professional Services
16. FUTURE LIBERALIZATION	Gradual liberalization through exchange of lists commitments.	Review of the Agreement in 2007 and every 5 years thereafter (Article 10). Establishment of a Supervisory Committee to consider and recommend further liberalization of trade in goods, services, and investments (Article 8, par. 2d).	Review of QRs every two years; Schedule future liberalization commitments

Source: Stephenson (1997) plus author's own.

If countries made commitments on sectors at an even disaggregated level than in the WTO classification list, it is counted along with the other sectors in that category. For example, if in the WTO list, accounting and auditing is listed as one category under professional services, and Singapore make commitments for auditing separately from accounting, the paper counts only one sector and use the more liberal commitment of the two for the scoring process. The assumption that the more liberal commitment applies to the whole subsector bias the sectoral coverage indicators upward. Conversely, if Singapore schedule commitments for an aggregated item (e.g. Telecommunications) instead of individual subsectors within Telecom, then it is assumed that the commitment applies to all of the respective subsectors and, thus, is accordingly multiplied by the appropriate number of subsectors. Finally, where the commitment says ‘Unbound due to lack of technical feasibility’, a value of ‘1’ is allocated.

Measures of sectoral coverage

Tables 6 to 8 report the summary figures for Singapore, Japan, and the Philippines under the WTO, AFAS, and JSEPA. Singapore, like other countries, was very cautious in its GATS commitments. For example, even though it has a fairly liberal financial services regime, yet it has many “Unbound” commitments under the WTO. In the JSEPA Singapore schedule, however, it is generally less cautious. Total number of sector-mode commitments increased by 141% in JSEPA from 232 in the WTO to 560. This represents about 97% of total maximum commitments (row 2), an even higher figure than its combined WTO-AFAS commitments share (only 61% of maximum). This means that Singapore has bound many measures in services in its bilateral agreement with Japan.

Japan’s increase in sector-mode commitments is less dramatic, but significant, nonetheless. It increased its sector-mode commitments by 20% from 408 in WTO to 492 in JSEPA, representing 85% of maximum possible commitments compared to only 70% in the WTO. For the Philippines, number of commitments increased by 77% (from 160 in WTO to 284 in combined AFAS-WTO commitments), up from slightly below one-third to about half of possible maximum.

Coverage, defined as the sum of the scale factors allocated to each sector-mode (0 for Unbound, 0.5 for bound restrictions, 1 for no restrictions), as a percentage of maximum, shows that the quality of opening has likewise improved from the WTO to the preferential trade agreements for all three countries. Even so, the coverage/count ratio shows that the commitments are still littered with many restrictions. In Japan, the improvement in coverage commitment is almost marginal. Coverage share of maximum possible commitments increased from 50% in the WTO to 52% in JSEPA for market access and dropped from 48% to 46% for national treatment. This is apparent from its national schedule that is full of either ‘unbound’ entries or restrictions, even though more sectors have been listed. In Singapore’s case, the proportion of ‘1’ and ‘0.5’ is much higher than Japan’s, thus the 61% and 63% share of *coverage* to maximum for MA and NT, respectively.

Table 6. Sectoral Coverage of Specific Commitments (Singapore)

	HIC in GATS (average)	WTO	AFAS*	JSEPA	WTO + AFAS **
No. of commitments	330.4	232	120	560	352
<i>Market Access</i>					
Count (sector-modes listed as a share of maximum ^{1/})	53.3	40	21	97	61
Coverage (sector modes listed as a share of max, weighted by openness and binding scale factors)	40.6	27	15	61	43.9
Coverage/ Count	76.1	72	73	63	72
No. of "No Restrictions"	188.9	118	77	357	195
"No Restrictions" as a share of total offer made	56.4	51	64	64	55
"No Restrictions" as a share of maximum		20	13	62	34
<i>National Treatment</i>					
Count (sector-modes listed as a share of maximum ^{1/})	58.1	40	21	97	61
Coverage (sector modes listed as a share of max, weighted by openness and binding scale factors)	42.4	25	16	63	42.7
Coverage/ Count	79.5	67	76	65	70
No. of "No Restrictions"	218.7	152	88	372	240
"No Restrictions" as a share of total offer made	65.1	66	73	66	68
"No Restrictions" as a share of maximum		26	15	64	41
<i>Memo Items</i>					
No. of NT 1's / No. of MA 1's	1.2	1.3	1.1	1.04	
No. of matched 1's (MA=NT=1)	173.4	115	64	345	179
Matched 1's/ count	51.4	49.6	53	62	51
Matched 1's/ max	28	19.8	11	59	31

Note: ^{1/} maximum is 145 sectors * 4 modes. The paper used 145 instead of 155 sectors as Hoekman (1995) to remove the ambiguous classification of "others" in some subgroups

* Addition to WTO commitments. Some committed sectors may be similar to WTO committed sectors

** may be overestimated because some sectors may be the same except that the modal commitments have become more liberal

Source: AFAS and JSEPA – author's own computation; WTO – from Hoekman (1995)

Table 7. Sectoral Coverage of Specific Commitments (Japan)

	HIC in GATS (average)	WTO	JSEPA
No. of commitments	330.4	408	492
<i>Market Access</i>			
Count (sector-modes listed as a share of maximum ^{1/})	53.3	70	85
Coverage (sector modes listed as a share of max, weighted by openness and binding scale factors)	40.6	50	52
Coverage/ Count	76.1	72	61
No. of “No Restrictions”	188.9	230	282
“No Restrictions” as a share of total offer made	56.4	56	57
“No Restrictions” as a share of maximum		40	49
<i>National Treatment</i>			
Count (sector-modes listed as a share of maximum ^{1/})	58.1	70	85
Coverage (sector modes listed as a share of max, weighted by openness and binding scale factors)	42.4	48	46
Coverage/ Count	79.5	68	54
No. of “No Restrictions”	218.7	199	213
“No Restrictions” as a share of total offer made	65.1	49	43
“No Restrictions” as a share of maximum		34	37
<i>Memo Items</i>			
No. of NT 1’s / No. of MA 1’s	1.2	0.9	0.8
No. of matched 1’s (MA=NT=1)	173.4	155	200
Matched 1’s/ count	51.4	38	41
Matched 1’s/ max	28	27	34

Note: ^{1/} maximum is 145 sectors * 4 modes. The paper used 145 instead of 155 sectors as Hoekman (1995) to remove the ambiguous classification of “others” in some subgroups

Source: AFAS and JSEPA – author’s own computation; WTO – from Hoekman (1995)

Table 8. Sectoral Coverage of Specific Commitments (Philippines)

	Developing Country WTO Average	WTO	AFAS*	WTO + AFAS **
No. of commitments	183.7	160	124	284
<i>Market Access</i>				
Count (sector-modes listed as a share of maximum ^{1/})	29.6	28	21	49
Coverage (sector modes listed as a share of max, weighted by openness and binding scale factors)	17.1	21	13	36
Coverage/ Count	57.6	76	61	73
No. of “No Restrictions”	67.3	102	53	155
“No Restrictions” as a share of total offer made	36.6	64	43	55
“No Restrictions” as a share of maximum		18	9	27
<i>National Treatment</i>				
Count (sector-modes listed as a share of maximum ^{1/})	29.6	28	21	61
Coverage (sector modes listed as a share of max, weighted by openness and binding scale factors)	18.8	24	13	39
Coverage/ Count	63.3	87	61	64
No. of “No Restrictions”	90.5	144	70	214
“No Restrictions” as a share of total offer made	49.3	90	56	75
“No Restrictions” as a share of maximum		25	12	37
<i>Memo Items</i>				
No. of NT 1’s / No. of MA 1’s	1.5	1.4	1.3	
No. of matched 1’s (MA=NT=1)	64.3	91	45	136
Matched 1’s/ count	35	57	36	48
Matched 1’s/ max	10.4	16	8	23

Note: ^{1/} maximum is 145 sectors * 4 modes. The paper used 145 instead of 155 sectors as Hoekman (1995) to remove the ambiguous classification of “others” in some subgroups

* Addition to WTO commitments. Some committed sectors may be similar to WTO committed sectors

** may be overestimated because some sectors may be the same except that the modal commitments have become more liberal

Source: AFAS and JSEPA – author’s own computation; WTO – from Hoekman (1995)

In terms of the proportion of ‘no restrictions’ to total offer made, Japan has barely improved in its market access commitments, and even dropped the ratio in national treatment commitments in the JSEPA. On the other hand, a marked improvement can be noted for market access in Singapore, while the proportion dropped in the case of the Philippines.

It can also be noted that Singapore and the Philippines are more liberal in its national treatment commitment, while Japan is more liberal in market access. This is shown in the ratio of ‘no restrictions’ commitment in NT over ‘no restrictions’ commitment in MA. Looking at the national schedules, almost all of mode 4 commitments are ‘unbound’ for all three countries, although the Philippines has indicated mode 4 restrictions in some sectors with explicit reciprocity of labor access conditions in its AFAS package of commitments.

To summarize, overall commitments have increased in the preferential trade agreements compared to these countries’ WTO commitments, even though both market access and national treatment disciplines remain littered with reservations or limitations. Movement of natural persons or Mode 4 commitments are still mostly unbound, even in the preferential trade agreements. Japan appears to be more generous with market access commitments than with national treatment, while it is the reverse for Singapore and the Philippines.

As mentioned, this type of measurement merely measures the extent of countries’ willingness to bind their regulatory measures but does not imply actual liberalizing content. If at all, the extent of openness-cum binding can be implied the bigger the numbers. Moreover, this procedure suffers further limitations because the figures do not take into account the relative importance of different activities in GDP (i.e., the size of the various service markets). The indicators of sectoral coverage do not incorporate information on the relative restrictiveness of measures that are maintained nor the relative importance of modes of supply on a sector-by-sector basis. For example, a foreign equity limit of 75% is valued the same as one that puts the cap at 30%. Similarly, a ‘no restriction’ commitment for mode 1 or cross-border delivery in retail banking is of little value since retail banking usually requires commercial presence (Hoekman, 1996).

Options for the Philippines

Movement of Natural Persons and Mutual Recognition

Like many developing countries with surplus labor, much of the gains from services trade liberalization lie in more liberal mode 4 commitments (movement of natural persons) by partner countries. A liberal mode 4 commitment should enable domestic workers to offer temporary services abroad with relative ease than what is currently allowed. But analysis of services schedules of commitments in both WTO and regional agreements like Japan-Singapore Economic Partnership hints of no major improvement in labor movement policies.

In the JSEPA and WTO, Japan left mode 4 commitments in almost all services sectors largely unbound, which essentially means that it has taken no liberalization commitments as far as labor imports are concerned. This type of commitment schedule is unlikely to significantly vary in other bilateral agreements which Japan would sign, including the Japan-Philippines bilateral agreements. Yet, it is in mode 4 commitments where significant complementarity

between Japan and Philippines lies, because Japan has an aging population while the Philippines has surplus labor. The promise of a bilateral agreement for difficult issues like movement of natural persons lies in the fact that the Japanese market is, nevertheless, protected from having to extend any mode 4 obligation to other countries.

Most barriers to movement of natural persons in Japan and in other countries include quotas or economic needs tests, requiring proof, for instance, that no local labor is able to take on the job.¹² In many countries, formalities to obtain a visa make red tape related to FDI seem trivial by comparison. Furthermore, entry can be impeded by: 1) non-recognition of professional qualifications obtained abroad; 2) burdensome licensing requirements; 3) or by the imposition of discriminatory standards on foreign workers. Requirement of registration with, or membership in domestic professional organizations, e.g. local BAR for lawyers, can also constitute an obstacle for a person wishing to provide a service on a temporary basis (see also Table 1 above).

For the Japan-Philippines services trade agreement, the NAFTA would be a more useful starting point than the JSEPA. The JSEPA chapter on movement of natural persons talks mainly about entry facilitation of specific type of workers and makes no mention about the establishment of committee for mutual recognition as in NAFTA.¹³ For instance, NAFTA contains an obligation to abolish nationality or permanent residency requirements for the recognition of diplomas and the granting of licenses for the foreign providers of professional services. They also set out the obligation to develop a generic blueprint aimed at defining procedures for assisting all professions to achieve mutual recognition of licenses and certifications. While both Mexico and US have slackened in the full implementation of the mutual recognition provision, the fact that such obligation is enshrined in the bilateral agreement is a major milestone for future liberalization in the movement of labor, perhaps, when both the political and economic scenario are opportune for both countries.

Some preliminary progress under NAFTA, however, has already been achieved. For instance, Canadian and Mexican states have approved the agreement signed in 1995 to recognize the equivalency of professional qualifications for the temporary and permanent licensing of engineers. In the US, only Texas had adopted the agreement. A recognition agreement for legal consultants was also agreed by representatives of the legal profession from US, Canada, and Mexico in 1995 but is yet to be adopted. Other professions that are currently working on elaborating recognition agreements under NAFTA include architects, accountants, nurses, land surveyors, and actuaries. Between Canada and US, non-governmental bodies on professional qualifications of architects and accountants signed two recognition agreements, but which, unfortunately, have not yet been extended to Mexico.

Other NAFTA-like provisions that are attractive to adapt in the JSEPA are the following. In the trade agreements of Mexico and Chile with other Latin American countries, there is an annex on professional services that establishes procedures for the recognition of studies, diplomas, licensing and certification obtained by professional service providers. In NAFTA, the

¹² At times, employers are required to take timely and significant steps to recruit and retain sufficient national workers in the specialty occupation. In addition, another requirement is that no worker should have been laid off for a certain period preceding and following the filing of any work permit or visa application for a foreign worker.

¹³ Subsequent discussions on NAFTA mutual recognition agreement draws a lot from Stephenson (2001).

annex requires Parties to encourage the relevant bodies in their respective territories to: 1) develop mutually acceptable standards and criteria for the licensing and certification of professional service providers; 2) to provide recommendations on mutual recognition to the Parties; and 3) to develop procedures for the temporary licensing of professional service providers from the other Party. The guiding principle for the establishment of standards is the equivalence of qualifications in the home and host countries using education, examination, and experience as criteria for evaluation. Moreover, the provisions of the Annex are to be revised every three years.

In practice, mutual recognition is very challenging because deep integration in this area entails the willingness of governments to recognize the regulatory authority and competence of other sovereign states, and necessitates a high degree of mutual trust. Even for the EU which enjoys a relative homogeneity in educational and professional standards, mutual recognition remains a knotty issue to this day. What more for countries like Japan and the Philippines with starkly divergent levels of development and professional standards. The experience from NAFTA, however, is encouraging in that it is, too, an agreement between developed and developing countries, yet mutual recognition principles were, at least, laid down. It, thus, offers a model of a possible way forward.

Philippine Sectors of Interest

To determine which service sectors should be pushed for access in the Japanese market and which to liberalize in the domestic market, a more in-depth and extensive analysis of each individual service sector is needed. Because of its scope, it is unrealistic to discuss all the major issues in depth, given the time constraint, but reference is made to substantial research in the Philippine context, if those exist. What this subsection presents is some kind of a situationer on the different service sectors in terms of their essential features for trade and negotiations, e.g. sector characteristic and definition, various trade and regulatory regimes in the Philippines or in other parts of the world that affect the sector, and existing liberalization commitments under the GATS or AFAS or JSEPA.¹⁴

1. Telecommunications Services

Telecommunications services is one of the most promising sectors that is a source of growth and efficiency for the global economy. In the WTO Classification List, it is broken down into 14-subsectors (2.C.a-n and “other” category (o)) (see Appendix 1 for the list of subsectors within Telecommunications). For purposes of negotiations, a. through g. of the list as well as a variety of “other” services like mobile communications, were generally considered *basic* telecommunication services. Subsectors h. through n. and any “other” services not supplied on a real-time basis or which transform the form or content of customer’s information, were considered *value added* telecommunication services. Increasingly, though, the distinction between basic and value-added telecommunication services has blurred with the adoption of new transmission technologies and the enhanced ability to integrate different technologies.

¹⁴ For more details, see the various background notes by the WTO Secretariat, from which this subsection has heavily drawn.

The relevant agreements for telecom services in the WTO are: 1) GATS; 2) the Annex on Telecommunications which deals with specific points pertaining to trade in telecom services such as access to public networks; 3) the Fourth Protocol which provides the legal basis for the annexation of new basic telecom schedules to the GATS schedules; and 4) the Reference Paper which contains pro-competitive regulatory principles and which was optional for WTO members.

Existing Commitments

Current Philippine commitments in the WTO cover practically all subsectors of telecom services, but with “Unbound” market access commitments for all modes of supply, except commercial presence (mode 3). National treatment commitments are liberal, in contrast. Mode 3 limitations include: foreign equity cap at 40%; franchise to be granted by the Congress; requirement to obtain a Certificate of Public Convenience and Necessity from National Telecommunications Commission; and non-authorization of resale of private leased lines, call-back, dial back and other similar schemes. The commitment in AFAS is similar for the *basic* telecom services, except for mode 1 where, instead of “Unbound”, the cross-border restriction was stated as “subject to commercial arrangement with licensed operators.” No commitment on the telecom value added services has yet been submitted. Under National Treatment, an additional restriction pertains to the number of foreign members of the Board (should be proportionate to equity share) and to the nationality of the executives and managers (required to be Filipino citizens).

The Philippines has not fully subscribed to the Reference Paper with its specific regulatory principles. Instead, the Philippines has a broadly stated commitments to the principles of competition. With regard interconnection or access to local loop carriers, the primary difference between the Philippine commitment and the reference paper is that the former applies its interconnection guidelines to all suppliers while the latter applies it specifically with respect to the major supplier.¹⁵

Possible Position

Areas for consideration for liberalization can focus on: 1) the foreign equity cap of 40% in basic telecommunications services; 2) zero percent foreign equity in broadcasting entities; and 3) restrictions on cross-sector ownership in telecommunications and broadcasting.

Removing or increasing the maximum limit on foreign ownership can attract more foreign investments that are needed for the continued upgrading and build up of the basic telecommunications infrastructure. The stark reality of high investment demand to keep pace with rapid modernization of basic telecommunications infrastructure has spurred other countries like Malaysia and China to increase foreign equity limits to 61% and 49%, respectively.

¹⁵ A Major supplier is defined as a supplier that has the ability to materially affect the terms of participation in the relevant market for basic telecommunications either because of control over essential facilities or because of a dominant position in the market. A more thorough discussion of the competition and regulatory issues in telecommunication services can be found in Serafica (2002).

Likewise, increasing the foreign ownership limit in broadcasting and removing the cross-ownership restrictions can usher in the restructuring of the telecommunications industry so that evolving networks can use a broad range of integrated services and technologies in a seamless, technology neutral manner. This is merely a recognition of the reality that rapid developments in technology have rendered many of the domestic rules and restrictions affecting telecommunications archaic.

This direction is all the more urgent as many other key services integrate into electronic networks. These key services include distribution services, advertising services, computer and related services, and financial services. Cheap and modern communications facilities are likewise an additional factor to attract a bigger portion of the burgeoning call center business from other parts of the world.

2. Financial Services

The Philippines have made significant commitments in financial services in the WTO, but it did not sign up in the Understanding on Commitments in Financial Services. Note that for financial services, four major agreements are relevant, namely: 1) GATS itself; 2) Annex on financial services which adapts basic GATS provision to sector-specific characteristics of financial services and is binding on all WTO members; 3) Fifth Protocol which includes the new Schedules and MFN exemption; and 4) Understanding on Commitments in Financial Services. The Understanding contains additional commitments that are referenced in the countries' scheduled commitments and have been signed mostly by OECD countries.

The question in the upcoming negotiation is whether the Philippines is ready to sign up for the Understanding. This subsection therefore briefly explains the Understanding and its relation to GATS, current Philippine commitments in WTO and AFAS, and determine if, indeed, given current regulatory provisions, the Philippines is ready to adopt the Understanding on Financial Services Agreement.

Understanding on Commitments in Financial Services

The obligations attached to the Understanding are the following. Countries that sign the Understanding commit to a standstill obligation, that is, they have to list non-conforming measures which are actually applied, and not a more restrictive measure than the status quo. Existing monopoly rights in the financial services sector must be listed and the country must endeavour to eliminate them or reduce its scope. Granting of MFN and national treatment with respect to the purchase or acquisition of financial services by public entities is obligatory (even though, GATS excludes obligations with respect to government procurement of services). In addition, financial service suppliers of other Members established in the territory must be granted, under national treatment terms and conditions, access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. The Understanding, however, makes clear that a Member's lender of last resort is under no obligation to act in respect of the financial service supplier of another Member.

The Understanding also expands the commitments across the four modes of supply. In particular, a certain level of access through cross-border and consumption abroad modes of supply (i.e. mode 1 and 2 commitments) has to be granted. Note that GATS by itself leaves all countries free to commit or not to modes 1 and 2, yet under the Understanding, such access is mandatory. With respect to commercial presence (mode 3), signatories to the Understanding must grant financial service suppliers of other Members the right to establish or expand within its territory, including the acquisition of existing enterprises (e.g. takeovers). Significantly, access granted in financial services are extended on an MFN basis, regardless of whether a country has signed up to the Understanding or not. Furthermore, foreign financial service suppliers that are established in the territory of the host Member are permitted to offer any new financial service in its territory, provided it has already been supplied and approved in either its home or a third country. However, the Understanding allows for regulatory or prudential carve outs.

With regard mode 4 (temporary entry of personnel), while GATS does not mandate a minimum level of market access, the Understanding provides for a minimum commitment with regard the temporary entry of personnel necessary for the establishment of a commercial presence and the conduct of activities in the territory of a host member. The Understanding also contains a “best efforts” obligation relating to certain types of non-discriminatory measures which may have adverse effects on liberalization of financial services such as, for instance, non-discriminatory limits on branching, or limits on types of financial services that a bank may offer e.g. banking, insurance, or investment services.

Given the obligations imposed by the Understanding, is the Philippines ready to sign up for the Understanding? In the face of current regulatory and supervisory regime, the conditions do not yet seem to be right. For example, considering the local capacity to adequately supervise and regulate the activities of foreign cross-border financial service supplier, it might be risky to take on unchecked commitments on cross-border supply of financial services (mode 1), specially if they are “new”, which domestic regulators grasp little of. The main consideration is actually whether the regulatory and supervisory structure is up to the job of regulating in a thoroughly liberalized financial environment. In the light of the recent Asian crisis, the country has, indeed, reasons to be circumspect.

On the other hand, the state of the domestic financial system cannot also be hostage to the pace of learning of the regulatory and supervisory authorities. If that were to happen, domestic financial services runs the risk of being doomed to backwardness while the rest of the world would have grown in financial sophistication. In fact, one of the best way to improve the regulatory structure is to provide incentives for it to improve, i.e. by allowing foreign financial institutions to operate in the domestic market, and in the process, put pressure on regulatory authorities to keep up and improve their knowledge of the field and adapt ‘best practices’ in the different areas of regulation and supervision.

Philippine experience of financial liberalization

To resolve the issue of whether to liberalize the financial sector more or not, one source of guidance can be the past liberalization experience of the Philippines. The literature on foreign bank entry asserts that domestic banks are helped to be more competitive and efficient by foreign

entry. Studies on domestic banking experience, however, show no significant impact of foreign bank entry on banks' spread (indicator of competition) and efficiency. On the other hand, these studies suffer major limitations because these relied on very short time period to assess the relatively recent entry of a few foreign banks. It is expected that the main impact of foreign entry is in its long term dynamic effect on competition and efficiency.¹⁶

Besides, past liberalization efforts have not really gone far enough in providing domestic banks with a viable threat to competition. In the first place, the Central Banking Act maintains the objective of ensuring that 70% of financial assets remain with Filipino-owned banks. There have also been limits on the type of services and branching activities of foreign banks. Yet, despite these limitations, the presence of foreign competition have contributed to the introduction of new products and processes, specially technology-based enhancements such as phone banking, bills payment, point-of-sale transactions, and internet banking. The threat of foreign competition has also motivated the restructuring of the financial sector through mergers and consolidations. It is hard to imagine that all these took place without a strategic view to the impending increased competition from foreign banks.

Philippine Prospects

One strategy which the Philippines can adopt is to pre-commit to a further liberalization in the future. Brazil and Hungary did this in their WTO commitment schedules, so that some precedents exist. The idea recognizes the reality that at the present regulatory and financial sector condition, the regulatory and supervisory structure is not ready to take on more liberalization but that at a determined future date, more significant opening should be expected. Meanwhile, certain incremental changes may be introduced in a paced manner in order not to backload all the financial liberalization to a late period.

A few of these incremental changes can be the adoption of a few provisions of the Understanding, for example, the standstill obligation. Committing to bind the non-conforming measures in market access and national treatment at the status quo contributes to greater transparency on conditions of market access in the domestic market and prevents regulatory rollbacks. After all, since the Philippines have already committed the same standstill obligations in its AFAS schedules to ASEAN countries, it would be merely extending the same to Japan. For example, updating the equity caps from 49% (in its WTO schedule) to actual statutory limit of 60%, or the number of branches allowed from four to six which is what the General Banking Act stipulates (see Table 9). Other commitments in AFAS could be extended to Japan.

¹⁶ Note, though, that the high bank spread is perhaps due to the greater focus of local banks on retail operations which normally entail higher operating costs compared to banks oriented towards wholesale markets. Retail operations need more branches, equipment and personnel to serve retail customers which then translate into higher spread (Milo, 2002).

Table 9. Philippine Financial Services Commitments in WTO and AFAS

<i>WTO Commitments</i>	<i>ASEAN Framework Agreement on Services</i>
<i>For all financial services sector</i>	
<ul style="list-style-type: none"> necessity test 	<ul style="list-style-type: none"> no necessity test
<i>Banking</i>	
<ul style="list-style-type: none"> cap on asset holding: 70% should be Filipino-owned. 	<ul style="list-style-type: none"> cap on asset holding: 70% should be Filipino-owned.
<ul style="list-style-type: none"> allowable number of branches for foreign banks: 4 	<ul style="list-style-type: none"> allowable number of branches for foreign banks: 6
<ul style="list-style-type: none"> majority of members of the Board should be Filipinos 	<ul style="list-style-type: none"> proportion of foreign members of the Board is equivalent to foreign equity share.
<ul style="list-style-type: none"> cap on foreign equity in banks: 49% 	<ul style="list-style-type: none"> cap on foreign equity in banks: 60%
<ul style="list-style-type: none"> cap on shareholding of foreign non-bank in locally incorporated bank must not exceed 20% for individual and 30% for a corporation 	<ul style="list-style-type: none"> cap on shareholding of foreign non-bank (whether individual or corporation) is 30%
<i>Investment Houses</i>	
<ul style="list-style-type: none"> foreign equity cap is 49%; composition of the Board should be majority Filipinos; prior authorization requirement for quasi-banking functions 	<ul style="list-style-type: none"> no separate commitment for investment houses. So WTO commitments stand.
<i>Non-bank financial intermediary e.g. insurance</i>	
<ul style="list-style-type: none"> Foreign participation cap: 40% 	<ul style="list-style-type: none"> no separate commitment

Source: WTO Philippine GATS Schedule

Philippine Schedule of Specific Commitments (for the second package of commitments) in the AFAS.

Furthermore, some of the discriminatory measures that are contained in present regulations may be considered for liberalization pre-commitment. An aid towards this step is a preliminary accounting of the regulatory measures (both discriminatory and non-discriminatory) that are in effect in the Philippines (see Appendix 4). A look at the table reveals a significant number of regulations that are not consistent with the Understanding and thus can be candidates for eventual removal. For instance, the 70% minimum limit on total asset holding reserved for Filipino-owned banks as well as the maximum limit of six branches to foreign banks violate Paragraph 5 of the Understanding. Policy directed lending, too, though is non-discriminatory, is

probably inconsistent with Paragraph 10b.¹⁷ On the other hand, there are many regulations that are clearly consistent with the prudential carve out provisions in the Annex and in the Understanding.

One suggestion is to weigh the cost and benefit of maintaining the discriminatory measures against foreign banks and their impact on competition and efficiency. If the regulation does not have any prudential or safeguard function, the country would, perhaps, be better off if those discriminatory measures are removed at the appropriate time, giving domestically-owned banks sufficient time to adjust.

Japan's commitments

Japan's commitments in the financial services area, being a signatory to the Understanding, are sufficiently liberal. Would this imply that Philippine banks may easily establish commercial presence in Japan to service foreign remittances of Filipinos working in Japan? The answer is not straightforward and would, in fact, depend on how confident Japan is with the supervisory power of Philippine authorities over the activities of Philippine banks with commercial presence in Japan. This is not a violation of the MFN provision but is fully compatible with Paragraph 3 of the Annex on Financial Services which specifies that a Member *may* recognize the prudential measures of another country.¹⁸ The Philippines should, therefore, use the bilateral negotiations for Japan to accord recognition to Philippine prudential measures and supervisory capacity.¹⁹ This recognition would, perhaps, depend on how close our prudential measures are to 'best practices' around the world.

3. Health Services

Health Related and Social Services is Category 8 in the WTO Services Sectoral Classification List (MTN.GNS/W/120), and has four main sections, namely, A) Hospital Services, B) Other Human Health Services, C) Social Services, and D) Other. The corresponding division in the United Nations Provisional Central Product Classification (CPC) is Division 93, which includes, besides those in the List, medical and dental services, veterinary services and the services provided by nurses, midwives, etc. These latter services have been grouped under Professional Services (1.A. h-j) as per the WTO List.

Health services sector is normally a domestic economic giant, but it is traditionally a relatively minor contributor to trade because it has long been considered a non-tradable. The dominant trade-related concern is on issues related to the international migration of health professionals as well as movements of patients. For developing countries, the interest is on attracting foreign patients to domestic hospitals, or on sending health personnel to work

¹⁷ "Each Member shall grant financial service suppliers of any other member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence." (Par. 5, Understanding on Commitments in Financial Services).

¹⁸ "May" is not the same as "obligated" to recognize another country's prudential measures.

¹⁹ The complicating factor in according recognition to Philippine supervisory authorities is that, under Paragraph 3b of the Annex, Japan is obliged to allow third countries to show that their prudential measures are similar or better than the Philippines and thus they, too, should be accorded recognition. In this way, the bilateral arrangement benefit is not exclusive to the Philippines but may be extended to more countries.

temporarily abroad. For developed countries, concern is on regulatory barriers that can inhibit subsectors in health services sector that can be delivered electronically. At the same time, concern about the burgeoning health costs should make developed countries take an interest in facilitating access to hospitals in developing countries where costs for both patients and insurers are significantly cheaper. For instance, the cost of coronary by-pass or liver transplant in India is only roughly one-tenth to one-fifth the cost in US or Europe, thus implying potential significant savings for patients from developed economies.

Trade issue for negotiation

In the case of Japan-Philippine trade, the concern is again mode 4 liberalization, i.e. a more liberalized environment or facilitated access for Philippine health professionals. Current Japanese commitments in both WTO and JSEPA, however, do not include commitments in professional medical/ dental services, as well as those of nurses and midwives (1.A.h-j of the WTO Classification List) (see Table 10 below). This is an issue which might need to be explored by the Philippine panel.

Besides mode 4 commitment, the Philippines can also benefit from mode 2 (consumption of hospital services abroad) commitment by Japan. Current Japanese commitments in both the WTO and JSEPA are quite liberal with regard hospital services (see Table 10). It has no restrictions in mode 2 (consumption abroad) with regard hospital services (Category 8.A). This means that Japanese people can seek exotic type of treatment from developing countries where costs are low for treatment like cosmetic surgery, which are normally not covered by health insurers anyway.

But for most medical needs, for mode 2 liberalization in hospital services to be meaningful, what is required is that Japan also has an equally liberal commitment in health insurance, i.e., that health insurance should be portable. In many domestic health insurance policy, health coverage is not extended abroad, except in a few certified and licensed foreign facilities. For example, four large Mexican insurance companies have accredited a consortium of hospitals in Texas as preferred health providers eligible to receive patients. Presumably, there should be no reason why similar arrangements could not be crafted between Philippine hospitals and Japanese insurers. For government insurance and medical care, coverage is even more limited to domestic licensed facilities without provisions for reimbursements for foreign medical expenses.²⁰ Thus, despite liberal mode 2 commitments, the lack of portability of government pension and medical care constrains some elderly persons from traveling or retiring abroad.

Yet, it is worth noting that according to a WTO report, if concerns about the quality of care received abroad are addressed through, for instance, certification or accreditation of medical facilities, the potential impact of permitting portability can be substantial for developing countries. Retired persons from OECD who choose to live in countries like the Philippines can bring with them billions of dollars annually in personal consumption plus medical expenditures. In a symbiotic relationship, developed countries are, at the same time, enabled to cut its medicare costs for its aging population.

²⁰ Interviews with Japanese retirees in the Philippines revealed that about 20% of hospitalization expenses can be reimbursed by government insurance in Japan.

As per GATS rules, private arrangements between developing countries' hospitals and developed countries' insurance companies are not covered by multilateral rules. However, the Philippines can request Japan to encourage and facilitate the accreditation process by, for instance, having transparent standards for hospital services on which the certification process could be based.

Table 10. Japanese Liberalization Commitments in Health Services

<i>Sector</i>	<i>Cross border supply</i>			<i>Consumption Abroad</i>			<i>Commercial Presence</i>		
	<i>Full</i>	<i>Limited</i>	<i>Unbound</i>	<i>Full</i>	<i>Limited</i>	<i>Unbound</i>	<i>Full</i>	<i>Limited</i>	<i>Unbound</i>
Commitments in the WTO									
8.A. Hospital Services (CPC 9311)	x			x					x ¹
Commitments in JSEPA									
8.A. Hospital Services (CPC 9311)	x			x					x ¹
8.B. Other human health services	x			x					x ¹
8.C. Social Services	x			x					x ¹

¹ Unbound except that there is no limitation on the participation of foreign capital.

Note: 1. The commitments are similar for market access and national treatment;

2. Japan made no commitment in Professional Services (i.e. medical and dental services, midwives and nurses, and other medical services) in both the WTO or JSEPA.

Philippine commitments

The Philippines has no commitment in health services either in the WTO or AFAS. For the bilateral negotiation with Japan, however, the Philippines should list this sector in its schedule and commit a liberal mode 3 (commercial presence) commitment to entice Japanese investors to invest in this sector. Considering that the hospital sector is not among those in the negative list of the foreign investment act, 100% equity by Japanese investors should be allowed. In addition, mode 4 commitment, particularly for the hospital management staff and board of directors, would have to be equally open to match the 100% equity.

Table 11 shows that, instead of increasing, bed capacity of Philippine hospitals has actually declined from 15.50 bed capacity per 10,000 population in 1985 to 10.20 in 2001, indicating a need to spur more hospital investments. In terms of the number of hospitals, itself, average growth from 1993-2001 is negative 0.3%. Opening up hospital services sector to foreign investment, therefore, should help in uplifting hospital care and in upgrading health facilities.

Table 11. Philippine Hospitals – Number and Bed Capacity

	<i>Total Number of Hospitals</i>	<i>Total Bed Capacity</i>	<i>Bed Capacity per 10,000 population</i>
1985	1,814	89,508	15.5
1990	1,733	87,133	14.0
1995	1,700	80,800	11.8
2000	1,712	81,016	10.6
2001	1,708	79,444	10.2

Source: Department of Health, ADB Key Development Indicators 2001.

4. Energy Services

The WTO Classification List does not have a distinct and separate major category for energy services. Instead, energy services are incorporated into various categories like Transport services, particularly pipeline transportation of fuels subclassification (WTO List 11.G.a), or “Other business services” e.g. services incidental to energy distribution (WTO List 1.F.j),²¹ as well as Construction (Civil Engineering) category. Other forms of services related to energy include consulting (in various fields, including energy efficiency, conservation, and renewable energy), construction, maintenance of the network, and services related to distribution such as metering and billing.

Part of the difficulty in analyzing the energy sector, particularly the role of trade in energy services, is that traditionally, and particularly before privatization and liberalization in many countries, the industry adopted a unified approach and did not distinguish between the ‘goods’ and the ‘services’ aspects of energy trade. After privatization and the unbundling of previously vertically integrated energy sector into production, transmission, and distribution of energy, regulatory principles for goods have been typically applied on production of energy, while those for services apply to transmission and distribution of energy. In the WTO context, production of energy goods comes under GATT, while transmission, distribution, and related services come within the scope of GATS.

The transport of energy is distinct from the transport and distribution of goods like cars and other manufactured goods because of two reasons. First, energy, specially electricity and gas, are difficult to store unlike any other goods, including oil. Second, the transportation and distribution network for energy are also distinct. These do not require highways, but distribution grids or pipelines (in the case of gas), and thus, in most cases, require quasi-natural monopolies. In contrast, seldom would a monopoly be necessary to transport and distribute manufactured products.

Historically, the energy sector in many countries was vertically integrated state monopolies. The process of privatization broke up public monopolies and unbundled vertically integrated utilities. The result, generally, is that production or generation of energy is competitive; so with energy distribution or the delivery of electricity to ultimate consumers

²¹ The corresponding UN Centralized Product Classification (CPC) 887 explanatory note read that this category includes distribution and transmission activities.

through low voltage mains. But transmission, which refers to the transportation of electricity from generators to distribution companies and large industrial consumers through high voltage mains, remained the activity of a natural monopoly.

GATS and GATT Rules for Energy

These different distinctions in activities (production, transmission, and distribution) have profound implications for multilateral trade regulation. For instance, with respect to foreign investment or commercial presence, while GATS provides legally binding rules applying to establishment of energy services suppliers, there is, for now at least, no similar comprehensive rules on investment for goods. The TRIMs (Trade Related Investment Measures) Agreement in the WTO affects cross-border trade of energy goods rather than establishment. For example, it applies to trade-related investment measures such as those linking investors' right to use imported goods as inputs to their export performance. Thus, foreign investments in energy generation which is under GATT has no similar legal cover as foreign investments in transmission and distribution of energy which fall under the scope of GATS. Table 12 summarizes these issues.

Table 12. Application of Trade Rules to Segments of Energy Sector

	TRADE IN GOODS		FOREIGN DIRECT INVESTMENT	
	Barriers	WTO Rules	Barriers	WTO Rules
Production of Energy (Goods)	- Tariff and non-tariff barriers - Restrictive Business Practices (RBPs), vertical foreclosure	GATT and other WTO goods Agreements e.g. TRIMs	- Market access, national treatment and other regulatory barriers - RBPs, vertical foreclosure	- none yet - none yet
	CROSS-BORDER TRADE		ESTABLISHMENT TRADE	
Transmission and Distribution of Energy (Services)	- Market access, national treatment and other regulatory barriers; - RBP, vertical foreclosure	- GATS obligations and commitments - Articles VIII, XVIII (reference paper) of the GATS	-Market access, national treatment and other regulatory barriers -RBP, vertical foreclosure	-GATS Obligations and commitments - Articles VIII, XVIII (reference paper).

Source: *WTO Background Note on Energy Services*

Likewise, with respect to competition rules, GATS also includes binding rules on monopolies and exclusive services suppliers²² and contains a legal framework to develop more regulatory disciplines touching upon important anti-trust issues (the Reference Paper for Telecommunications is an example). This is particularly important in light of the fact that transmission of energy is generally run by quasi-natural monopolies. The liberalizing effort of many countries can thereby be vitiated by weak regulations on, say, access to transmission

²² GATS Article VIII

network which is virtually controlled a natural monopoly. In contrast, restrictive business practices (RBPs) of goods manufacturers are currently out of the scope of WTO agreements.

Deregulation experience

Overall, the benefits of unbundling and privatization in various countries have, generally, been positive. In many places, efficiency was enhanced, outages reduced, new investments generated, wholesale prices dropped, and government subsidies abolished.

In the Philippines, EO 215 broke the monopoly of the National Power Corporation (NPC) in power generation. It opened the generation of electricity to the private sector and paved the entry for independent power producers (IPPs). Further, the Power Industry Reform Act of 2000 (RA 9136) embodies two major reforms: the privatization of NPC and the unbundling of the energy activity components into generation, transmission, and distribution. At the moment, the current structure is that the NPC remains as the role energy generator for geothermal and hydroelectric power, as well as the sole transmission utility. The energy distribution sector, however, is competitive with 146 (private and public) entities.

Trade Commitments

The Philippines has made commitments in energy related services neither in the WTO nor in AFAS. Japan, similarly, has not made commitments in services incidental to energy distribution (List 1.F.j).

As a public utility, foreign investment in the energy sector is subject to 40% limit in the Philippines. Considering that Japan can potentially be enticed to invest in this sector and considering the required resources to upgrade and develop new transmission lines, the foreign investment limit should be increased.

Other modes of supply, e.g. modes 1 and 2, are not relevant in the Philippine case. Cross-border trade in energy services apply more to countries that are geographically close to each other like Malaysia and Singapore, or European countries that share the same borders. More liberal mode 4 commitments may be worthwhile, particularly for the more technical and knowledge-intensive jobs which the Philippines do not have. Other regulations, where they exist, pertaining to health and safety objectives, environmental protection, consumer protection, and universal service should be reviewed and prevented from becoming a disincentive to investment.

5. Environmental Services

Environmental Services is Category 6 of the WTO Classification List and includes sewage services, refuse disposal, sanitation and similar services, other environmental services. The OECD definition of environmental services is broader than that used in the WTO Classification. It includes services provided to measure, prevent, limit, minimize or correct environmental damage to water, air, soil, as well as problems related to waste, noise and

ecosystems. The classification encompasses services relating: 1) to pollution management, including those related to the construction and installation of facilities for such purposes; services related to the installation and utilization of 2) cleaner technologies, and 3) technologies and products that reduce environmental risk and minimize pollution and resource use.

Historically, many of these services, particularly sewage and refuse disposal, were provided by governments because they were considered public good or natural monopolies owing to the high levels of required investment. But the situation has changed. In more developed countries, private markets for environmental services have been created as a result of stringent government regulations designed to control pollution problems. Natural monopolies have, likewise, been delineated narrowly to introduce greater competition in services which are not inextricably linked to the monopoly. For instance, sewage treatment is competitive even as sewage collection remains a natural monopoly.

The global environment market was estimated to be \$453 billion in 1996, of which, the services component accounted for roughly 50% or \$229 billion. Within services, solid waste management and water treatment services were the dominant activities (see Table 13). Growth rates in this sector in the developed country markets has declined in recent years because the major industrial sectors have already achieved a high degree of compliance with existing legislations. But faster growth is expected in Africa, Asia and Latin America as the stringency of domestic environmental regulations increase and international environmental standards are beginning to be more strictly enforced.

Table 13. Global Environmental Market in 1996 (Billion dollars)

	<i>USA</i>	<i>Japan</i>	<i>Asia</i>	<i>Total \$</i>	<i>Total %</i>
<i>EQUIPMENT</i>					
Water equipment & chemicals	16.0	5.6	2.7	38.9	8.6
Air pollution control	15.4	3.3	0.9	29	6.4
Instruments and info systems	1.8	1.0	0.2	5.2	1.1
Waste management equipment	10.7	8.6	1.3	32.4	7.2
Process/prevention technology	0.9	0.5	0.1	2.3	0.5
<i>SERVICES</i>					
Solid waste management	32.7	29.6	3.4	102.2	22.6
Hazardous waste management	5.9	3.8	0.5	16.8	3.7
Consulting and engineering	14.2	1.1	0.8	26.8	5.9
Remediation & industrial serv	8.3	1.1	0.4	15.0	3.3
Analytical services	1.2	0.5	0.1	3.2	0.7
Water treatment services	24.6	9.6	2.7	64.8	14.3
<i>RESOURCES</i>					
Water utilities	27.0	12.2	4.5	73	16.2
Resource recovery	11.6	9.2	1.1	37.7	8.3
Environmental energy	1.4	1.0	0.4	4.9	
Total \$	171.8	87.1	18.9	452	
Total %	38.0	19.3	1.9	1	

Source: Environmental Business International, Inc. as cited in *WTO Background Report on Environmental Services*

Trade Commitments

The Philippines does not have any commitments in environmental services. One important thing to note though is that Malaysia has started to privatize the sewage system of the entire country. If other countries, including the Philippines, start following Malaysia's example, this would have to mean mode 3 commitments that are attractive to foreign investors. Again, the Philippine constraint is the 40% limit on foreign equity on public utilities. This foreign equity cap would have to be reviewed.²³ Allowing foreign investment in this sector alleviates government deficiencies to provide essential infrastructure services because of budget constraint.²⁴

It is worth noting too that Japan firms are among the efficient environmental service providers particularly in the segment that deals with air pollution and waste management. Germany, France and Italy, on the other hand, have advantage in waste water treatment (see Table 14). Thus, even if the Philippines provide Japan with a preferential treatment in environmental services, there is less scope for trade diversion because Japanese providers are among the efficient ones in the world.

6. Distribution Services

Distribution services is category 4 in the WTO classification list and include commission agents' services, wholesale and retailing services, franchising,²⁵ and other subclassification. In the Philippines, the wholesale and retail taken together account for more than a third of total value added in services and more than 15% of GDP (see Table 15). It also accounts for a significant portion of employment, as the sector is heavily labor-intensive. Hence, foreign direct investments in this sector can significantly contribute to growth in employment.

²³ Alternatively, environmental services facilities can use the build-operate-transfer scheme. The advantage of the scheme is that it overcomes the foreign equity limits for foreign investment because once the facility becomes operational and the public authority has reimbursed the costs which the private firm has incurred, its role change from being owner to manager, as the public authority continues to pay the private firm for operating the facility.

²⁴ What is not clear, however, is whether the environment sector will fall within the scope of GATS rules or should be covered by Government Procurement Agreement. Government procurement of services, based on GATS rules, do not fall within its scope. But if the government privatizes a public utility, as in the case of Malaysian sewage utility, then GATS rules would have to apply.

²⁵ Although franchising is classified as part of distribution services, it is qualitatively different from the other three components. It is more a description of the type of contractual arrangement through which a distributor is allowed to use a retail format or a trademark.

Table 14. Growth Prospects and Potential Advantages in Selected Countries

Country	Growth prospects according to national opportunities			<i>Potential advantage according to opportunities in international market</i>
	<i>High Growth</i>	<i>Moderate Growth</i>	<i>Low Growth</i>	
Germany	High-tech products Recycling	Air pollution	Water Treatment Waste management	Waste- water Waste treatment Land remediation Measurement and analysis
US	Waste management Land remediation	Air pollution	Water and waste-water	Monitoring Remediation: nuclear, mining, agri, chemicals Biotechnologies Air pollution
Japan	Air pollution	Waste management	Water and waste-water	Air pollution: urban and industry
Australia	Mine remediation Consultancy services Water and waste water	Industrial remediation Clean production Air monitoring	Air control Solid waste management	Mine remediation Consultancy services

Source: OECD as cited in WTO Background Note on Environmental Services

Table 15. Share of Wholesale and Retails Trade in the Economy (%)
(based on GVA data in constant prices)

	1980	1985	1990-1995	1995-2000	2001
Share in Total Services Sector	36.2	35.9	35.5	35.0	35.5
Share in GDP	13.0	14.5	15.2	15.6	16.3

Source: NSCB

Trade commitments and Philippine liberalization

The Philippines did not make any commitment in distribution services sector in either AFAS or WTO. Future commitments in this sector must keep in mind that developments in distribution services can be significantly enhanced with growth in telecommunications. Fairly liberal e-commerce laws or mode 1 (cross-border mode of supply) commitments are going to be significant for the development of the distribution services sector.

Even without international commitments, the sector has been liberalized unilaterally. The Retail Trade Liberalization Act of 2000 (RA 8762) removed barriers to foreign investment for certain categories of minimum paid-up capitalization. In particular, for retail enterprises with paid up capital of at least \$7.5 million (Category C), foreign equity is allowed up to 100%. For enterprises with paid up capital of \$2.5 million to \$7.5million (Category B), 100% equity is likewise allowed but only after two years of the effectivity of the Act (i.e. 2003). Before then, foreign equity limit is 60%. Category D caters to enterprises specializing in high-end and luxury products with a paid up capital of \$250,000 per store. Foreign equity limit in Category D is likewise 100%. RA 8762, however, reserved small retail trade with capitalization of less than \$2.5 million for Filipino nationals.

Table 16. Retail Trade Liberalization Act of 2000 (RA 8762)

	<i>Category A</i>	<i>Category B</i>	<i>Category C</i>	<i>Category D</i>
Capitalization requirement	less than \$2.5 million	\$2.5 million to \$7.5 million	greater than \$7.5 million	High-end, luxury stores; \$250 thousand per store
Foreign equity limit	0%	60% (2000-2002) 100% thereafter	100%	100%

While The Retail Trade Liberalization Act liberalized entry of foreign investments, it maintained certain non-conforming measures that would have been listed under national treatment were this sector put in the Philippine GATS schedule. One is that for 10 years (i.e. up to 2010), foreign retailers falling in categories B and C are required to sell Philippine-made products with value equivalent to at least 30% of aggregate cost of stock inventories. For foreign retailers in Category D, the value of Philippine made products should be at least 10%. Foreign retailers are also restricted not to carry out retailing activities outside their accredited stores, which limits the type of activities foreign investors can do. Moreover, the Philippines would

have listed an MFN exemption because the Retail Act allows for a limited reciprocity, allowing entry in Philippine retail sector only to nationals/enterprises from countries which grant similar access to Filipino retailers.

Trade barriers

In the global context, some regulations that impinge on the activities of the sector are implemented by local governments and municipalities which wield the authority to license new stores and set the conditions of operation. Foreign distributors are, thus, confronted not only with cross-country differences in policy but also divergent regional and local attitudes. Since distribution services have a close relationship with trade in goods, the trade regime for goods, e.g. technical barriers to trade, efficient custom clearance, certification, and product testing, also inevitably has an effect on the distribution sector. The experience of the European Union points to the fact that technical harmonization and the removal of barriers caused by differences in national product regulations and elimination of border controls can greatly encourage the internationalization of distribution.

Other issues affecting distribution services are competition policy issues like vertical foreclosure, selective distribution, exclusive dealing, exclusive territories and retail price maintenance. In the Philippine context, what seems to be a budding concern is the dominance of big mall operators capable of foreclosing access to retailers in the malls if they do not agree with some of their conditions such as, for instance, a requirement not to establish another retail outlet within certain distance from the mall. But because foreign market access in distribution services have been allowed fairly recently, no significant competition problems appear to affect foreign distributors yet. This is not so in other countries as per the experience of US manufacturers in the Japanese market.²⁶ But it is important to take note that liberalization commitments in this sector can easily be nullified through lack of adequate implementation of competition rules.

7. Computer and Related Services

Computer services usually refer to computer-related consultancy services such as software development and systems integration. It is usually considered one of the three pillars of the computer industry, along with hardware and software. But addressing computer services in isolation make little sense because both hardware and software companies are significant suppliers of computer services and compete with independent services firms. For purposes of negotiations in the GATS, computer and related services have been classified as a subsector of business and professional services, designated 1B in the WTO Classification List.²⁷ It appears to have considerable overlap with regard telecommunication services for activities such as data base and data processing services that are increasingly performed or supplied on-line such that the distinction when telecommunication services, or computer services, or both are supplied is blurred. Similarly, it is not clear where to draw the line between software (good) and services.

²⁶ For example, the US government complained that US manufactured products had limited access to Japanese show rooms for finished vehicles as well as in repair markets for parts. Likewise, Kodak company filed a complaint with the US government alleging that Fuji and its network of domestic wholesalers and distributors sustained anti-competitive practices to limit the Japanese market access of Koda films and print paper.

²⁷ It includes 5 sub-categories: a) consultancy services related to the installation of computer hardware; b) software implementation services; c) data processing services; d) data base services; and e) other.

Presumably, packaged software is treated as a good, but are consultants hired by a firm to develop packaged software covered by GATS mode 4 commitments? When packaged software is supplied on-line, is it still a good or a service?

Sales in computer services to foreign persons through affiliates is far more important than through direct sales via cross-border. For example, in 1995, US sales to foreign persons through foreign affiliates of foreign companies amounted to \$23 billion compared to \$4.7 billion direct sales from the US of computer and data processing as well as of database and other information services. This is, perhaps, because, as with most other services, proximity to the customer is important for computer services to adequately diagnose what the client needs. The implication is that commercial presence is an important mode of supply.

In the Philippines, commercial presence of foreign computer services firms may be motivated less by serving domestic clients' needs but by the attraction of cheap and fairly good computer professionals. Labour costs of software development is famous for being very high in developed economies compared to that in developing countries, where costs are roughly only a tenth. This explains the established presences of foreign firms in Eastern Europe and India.

Trade Commitments

What are the current Philippine commitments in computer services sector? The Philippines has no WTO commitment in this sector, but has included it in the AFAS schedule. It has the usual 40% foreign equity limit, even though the sector itself does not belong in any of the negative lists for foreign investment, and thus, in principle, qualified for 100% foreign equity share. Modes 1 and 2 have full commitments but mode 4 is Unbound. Limitations on national treatment likewise include "Unbound" mode 3 commitment.

What are the flanking government measures that are necessary to develop the sector? One important area is in education and training of computer or IT professionals and in facilitating access to advanced computer equipments through low tariffs. The government can upgrade and impose technical standards as well as encourage more computer schools to offer and improve their IT courses to help fill up the dearth of computer professionals globally. But most importantly, the development of the computer services sector is closely tied up to the development of the local telecommunication services sector. Thus, low interconnection fees or internet access should indirectly benefit the computer services sector and allow them to offer their services cross-border competitively.

8. Education Services

Educational services sector is Category 5 of WTO List which includes 5 subsectors: primary, secondary, tertiary, adult education, and others. While public sector expenditure is usually significant in the primary and secondary education services, private sector expenditure is more significant in the tertiary and adult education services.

Advances in technology have not left the sector unaffected. In particular, for tertiary and adult education services, distance learning has been a very dynamic area, thanks to the new

information and communication technologies such as cable and satellite transmissions, audio and video conferencing, PC software, CD-ROMs, and internet facilities. Distance education, education software, corporate training through ICT delivery are some examples of mode 1 or cross-border mode of supply for educational services. Though, indeed, distance education and the like have grown, majority of international trade in education remains through students going abroad to study (mode 2 or consumption abroad mode of supply).

More recently, particularly in Asia, education services have been increasingly traded through commercial presence. Foreign educational institutions set up facilities abroad, either through partnerships with local universities or by establishing local branch campuses or subsidiaries. They capitalize on their institution's name and prestige in the Home country to leap through local competition. Other type of institutional arrangement through which commercial presence takes place is through twinning arrangements. "Twinning" consists of domestic private colleges offering courses leading to degrees at overseas universities. Institutions with twinning arrangements adopt the programme design, instructional methods, and examination standards of the foreign partner to validate the in-country courses. The arrangement is akin to franchising of individual educational courses.

Trade in education via mode 4 (movement of natural persons) pertains to, say, foreign professors lecturing in the country or academic researchers working abroad. The biggest importer of educational services through this mode of supply is the US where some 62,350 scholars have gone in 1996-97.

Trade barriers

There is rarely any barrier on mode 2 (consumption abroad) trade in education except the usual administrative burden of visa processing. For mode 1, barriers can include foreign exchange controls, difficulties in validating degrees obtained abroad through distance learning. Barriers on commercial presence can be restrictions on financial assistance for students in non-certified or recognized institutions (a national treatment limitation), restrictions on granting degrees by private institutions, restrictions on the type of entity, and on acquisition of real estate. In addition, mode 3 trade barriers include the usual limits on equity, nationality requirements of managers and executives of the school, restrictions on recruiting foreign teachers, and high government subsidization of local institutions. Mode 4 barriers are the usual difficulties in visa processing, guaranteeing entry only to certain categories of persons, etc.

Summary and Conclusions

The paper summarize many of the current discussions on international services trade, the enormous challenge in further services liberalization that lie ahead, and the rise of many regional trade agreements. Two different models of regional trade agreements in services: NAFTA-type and GATS-type approach are discussed. The paper discusses the difference between these two approaches and their implications on transparency, stability of commitments, and trade liberalization. In general, the negative list or NAFTA-type approach appears more favorable because it provides greater transparency, stability, and liberalization.

The paper also analyzes the commitments of Japan, Singapore and the Philippines in the context of the WTO, AFAS, and JSEPA. It finds that, indeed, the preferential trade agreements exhibit higher “index of liberalization of services” than the multilateral agreement. In particular, the main findings are: 1) Singapore has more sector-mode binding in the JSEPA than in AFAS; 2) all three countries are more liberal in their commitments in the PTAs than in the WTO; 3) quality of opening (coverage index) has improved in the PTAs for all three countries; 4) Many restrictions still abound; 5) Philippines and Singapore are more liberal in their national treatment commitments than in market access, while it is the reverse for Japan; and 6) almost all mode 4 (movement of natural persons) commitments for all sectors are still ‘unbound’.

Finally, it discusses various services sectors that can be of interest to the Philippines in the upcoming negotiations with Japan. In most of these sectors, the most important modal commitment is the liberalization of commercial presence (mode 3).

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WTO. Background Notes on Various Services Industries.

Appendix 1

SERVICES SECTORAL CLASSIFICATION LIST

SERVICES SECTORAL CLASSIFICATION LIST

<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
1. <u>BUSINESS SERVICES</u>	<u>Section B</u>
A. <u>Professional Services</u>	
a. Legal Services	
b. Accounting, auditing and bookkeeping services	862
c. Taxation Services	863
d. Architectural services	8671
e. Engineering services	8672
f. Integrated engineering services	8673
g. Urban planning and landscape architectural services	8674
h. Medical and dental services	9312
i. Veterinary services	932
j. Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k. Other	
B. <u>Computer and Related Services</u>	
a. Consultancy services related to the installation of computer hardware	841
b. Software implementation services	842
c. Data processing services	843
d. Data base services	844
e. Other	
C. <u>Research and Development Services</u>	
a. R&D services on natural sciences	851
b. R&D services on social sciences and humanities	852
c. Interdisciplinary R&D services	853
D. <u>Real Estate Services</u>	
a. Involving own or leased property	821
b. On a fee or contract basis	822
E. <u>Rental/Leasing Services without Operators</u>	
a. Relating to ships	83103
b. Relating to aircraft	83104
c. Relating to other transport equipment	83101+83102+
d. Relating to other machinery and equipment	83106-83109
e. Other	
F. <u>Other Business Services</u>	
a. Advertising services	871
b. Market research and public opinion	864

	polling services	
c.	Management consulting service	865
d.	Services related to man. consulting	866
e.	Technical testing and analysis serv.	8676
f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
h.	Services incidental to mining	883+5115
i.	Services incidental to manufacturing	884+885
j.	Services incidental to energy distribution	887
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing	88442
s.	Convention services	87909*
t.	Other	
2.	<u>COMMUNICATION SERVICES</u>	
A.	<u>Postal services</u>	7511
B.	<u>Courier services</u>	7512
C.	<u>Telecommunication services</u>	
a.	Voice telephone services	7521
b.	Packet-switched data transmission services	7523**
c.	Circuit-switched data transmission services	7523**
d.	Telex services	7523**
e.	Telegraph services	7522
f.	Facsimile services	7521**+7529**
g.	Private leased circuit services	7522**+7523**
h.	Electronic mail	7523**
i.	Voice mail	7523**
j.	On-line information and data base retrieval	7523**
k.	electronic data interchange (EDI)	7523**
l.	enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m.	code and protocol conversion	n.a.
n.	on-line information and/or data processing (incl.transaction processing)	843**
o.	other	

The () indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

D.	<u>Audiovisual services</u>	
a.	Motion picture and video tape production and distribution services	9611
b.	Motion picture projection service	9612
c.	Radio and television services	9613
d.	Radio and television transmission services	7524
e.	Sound recording	n.a.
f.	Other	
E.	<u>Other</u>	
3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512
B.	<u>General construction work for civil engineering</u>	513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517
E.	<u>Other</u>	
4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	
5.	<u>EDUCATIONAL SERVICES</u>	
A.	<u>Primary education services</u>	921
B.	<u>Secondary education services</u>	922
C.	<u>Higher education services</u>	923
D.	<u>Adult education</u>	924
E.	<u>Other education services</u>	929
6.	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401

B.	<u>Refuse disposal services</u>		9402
C.	<u>Sanitation and similar services</u>		9403
D.	<u>Other</u>		
7.	<u>FINANCIAL SERVICES</u>		
A.	<u>All insurance and insurance-related services</u>		812**
a.	Life, accident and health insurance services		8121
b.	Non-life insurance services		8129
c.	Reinsurance and retrocession		81299*
d.	Services auxiliary to insurance (including broking and agency services)		8140
B.	<u>Banking and other financial services</u> (excl. insurance)		
a.	Acceptance of deposits and other repayable funds from the public		81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction		8113
c.	Financial leasing		8112
d.	All payment and money transmission services		81339**
e.	Guarantees and commitments		81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:		
	- money market instruments (cheques, bills, certificate of deposits, etc.)		81339**
	- foreign exchange		81333
	- derivative products incl., but not limited to, futures and options		81339**
	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.		81339**
	- transferable securities		81321*
	- other negotiable instruments and financial assets, incl. bullion		81339**
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues		8132
h.	Money broking		81339**
i.	Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services		8119+** 81323*
j.	Settlement and clearing services for financial assets, incl. securities, derivative products, and other negotiable instruments	or	81339** 81319**
k.	Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit	or	8131 8133

	reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	
1.	Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131
C.	<u>Other</u>	
8.	<u>HEALTH RELATED AND SOCIAL SERVICES</u> (other than those listed under 1.A.h-j.)	
A.	<u>Hospital services</u>	9311
B.	<u>Other Human Health Services</u>	9319 (other than 93191)
C.	<u>Social Services</u>	933
D.	<u>Other</u>	
9.	<u>TOURISM AND TRAVEL RELATED SERVICES</u>	
A.	<u>Hotels and restaurants (incl. catering)</u>	641-643
B.	<u>Travel agencies and tour operators services</u>	7471
C.	<u>Tourist guides services</u>	7472
D.	<u>Other</u>	
10.	<u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u> (other than audiovisual services)	
A.	<u>Entertainment services (including theatre, live bands and circus services)</u>	9619
B.	<u>News agency services</u>	962
C.	<u>Libraries, archives, museums and other cultural services</u>	963
D.	<u>Sporting and other recreational services</u>	964
E.	<u>Other</u>	
11.	<u>TRANSPORT SERVICES</u>	
A.	<u>Maritime Transport Services</u>	
a.	Passenger transportation	7211
b.	Freight transportation	7212
c.	Rental of vessels with crew	7213
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7214

f.	Supporting services for maritime transport	745**
B.	<u>Internal Waterways Transport</u>	
a.	Passenger transportation	7221
b.	Freight transportation	7222
c.	Rental of vessels with crew	7223
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7224
f.	Supporting services for internal waterway transport	745**
C.	<u>Air Transport Services</u>	
a.	Passenger transportation	731
b.	Freight transportation	732
c.	Rental of aircraft with crew	734
d.	Maintenance and repair of aircraft	8868**
e.	Supporting services for air transport	746
D.	<u>Space Transport</u>	733
E.	<u>Rail Transport Services</u>	
a.	Passenger transportation	7111
b.	Freight transportation	7112
c.	Pushing and towing services	7113
d.	Maintenance and repair of rail transport equipment	8868**
e.	Supporting services for rail transport services	743
F.	<u>Road Transport Services</u>	
a.	Passenger transportation	7121+7122
b.	Freight transportation	7123
c.	Rental of commercial vehicles with operator	7124
d.	Maintenance and repair of road transport equipment	6112+8867
e.	Supporting services for road transport services	744
G.	<u>Pipeline Transport</u>	
a.	Transportation of fuels	7131
b.	Transportation of other goods	7139
H.	<u>Services auxiliary to all modes of transport</u>	
a.	Cargo-handling services	741
b.	Storage and warehouse services	742
c.	Freight transport agency services	748
d.	Other	
I.	<u>Other Transport Services</u>	
12.	<u>OTHER SERVICES NOT INCLUDED ELSEWHERE</u>	

Appendix 2. Sample Sector Commitment

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments	Notes
Life Insurance as follows: Ordinary Group Industrial	1) Risks located in the Philippines should be insured with the companies authorized #4 to transact business in the Philippines	1) Unbound		#4 Authorized means the company has been issued a license or a certificate of authority by the Insurance Commission
	2) same as (1) above	2) Unbound		
	3) Market access limited to: a) acquisition of up to 40% of the voting stock of an existing domestic insurance company	3) None		
	4) None	4) None		

Source: Philippine Schedule of Commitments

Appendix 3. Philippines Service Sector Commitments in AFAS

First Package	
WTO Classification	I. Sector or Subsector
1.A.b	<p>BUSINESS/ PROFESSIONAL</p> <ul style="list-style-type: none"> - Auditing services (financial auditing and accounting review)
9 9.A.	<p>TOURISM</p> <ul style="list-style-type: none"> - Tourism accommodation facilities <ul style="list-style-type: none"> - pension house - tourist inn - apartels
Second Package	
WTO Classification	II. Sector or Subsector
11.C.e ?	<p>AIR TRANSPORT</p> <ul style="list-style-type: none"> - Computer reservation system
1.A 1.A.d 1.A.g 1.A.g ? 1.A.e	<p>BUSINESS/ PROFESSIONAL</p> <ul style="list-style-type: none"> - Architectural services - Environmental (urban planning) services - Landscape Architectural services - Interior Design services - Engineering Services (civil, electrical, geodetic, mechanical, sanitary, electronics and communications engineering) - Auditing services (financial auditing and accounting review)
1.A.b	<p>CONSTRUCTION SERVICES</p>
3.A – E.	
7 7.B 7.B.a 7.B.b 7.B.d 7.B.e 7.B.f	<p>FINANCIAL SERVICES</p> <ul style="list-style-type: none"> - Commercial banking <ul style="list-style-type: none"> - acceptance of deposits and other repayable funds from the public - lending of all types, including consumer credit, mortgage credit, and financing of commercial transaction - all payment and money transmission services, including credit, charge and debit cards, travelers cheques and bankers draft - guarantees and commitments - trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise the following: money market instruments (bank's own promissory notes, repurchase agreements, and certificates of assignment/ participation with recourse); foreign exchange; derivative products including but not limited to futures options; exchange rate and interest rate instruments, including products such as swaps, forward rate agreements; and other allowable negotiable instruments and financial assets;

<p>7.B.g</p> <p>7.B.i</p> <p>11.A</p> <p>11.A.a and b</p> <p>2.C</p> <p>2.C.?</p> <p>9</p> <p>9.A.</p>	<ul style="list-style-type: none"> - participation in issues of all kinds of securities including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues. - Assets management, such as cash or portfolio management, all forms of collective investment management, custodial, depository and trust services <p>MARITIME TRANSPORT</p> <ul style="list-style-type: none"> - International transport except: a) cabotage transport, and b) government own cargoes <p>TELECOMMUNICATIONS</p> <ul style="list-style-type: none"> - Paging services <p>TOURISM</p> <ul style="list-style-type: none"> - Tourism accommodation facilities - pension house - tourist inn - apartels
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Third Package

<p>11.C.e?</p> <p>1.B.a.</p> <p>1.B.b.</p> <p>1.B.d.</p> <p>3.E</p> <p>2.C</p> <p>2.C.a.</p> <p>2.C.e.</p> <p>2.C.d.</p> <p>2.C.b.</p> <p>2.C.c.</p> <p>2.C.f.</p> <p>2.C.a.?</p> <p>9.A.</p> <p>9.A.</p> <p>9.A.</p> <p>9.A.</p>	<p>AIR TRANSPORT</p> <p>Same as second plus</p> <p>Selling and Marketing of air transport</p> <p>BUSINESS/PROFESSIONAL SERVICES</p> <p>Same as second plus</p> <ul style="list-style-type: none"> - Consultancy services related to the installation of computer hardware - Software implementation services - Database services <p>CONSTRUCTION</p> <p>Same plus</p> <ul style="list-style-type: none"> - Renting services related to equipment for construction or demolition of building or civil engineering works, with operator <p>TELECOMMUNICATIONS SERVICES</p> <ul style="list-style-type: none"> - Voice telephone services - Telegraph services - Telex services - Packet switched data transmission services - Circuit-switched data transmission services - Facsimile services - Cellular mobile telephone services <p>TOURISM</p> <p>Same as second plus</p> <ul style="list-style-type: none"> - Hotel and Resort - Meal Serving services with full restaurant services - Beverage serving services without entertainment - Specialty restaurants
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Appendix 4. Regulations and Restrictions in Banking and Insurance

	<i>Discriminatory Restrictions</i>	<i>Non-discriminatory</i>	<i>Legal Basis</i>	<i>Notes</i>
Banking				
		3-year moratorium on the establishment of new banks	RA 8791 (2000)	Covered by Annex, prudential carve out
		Monetary Board approval for domestic bank branches licenses		Covered by Annex
	Foreign banks are limited to a maximum of 6 new branches		RA 7721 (1994)	Violates Par 5 of Understanding
	100% foreign bank ownership limited to 7-year window of opportunity.		RA 8791	
		Consolidated banking supervision, fit and proper rule for bank directors and officers, independent directors, risk-based capital requirement, safeguards against connected lending, family groups and related interests, interlocking directorships, disclosure requirements, etc.		Covered by Annex
	Foreign banks can enter: 1) by acquiring, purchasing or owning up to 60% of the voting stock of an existing bank; 2) by investing up to 60% of the voting stock of a new banking subsidiary incorporated under Philippine laws; or 3) by establishing branches with full banking authority. The last mode of entry is operative for only five years from the date of effectivity of the Act and limited to only 10 banks.		RA 7721	
		Underwriting may be performed only by commercial banks with expanded commercial banking authority.	BSP Manual ?	Covered by Annex

	Non-Filipino citizen employed as officer or assigned to do technical functions shall have two Filipino understudies		Legal basis?	Mode 4 restrictions in Philippine WTO schedule
	Control of at least 70% of bank resources or assets be held by domestic banks that are majority owned by Filipinos.		RA7721, RA 8791	Violates Par. 5 of Understanding.
		Individuals and non-bank corporations may own up to 40% of the voting stock of a domestic bank.	RA 8791	
		Limits on loans, credit accommodations and guarantees; restrictions on portfolio assets.	RA 8791	Covered by Annex
		Restrictions on capital adequacy, reserve requirements		Covered by Annex
		Policy directed lending		Violates Par 10b of Understanding
Insurance				
	Foreign equity cap: 100%; paid-up capital requirement higher for new entrants.		RA 8179 (1996)	
		Restrictions on portfolio assets; limits on investments in stocks, bonds, real estate investments, investments in single enterprise, and in foreign currency.		Prudential carve out
	Security deposits with insurance commission is also higher for foreign-owned insurance companies (P300M for insurance; P500 M for reinsurance, vs. only 25% of min paid up capital for domestic companies			Violates GATS national treatment?

Source: Adapted from Milo (2002).