

Chapter 2

SERVICES

(1) Background of the Rules

The purpose of the disciplines regarding trade in services under EPAs/FTAs is, as under the General Agreement on Trade in Services (GATS), to enhance trade liberalization by eliminating barriers to trade in services between Parties and increasing the transparency of measures affecting trade in services. Disciplines and specific commitments aim to be GATS plus. Therefore, provisions under EPA/FTA have been gradually developed and advanced, and on some matters, the text of the relevant provisions greatly varies from EPA/FTA to EPA/FTA. This variation reflects certain distinctions between the contracting party countries, such as their policies on liberalization in service areas, history of negotiations regarding the relevant EPA/FTA (*i.e.*, issues with respect to multilateral negotiations or political situations of the negotiating countries).

Unlike trade in goods, where negotiations focus on the maximum tariff rate stated in the relevant schedule of concessions, the liberalization commitment approach, with respect to trade in services in individual sectors, deals with domestic regulations making it difficult to specify the effect of trade restrictions in numerical values. In the service chapter of an EPA/FTA, liberalization commitment approaches are classified into two categories -- the “negative list” and the “positive list”. The “negative list” is an approach of commitment under which the obligation of liberalization such as national treatment and MFN treatment is disciplined as a general obligation; and measures and sectors which are exempted from that obligation are explicitly inscribed in the list of non-conforming measures, and liberalization such as national treatment and MFN treatment is committed for all those which are not included in the list of non-conforming measures. The “positive list” is another approach of commitment under which the subject sectors of liberalization and the conditions and restrictions are specifically and explicitly inscribed in the list regarding national treatment and market access, and no obligations are to be undertaken regarding national treatment and market access with respect to any other sectors which are not inscribed in the positive list. In preparing the lists of the sectors with respect to which commitments are made, the Services Sectoral Classification List (MTN.GNS/W/120; 10 July 1991) used in WTO/GATS should be the basis, but Member countries can also specify the scope of implementing liberalization for sub-sectors and lower levels.

To sum up, the “negative list” is an approach under which Member countries specify the sectors which are exempted from the obligation of liberalization, while the “positive list” is a commitment approach under which Member countries specify the sectors for which liberalization is implemented. The former is considered as a framework which generally contributes to a higher level of liberalization, but of course, the achievement of liberalization all depends on the substance of commitments.

(2) Overview of Legal Disciplines

The structure of each treaty on trade in services depends on whether it adopts “positive list approach” or “negative list approach”.

1) Four modes and the relationship based on these modes between the service chapter, the chapter on investment, and the chapter on the movement of natural persons

In the Services chapter of GATS and EPAs/FTAs, trade in services is classified as four modes of supply: Mode 1: cross-border supply; Mode 2: consumption abroad; Mode 3: commercial presence; and Mode 4: movement of natural persons. Only Mode 3 is dealt with in a different way according to each specific EPA/FTA (see Chapter 12, Part II).

In the case of EPAs/FTAs in which the GATS style “positive list” approach is adopted, all four modes are covered. However, Mode 3 in the service chapter overlaps with the scope of the chapter on investment as the chapter on investment does not exclude the coverage on investments in service sectors. To avoid any inconsistency inherently arose by such an overlap, the commitment (reservation) in the chapter on investment are made principally the same as the commitment of Mode 3 in the service chapter made in the sectors concerned. Provided that inconsistency is eventually found between the two chapters, there is the provision that the disciplines and commitments in the service chapter should prevail to the extent of such inconsistency.

In the case of the NAFTA-style “negative list” approach, the service chapter covers only the cross-border supply of Modes 1, 2 and 4, while investments in service sectors, i.e., Mode 3, is dealt with in the chapter on investment. In other words, it is the chapter on investment that covers investments in service sectors made by investors of a contracting party’s country in the other contracting party’s country such in forms of subsidiaries and branches.

In addition, regarding Mode 4, immigration measures are dealt with in the chapter on the movement of natural persons, while the treatment after immigration is dealt with in the service chapter. In summary, Mode 4 itself includes the immigration measure but in the case of GATS style EPA/FTA, while keeping it in the scope of the service chapter, the immigration measure is excluded from the Schedule of Commitments (without any commitment); and in the case of NAFTA style EPA/FTA, the immigration measure is not within the scope of the service chapter.

2) Definition of Service Supplier of the other party and juridical person of the other party

EPAs/FTAs normally provide for definitions of basic terms in order to clarify the coverage of such basic terms. One such basic term is “service supplier of the party.” They are objects that are given the benefit of EPAs/FTAs. Entities which are eligible to be a service supplier include both natural persons and juridical persons. Under such definitions, such persons are entitled to the benefit of the agreements through, *inter alia*, a liberalization commitment in respect of trade in services. In addition, EPAs/FTAs usually provide for definitions of a “juridical person of the other party”. A “juridical person of the other party” is

usually defined as (i) with regard to Mode 1 and Mode 2, a juridical person established within the territory of the other party, and (ii) with regard to Mode 3, a juridical person that is established within the territory of the country and owned or controlled by: (a) a natural person in the other country or (b) another juridical person established within the territory of the other party. Some EPAs/FTAs require as a criteria for such definition engagement by the “juridical person of the other party” in substantial activity in the territory of the other Party, while the others not.

EPAs/FTAs normally define “ownership” and “control” as follow:

A juridical person is deemed to be “owned” by persons if more than fifty percent (50%) of the equity interest in it is owned by such persons. Under GATS, the term “owned” is construed to mean direct ownership. Under the aforesaid definition of a “juridical person of the other party” for Mode 3, such person could mean a juridical person (a “subsidiary”) established within the territory of one contracting party country and directly owned by another juridical person (a “parent company”) established within the territory of the other contracting party country, but would not include a sub-subsidiary (a company that is indirectly owned by a parent company through subsidiary established within the territory of the other contracting party). In contrast, the chapter on investment in the relevant EPA/FTA normally defines “investment” (which is the subject of protection granted pursuant to that chapter), as an asset of an investor in one contracting party, and such includes any “enterprise” owned, whether directly or indirectly, by such an investor or investors.

Under the chapter on services in the relevant EPA/FTA, a juridical person is “controlled” by persons if such persons have the power to name a majority of its directors or otherwise to legally direct the actions of the juridical person.

3) Most-Favored-Nation (“MFN”) Treatment

The provision of MFN treatment under GATS requires that among WTO member countries: “each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country” (Article II). According to this provision, a WTO Member country undertakes the obligation of according the same treatment to all other WTO Member countries with regard to the measures which fall under GATS. This means that in addition to national treatment and the treatment pertaining to market access with respect to which a Member country made commitments in the Schedule of Commitments, the same treatment is equally afforded to all WTO Member countries even if no commitment has been made in that country’s Schedule of Commitments. On the other hand, under Article V of GATS, Member countries that enter into an EPA/FTA may not be subject to the MFN obligation under GATS (i.e., there is no obligation to accord such treatment to the WTO Member countries other than contracting party countries to such EPA/FTA). For instance, in the case where under GATS, Member country A has committed to allow foreign capital to make an equity contribution at a rate up to 40% in the retailing service sector, if under the EPA/FTA which country A has concluded with country B (which satisfies the requirement of the said Article V), a commitment has been made to allow a rate up to 50% in the said sector for foreign capital, then there is no obligation to let the WTO Member countries other than country B equally share such committed treatment. Country A allows foreign capital to make an equity contribution at a ratio up to 50% in the retailing service sector only for service suppliers of country B, while the ratio up to 40% remains unchanged for service suppliers of other WTO Member countries.

On the other hand, the MFN treatment provided in EPAs/FTAs requires that a contracting party country should accord to the other contracting party treatment no less favorable than that it accords to like services and service suppliers of any other third country. The MFN treatment pursuant to a principle like this is widely seen in the EPAs/FTAs concluded between developed countries and was provided in agreements like NAFTA and the U.S.A.-Singapore FTA.

Under the EPAs/FTAs, such as the Japan-Viet Nam EPA and the Japan-Switzerland EPA, the MFN treatment is provided with the exception that the preferential treatment provided under the EPAs/FTAs with the third country that satisfies the requirements under Article V of the GATS is not applicable to the other contracting party country to the former EPAs/FTAs. Provisions are included in the Japan-Switzerland EPA that the contracting party country is obliged to consult with the other contracting party country or endeavor to accord to the other contracting party country treatment no less favorable than that provided under other agreements concluded and notified under Article V of the GATS. The Japan-Viet Nam EPA provides an obligation of consultation similar to that of the Japan-Switzerland EPA, but does not provide such obligation to endeavor as is stipulated in the latter EPA.

In addition, certain agreements include review provisions aimed at effectively according MFN treatment while not specifically providing for the MFN treatment. Such provisions are peculiar to EPAs/FTAs. That is to say, pursuant to a review provision, if country B newly enters into a B-C EPA/FTA with country C and if such new B-C EPA/FTA accords a more favorable treatment to country C (which is a third party country from country A's perspective), then the A-B EPA/FTA, which contains a review provision, may obligate the contracting party country B to consider whether it should revise such A-B EPA/FTA in order to accord to country A treatment no less favorable than that provided to country C under the new B-C EPA/FTA. The Japan-Thailand EPA and the India-Singapore FTA are examples of an EPA/FTA providing an MFN provision of this type.

4) Market Access

As under GATS, EPAs/FTAs provide market access provisions, primarily in order to liberalize restrictive measures imposed on market entries mainly due to economic factors. Following the GATS approach, most such agreements are structured in the positive list format of commitments described above. However, NAFTA, which is a negative list format agreement (which entered into force before GATS), also contains disciplines on "quantitative restrictions" on trade in services. (However, "limitations on the participation of foreign capital", which is provided in the paragraph 2 (f) of Article XVI of GATS, is excluded because Mode 3 is exclusively covered in the Investment chapter.)

5) National Treatment

As under GATS, national treatment under EPAs/FTAs is a concept whereby the treatment accorded by a contracting party to the services and the service suppliers of the other contracting party country shall be no less favorable than the treatment accorded to its own like services and service suppliers.

Under the positive list approach, the sectors in respect of which national treatment obligations are committed and the conditions and restrictions therefore are inscribed in the "Schedule of Commitments" of the relevant EPA/FTA. On the other hand, under the negative

list approach, both the sectors for which national treatment obligations are not committed and the measures which are exempted from such commitments i.e. conditions and restrictions in respect of the remaining sectors are inscribed in the “Schedule of Reservations” of the relevant EPA/FTA. Under either approach, the scope of commitments or reservations, as the case may be, is to be explicitly specified in order to enhance transparency and promote liberalization of trade in services.

6) Additional Commitments

As under GATS, commitments which go beyond market access and national treatment obligations may be inscribed in the “Schedule of Commitments” of the relevant EPA/FTA. Some EPAs/FTAs adopting the positive list approach provide examples of additional commitments (such as disciplines promoting competition in the telecommunications sector and additional commitments in respect of domestic regulations in the financial sector) with a view to incorporating the outcome of the GATS negotiation. No example of additional commitments is found in FTAs which adopt the negative list approach.

7) Standstill Obligation

Under NAFTA, which adopts the negative list approach, if the contracting party country makes reservations on certain obligations under the agreement (such as with respect to the national treatment obligation, the MFN treatment obligation with regard to existing measures in certain sectors etc.), it owes an obligation to maintain the *status quo* in respect of such reservations as of the entry into force of the agreement (that is, it owes an obligation not to adopt any measure which is more restrictive than existing measures). This is referred to as a “standstill obligation.” A contracting party country may make a reservation not only on existing measures, but also on the relevant service sector, where the country does not owe any such standstill obligation with respect to existing measures, and thus may adopt any measures and maintain existing measures to an extent specifically reserved the applicability of certain obligations (such as the national treatment obligation) in the sector concerned.

In cases where standstill obligations are provided in an EPA/FTA which adopts the positive list approach (for example, under paragraph 3 of Article 75 of the Japan-Philippines EPA, and with respect to the sectors marked as “SS” (the abbreviation of “short for standstill”) in the Schedule of Commitments attached thereto (such sectors are referred to as the “SS sectors”)), the conditions and restrictions therefore may be inscribed therein only in relation to existing measures which do not conform to either market access obligations or national treatment obligations. Without regard to whether or not the relevant sector is marked “SS”, any commitment inscribed in the Schedule of Commitments for a certain sector is binding. Further, the contracting party countries would be obligated to maintain the status quo of existing measures as of the entry into force of the agreement in connection with the SS sectors. The Japan-Philippines EPA is the first agreement that adopted this approach with respect to services; the Japan-Malaysia and Japan-Indonesia EPAs followed suit.

8) Authorizations, Licenses and Qualifications (Domestic Regulations)

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not create unnecessary barriers to trade in services, most EPAs/FTAs obligate contracting party countries to establish objective and transparent criteria: (i) so as to ensure that any such requirements, procedures

and standards are not more burdensome than necessary to ensure the quality of the service, and (ii) so as to ensure that licensing procedures are not in and of themselves a restriction on the supply of the services. In addition, some EPAs/FTAs (for example, the U.S.A.-Singapore FTA, the U.S.A.-Australia FTA, and the India-Singapore FTA) explicitly provide that the parties thereto shall review the relevant disciplines in response to the progress, if any, in working programs concerning qualification requirements and procedures, technical standards and licensing requirements contemplated by paragraph 4 of Article VI of GATS.

9) Mutual Recognition

This provision provides that a contracting party country may recognize the education or experience obtained, requirements met, or licenses or certifications granted by another contracting party country for the purpose of fulfillment, in whole or a part, of its standards or criteria for the authorization, licensing or certifications of service suppliers of another contracting party country. In case of such recognition given by a contracting party country to a third party country, it is clearly provided that such recognition should not fall under the scope of MFN obligation, however, it is also provided that the contracting party country should offer an adequate opportunity to the other contracting party country to demonstrate that the other contracting party should also be treated the same with respect to such recognition. (The same provision is provided for in Article VII of GATS.)

Some agreements go a step further and explicitly provide that the contracting parties negotiate on the framework of mutual recognition by professional associations, and some even require such negotiation to be completed by specific deadlines and/or in respect of certain sectors (see, for example, the India-Singapore FTA).

10) Transparency

As under GATS, in order to ensure transparency, contracting party countries have obligations to (or obligations to make efforts to) promptly publish domestic measures in connection with the disciplines regarding services, establishment of enquiry points, etc. In addition, some agreements effectively provide that a contracting country party may change any existing measure, or introduce any new measure, but only after the expiration of a certain period of time after publishing a draft of such measure, and that it shall receive comments from the other contracting party country during such period. Some agreements even effectively provide that the parties thereto should adopt such comments to the greatest extent possible.

11) Safeguards

While most EPAs/FTAs lack specific provisions on safeguard measures for service sectors (as there has been little progress in respect of negotiation on safeguards contemplated in Article X of GATS), some EPAs/FTAs do contain provisions in this regard. These agreements effectively provide, *inter alia*, that (i) the contracting party countries shall refrain from taking safeguard measures against the other contracting party; (ii) shall not initiate investigations therefore (see, for example, the Australia-Singapore FTA, and the India-Singapore FTA); and/or (iii) the parties thereto shall review the issue of safeguard measures in the context of developments in multilateral negotiations (see, for example, the India-Singapore FTA).

12) Denial of Benefits

Denial of benefit provisions under EPAs/FTAs effectively provide that a contracting party country may, under certain conditions, deny the benefits (*i.e.* liberalized market access commitment) provided to service suppliers of the other contracting party country. Many of them have followed the provisions of NAFTA, and deny benefits with respect to services or service suppliers of the other contracting party country where: (i) a juridical person of the other contracting party country is owned or controlled by a third party country which has no diplomatic relations with a contracting party country; (ii) a juridical person owned or controlled by a third party country to which measures such as economic sanctions prohibiting transactions with such juridical person are imposed by a contracting party country; or (iii) a juridical person which is owned or controlled by a juridical person of a third party country and is not engaging in substantial business activities within the territory of the other contracting party country. Regarding (iii), a contracting party country must give prior notification to and consultation with the other contracting party country, but whether or not benefits will actually be denied is left to the discretion of the contracting party country. Such prior notification and negotiations are not mandatory regarding (i) and (ii).

In addition, under GATS a Member country may deny the benefits of GATS to the supply of a service if it establishes that the service is supplied to its territory from or in the territory of a non-member country or that such service is supplied by a vessel registered under the laws of a non-member country in the maritime transport service (Article XXVII).

13) Payments and Transfers

As under GATS, while restrictions on payments and transfers for current transactions relating to trade in services are generally prohibited, restrictions on payments and transfers for the purpose of safeguarding the balance of international payments are conditionally permitted under EPAs/FTAs.

Some EPAs/FTAs limit the coverage of this provision to the sectors committed by the contracting party country in the Schedule of Commitments, as under GATS, while others apply this provision to all sectors as a general obligation.

14) Exceptions

Most EPAs/FTAs contain provisions equivalent to those of Articles XIV and XIV***bis*** of GATS, and exempt (as general exceptions) measures to protect public morals, to maintain public order, health and safety, and measures in respect of national security interests.

15) Review of Commitments (Review Provisions)

While GATS provides that Members shall enter into successive rounds of negotiations for progressive liberalization (Article XIX), many EPAs/FTAs provide that reviews of commitments shall be made several years after the entry into force of the agreement for the purpose of further liberalization of trade in services.

EPAs/FTAs include a variety of provisions in this regard. Some agreements follow the GATS model, and advocate efforts toward progressive liberalization (see, for example, the India-Singapore FTA), some do not contain any special provisions in this respect (see, for

example, the U.S.A.-Singapore FTA, and the U.S.A.-Australia FTA), some provide for biannual review of the agreement (see, for example, the EFTA-Singapore FTA), etc.

(3) Summary of Japan's EPAs

1) Major Provisions

•Market Access

Japan's EPAs with ASEAN countries including the Japan-Singapore EPA adopts the GATS-type positive list approach, and the market access provisions in these agreements follow those of the GATS model.

The Japan-Mexico EPA and the Japan-Chile EPA adopt the NAFTA-type negative list approach and contains no obligatory provisions in respect of market access (NAFTA contains disciplines over quantitative restrictions on trade in services (Article 1207), but does not use the concept of market access in connection with trade in services). The Japan-Switzerland EPA is the first one for Japan to include market access obligations while adopting the negative list approach in an annex to the service chapter. The Japan-Peru also includes market access obligations while adopting the negative list approach.

•National Treatment

The provisions on national treatment under the Japan's EPA's with the Philippines, Mexico, Chile and Brunei are the same as those of GATS. The Japan-Singapore EPA, the Japan-Malaysia EPA, the Japan-Thailand EPA, the Japan-Indonesia EPA and the Japan-Viet Nam EPA also have provisions regarding national treatment obligations which are modeled on GATS, but provide that the foregoing provisions may not be invoked "under Chapter 21" with respect to any measure that falls within the scope of a tax treaty relating to the avoidance of double taxation. The Japan-Switzerland EPA also includes the provisions to that effect. This is based on the premise that dispute resolution regarding measures covered by a bilateral tax treaty shall be conducted pursuant to such tax treaty.

•Transparency

All EPAs that have been concluded by Japan so far provide in the chapter therein on general provisions (except the Japan-Mexico EPA, in which the relevant provisions are provided in the chapter on implementation and operation of the agreement) that those measures which pertain to or affect the operation of the agreement be published, at least within the country, and that each contracting party country is obligated to respond to questions posed by the other country with respect to such measures. This also extends to the provisions of the chapter on services. However, the following items are mentioned in the chapter as agreements provided for ensuring transparency. In addition, the chapter on trade in services in the Japan-Malaysia EPA requires that information regarding restrictive measures affecting, *inter alia*, market access, national treatment obligations and provision on white papers, in respect of trade in services be provided.

The Japan-Philippines EPA, the Japan-Brunei EPA and the Japan-Thailand EPA provide for the preparation, delivery to the counterparty country and publication of a list of existing measures not conforming to the market access and national treatment obligations ("transparency list") and the Japan-India EPA provides an obligation for the preparation and

publication of a similar list, regardless of whether a specific commitment covers the relevant sector. Simply put, a transparency list is prepared solely for the purpose of increasing the transparency of restrictions, and does not affect the rights and duties of the contracting party countries. Measures to be covered by a transparency list include, in addition to measures included at the national level, measures of regional governments (at the prefectural level in Japan) and of municipal governments (at the level of cities, towns, and villages in Japan), except for the Japan-Philippines EPA, which does not include measures at the municipal level in the transparency list. Moreover, in addition to the aforementioned provisions in the chapters on general provisions and so forth, the Japan-Philippines EPA, the Japan-Indonesia EPA, the Japan-Brunei EPA, and the Japan-Viet Nam EPA effectively provide that a contracting party country must respond to and provide information in response to questions by a service supplier of the counterparty country through its contact point. This is significant because, unlike with respect to what information is to be provided under general provisions, such information is to be provided to the service supplier and not the government of the contracting country.

As commitments under the Japan-Mexico EPA, the Japan-Chile EPA, the Japan-Switzerland EPA and the Japan-Peru EPA are determined using the negative list approach, it is clearly understandable from the structure of the agreement which sectors contain a measure not conforming to certain obligations (for example, the national treatment obligation), and, if any measures not conforming to such obligations exist, the nature of such measure or measures, as the case may be. This ensures a high level of transparency. In addition, it effectively provides that if a new measure which affects the implementation or the operation of the agreement is to be introduced to a sector on the transparency list, notification shall be made to the counterparty country, to the greatest extent possible, thereby contributing to the enhancement of transparency of regulatory measures.

•Standstill Obligations

The Japan-Mexico EPA, the Japan-Chile EPA, the Japan-Switzerland EPA and the Japan-Peru EPA, which adopt the NAFTA-type negative list approach, provide that the following measures are to be covered by standstill obligations:

- (i) Existing measures not conforming to certain obligations (for example, national treatment) maintained by the federal or central government and inscribed in the Schedule of Reservations (a list of sectors reserved under the existing measures).
- (ii) Existing measures not conforming to obligations (for example, national treatment) maintained by the regional government at the prefectural level as measures of the Japanese local government and inscribed in the Schedule of Reservations (a list of measures under the existing measures), and existing measures not conforming to obligations (for example, national treatment) maintained by the local government other than at the prefectural level (municipalities such as cities and villages).
- (iii) Existing measures not conforming to obligations (for example, national treatment) maintained by the state government as measures of the Mexican/Chilean local government and inscribed in the Schedule of Reservations (Annex 6: list of sectors reserved under the existing measures), and all existing measures not conforming to obligations (for example, national treatment) maintained by the local government (municipalities such as cities and districts). Regarding the Japan-Switzerland EPA, existing measures, for which the Swiss government does not

specifically reserve to adopt new measures, among those measures not conforming to obligations (for example, national treatment) maintained by the state and local government and inscribed in the Schedule of Reservations.

In the case of the positive list approach, sectors subject to standstill obligations are those marked SS in the Schedule of Commitments. Although the terms of such standstill obligations are provided in the Japan-Philippines EPA, the Japan-Indonesia EPA, the Japan-Thailand EPA and the Japan-Malaysia EPA (as stated in Paragraph (2) 7) hereof), such terms limit those specific commitments of such sectors marked SS to conditions and restrictions under the existing measures not conforming to national treatment, etc..

•MFN Treatment

With respect to EPAs entered into by Japan, the Japan-Mexico EPA, the Japan-Philippines EPA, the Japan-Chile EPA, the Japan-Brunei EPA and the Japan-Peru EPA effectively provide that the contracting parties' countries shall mutually accord to each other general MFN treatment, and shall separately enumerate in the annex (MFN Schedule of Reservations/Exemptions) as exceptions those sectors in respect of which MFN treatment is not accorded.

The Japan-Singapore EPA and the Japan-Thailand EPA, on the other hand, do not automatically accord to each party MFN treatment. However, under such EPA, where one contracting country (assume, for example, Singapore) accords preferential treatment to a non-contracting party country (assume, for example, the United States), the other contracting country (for example, Japan) may request the first contracting country to allow such preferential treatment, and such first contracting country must consider whether to so permit.

The Japan-Viet Nam EPA and the Japan-Switzerland EPA provide the principle of MFN treatment with the exception that the preferential treatment provided under the other EPAs/FTAs which either party concludes with a third party country, and which satisfies the requirements under Article V of the GATS, is not applicable to the other party to the former EPAs. The Japan-Viet Nam EPA provides an obligation of either party to negotiate with the other party if either party accords more favorable treatment to the third party. Under the Japan-Switzerland EPA, a contracting party country shall endeavor to accord to another contracting party country treatment no less favorable than that provided under other agreement.

Although the Japan-Malaysia EPA and the Japan-Indonesia EPA provide for MFN treatment as a general obligation, Malaysia and Indonesia made reservations with respect to all sectors in the annex, and made exception of those sectors that would not be accorded MFN treatment (MFN Schedule of Reservations/Exemptions). Malaysia and Indonesia consequently accord MFN treatment only in some sectors (such as rental and leasing services, etc.) as exceptions to the exceptions in the MFN Schedule of Reservations (i.e. "all sectors except").

•Denial of Benefits

Under the Japan-Singapore EPA, in addition to those services in respect of which benefit is denied under GATS (i.e. services from non-member countries, maritime transport services by vessels of a non-member nationality, etc., as described above), benefit under the EPA is denied to (i) a juridical person which is controlled or owned by a party of a third party country, established in the territory of the other contracting party country and not engaged in a

substantial activity in the territory of either contracting party country, and (ii) a juridical person established in the territory of one of contracting party countries by a service supplier of a third party country and which does not engage in a substantial activity in such contracting party countries.

The Japan-Mexico EPA, the Japan-Philippines EPA, the Japan-Chile EPA, the Japan-Brunei EPA, the Japan-Indonesia EPA, the Japan-Viet Nam EPA and the Japan-Peru EPA, for the most part, adopt the text of the provisions of NAFTA. They provide that a service supplier of the other contracting party country will be denied benefits if it is a (i) juridical person that is owned or controlled by persons of a third party country with which Japan does not maintain diplomatic relations, or by persons of a third party country upon whom Japan is imposing economic sanctions, and (ii) juridical person that is owned or controlled by persons of a third party country and that has no substantial activities in the territory of that other contracting party country.

The Japan-Malaysia EPA effectively provides that only with respect to clause (i) discussed in the foregoing paragraph addressing the Japan-Mexico EPA and the Japan-Philippines EPA will benefits be denied. It does not provide the same in respect of clause (ii) of the foregoing paragraph because, in its definition of a “juridical person of the other Party,” the Japan-Malaysia EPA exempts from application of the agreement a juridical person which does not engage in substantive activity in the territory of the other contracting party country.

The Japan-Thailand EPA provides that clause (ii), which does not engage in substantive activity in the territory of the other contracting party, will benefits be denied in addition to the juridical person defined in clause (i).

The Japan-Switzerland EPA does not provide any provisions of denial of benefits.

•Payments and Transfers

The Japan-Singapore EPA, the Japan-Thailand EPA, the Japan-Brunei EPA, and the Japan-Viet Nam EPA extend GATS disciplines only to committed sectors. The Japan-Philippines EPA, the Japan-Indonesia EPA, the Japan-Malaysia EPA, the Japan-Switzerland EPA and the Japan-Peru EPA, however, extend GATS disciplines to all sectors pertaining to trade in services as general obligations and do not limit such disciplines to committed sectors. The Japan-Mexico EPA effectively provides that no restrictive measures on payments and transfers shall be applied to cross-border trade in services in the chapter therein on exceptions (which enumerates those that are beyond the scope of the entire agreement). This is not provided in the Japan-Chile EPA.

Note: The provisions on the scope of trade in services, modes and obligations (*i.e.*, national treatment, markets access) contain many parts which overlap with provisions under GATS. Therefore, descriptions on these are not dealt with in detail here in this chapter, as “Part II Chapter 12 Trade in Services” already gave an account thereof.

2) Salient Features of Liberalization Commitments of the Counterparty Country

Commitments were made using the “positive list” in EPAs with ASEAN countries. The counterpart countries made commitments with a higher level than under GATS regarding manufacturing industry-related repair and maintenance services, wholesale distribution services, computer and related services and also in sectors such as finance, communications, construction and transport. These commitments also include a standstill obligation; they do not deviate from the current laws and regulations, a phenomenon which is frequently seen in the commitments made by developing countries under GATS, and the inconsistency between the EPA as an international commitment with Japan and the regulations based on the counterpart country’s current domestic laws and regulations have been eliminated.

In the EPAs with Mexico, Chile, and Switzerland, commitments were made using the “negative list.” In principle, national treatment and MFN treatment obligations were made horizontally on all service sectors. In the EPA with Switzerland, market access obligations were also provided. Reservations were made for the sectors where commitments basically were secured through a standstill obligation while leaving certain sectors (key service sectors such as communication services, sectors relating to social policy) without a standstill obligation.

•Japan-Singapore EPA

The domestic laws and regulations of Singapore set forth few restrictions on market entry with respect to foreign equity participation. The Japan-Singapore EPA contains no horizontal limitation with respect to market entry into Singapore by Japanese enterprises in all or a wide range of industries (or sectors). In addition, with respect to individual sectors, commitments were made regarding 139 sectors (an increase of 76 sectors compared to the commitments under GATS). Moreover, many of the commitments regarding such sectors do not contain any market entry limitation with respect to foreign equity participation, thus the level of liberalization is generally high. Specific sectors for which commitments with a level of liberalization higher than that of GATS are as follows:

- Sectors with no limitation on market entry (allows 100% Japanese capital investment)

Rental/leasing services, placement and supply services of personnel, packaging services, distribution services, environmental services and shipping agency services

- Major sectors in respect of which commitments are made with certain conditions on market entry

Financial services (insurance, banking): alleviation of foreign equity participation restrictions, alleviation of aggregate loan restrictions, liberalization of new services, issuance of new licenses to insurance companies and elimination of the restriction on foreign equity participation in insurance companies (49%).

- Telecommunications: Singapore made commitments with a higher level of liberalization than under GATS, such as elimination of the foreign equity participation restriction (73.99% as the upper limit) reserved under GATS (thereby allowing 100% Japanese capital). In addition, this EPA contains an Annex on Telecommunications Services which provides sector-specific disciplines (*i.e.*,

collocation, interconnection pursuant to an approved reference offer) which was a higher level of commitment than what it had committed to in the equivalent reference documents under GATS.

- Tourism: New commitments were made with respect to three of the six sub-sectors, such as catering services.
- Transport: New commitments were made with respect to 35 of the 38 sub-sectors with certain conditions, such as “international maritime (passenger) transport services,” “maritime freight forwarding services” and “storage and warehousing services.” In addition, new commitments were made with respect to “Leasing or rental services relating to ships, aircraft, private cars, goods transport vehicles and other land transport equipment without operators” International transport (freight and passengers) excluding cabotage transport

Furthermore, review of the Japan-Singapore EPA was conducted in 2007. Regarding the financial services sector, additional commitments as follows were made.

Regarding banking and securities trade services, further liberalizations were committed in the following ways.

- One additional license on full bank status in Singapore was reserved for Japanese banks
- Limitation on the number of license issuances for wholesale banks were eliminated
- Cross-border services with respect to securities trade were extendedly liberalized

Regarding asset management services, new commitments were made to allow two specific cases in Mode 1: (i) any sale of units by a service supplier of Japan in a collective investment scheme to an institutional investor of Singapore through solicitation; and (ii) any sale of units by a service supplier of Japan in a collective scheme which is recognized by the relevant Authority of Singapore through a holder of a capital market services license to an investor of Singapore.

•Japan-Mexico EPA

The chapter on services in the Japan-Mexico EPA adopts, as does NAFTA, the negative list approach. Under such approach, only service sectors other than specifically enumerated in respect of which reservations (for example, reservations regarding national treatment) are made are eligible for complete liberalization. Under this approach, reservations can be divided into those made in relation to existing laws and regulations (with obligations to maintain the *status quo* of such laws and regulations) and those made in relation to the sectors without existing laws and regulations (and thus, without obligations to maintain the *status quo* of laws and regulations).

- (i) Sectors in respect of which reservations are made in relation to the existing laws and regulations (including investment in the service sector)

Communications (telecommunications services and public networks, etc.), education, construction (petroleum related), educational services (private schools), retail trade (sale of non-food products in specialized establishments), air transport, specialty air services, land transportation, railway transport, water transport, etc.

(ii) Sectors in respect of which reservations are made but not in relation to the existing laws and regulations (including investment in the service sector)

Entertainment services (broadcasting, recreational and leisure services), postal services and telecommunications, telecommunications services and networks (and related maritime telecommunications services), professional services (law firms), etc.

In addition, the chapter on services in the Japan-Mexico EPA provides for the accordance to each contracting party of MFN treatment in principle, and accordingly, Japan enjoys the benefit of preferential treatment granted by Mexico under NAFTA or any other EPA/FTA, to any third party country thereunder to the Japan-Mexico EPA (except in respect of some sectors in respect of which Mexico made reservations on MFN treatment (i.e. telecommunications, water transport, etc.)).

Although Mexico made a reservation of 49% foreign equity participation regarding Mode 3 on the rental/leasing, repair and maintenance, audio visual services, etc., under GATS, such sectors are excluded from the negative list in the commitments under the Japan-Mexico EPA, and Japanese enterprises are not subject to such foreign equity participation restrictions.

•Japan-Philippines EPA

The Philippines made commitments for more sectors (approximately 100 sectors) than under GATS (approximately 30 sectors). Among those sectors, it made standstill commitments (i.e., commitments on the basis of existing laws and regulations) which require the maintenance of the *status quo* of laws and regulations for 65 sectors pursuant to Japan's request.

Thus, with respect to the conditions for entering the Philippine market for these approximately 100 sectors, there is no discrepancy between, on the one hand, conditions for entering the market for these sectors and, on the other hand, the domestic laws and regulations, which were not fully assured under GATS. This ensures transparency and stability of the Philippines' domestic laws and regulations under which Japanese enterprises conduct business operations in the Philippines.

In addition, as the Japan-Philippines EPA provides for the accordance to each contracting country of MFN treatment in principle, Japan is unconditionally and automatically entitled to the preferential treatment accorded to a non-party country under any other EPA/FTA (except in respect of some sectors in respect of which the Philippines made reservations on MFN treatment (i.e. commercial banking, financing companies, etc.)).

Major sectors in respect of which standstill commitments for specific sectors are made (limited to commitments of sectors with a level of liberalization higher than that of GATS) are as follows:

- Computer and related services (consultancy services related to the installation of computer hardware, software implementation services, data processing services), distribution services (commission agents' services), and motion picture or video tape production services (only for animated cartoons)

Substance of commitments:

An enterprise in any of such sectors which satisfies the following may be funded by 100% Japanese equity participation:

- (i) Paid-in equity capital of 200,000 dollars or more.
- (ii) Paid-in equity capital of 100,000 dollars or more and employs 50 employees or more.
- (iii) Paid-in equity capital of 100,000 dollars or more and requires developed technology, etc.

Other enterprises in any of such sectors may be funded by only 40% Japanese capital.

- Rental and leasing services (without operators, relating to ships), services incidental to energy distribution, telecommunications services (excluding cable television), aircraft maintenance and repair services

Substance of commitments:

An enterprise in any of such sectors may be funded by up to 40% Japanese equity participation.

- Advertising services

Substance of commitments:

An enterprise in such sector may be funded by up to 30% Japanese equity participation; however, all the executive and managing officers must be Philippine citizens.

- Services incidental to mining (investigation and development of petroleum, gas, geothermal heat and coal)

Substance of commitments:

An enterprise in such sector may be funded by up to 40% Japanese equity participation, with reservations regarding conditions upon execution of agreements with Japanese enterprises.

- Commercial banking

Substance of commitments: An enterprise in such sector may be funded by up to 60% Japanese equity participation.

- Educational services (primary, secondary, adult)

Substance of commitments:

An enterprise in such sector must be funded by 60% or more Filipino equity participation; congress may request that this 60% threshold be raised.

- Telecommunications

Substance of commitments: The level of liberalization commitment has improved, including the expansion of the scope of liberalization commitments made with respect to services to which the Philippines did not commit under GATS, (*i.e.*, private leased circuit services, satellite services, data and message transmission services (data network services, and electronic message and information services)), and value-added services of e-mail and so on. In addition, the Philippines made clear in its Schedule of Commitments that regarding the reference document in which it made commitments with substance different than in the model reference document of GATS, reviews will be made in the future in accordance with the development of its domestic laws and regulations.

- Tourism/Transport

Substance of commitments: In the tourism sector, new commitments were made with respect to “tourist guide services.” In the transport sector, it committed to eliminate the 40% foreign equity participation restriction and realize full liberalization with respect to “maritime agency services” and “international freight forwarding services by sea.” Also, in many sectors of tourism services and transport services which include “international freight forwarding services by sea,” in addition to the commitment that regulations will not be reinforced in the future, the Philippines made new commitments pertaining to the availability of some services (*i.e.* pilotage, emergency repair services, etc.) at the port and additional commitments with respect to the use of multimodal activities for the purpose of transport operations. Additionally, it made new commitments with respect to “road freight transportation services” and “rail freight transportation services” as well.

- Japan-Malaysia EPA

Malaysia implements a foreign capital policy in respect of the service sector primarily in accordance with the administrative guidelines, and a domestic policy (Bumiputra Policy) requiring that enterprises incorporate Bumis (Malayan) capital of 30% or more. Malaysia’s foreign capital policy thus makes it difficult to achieve complete liberalization, but, in the sectors of rental and leasing services, maintenance and repair, etc., the Japan-Malaysia EPA contains a higher level of liberalization commitments than that to which Malaysia committed under GATS.

- (i) Commitments of Specific Sectors (GATS plus)

- In respect of rental and leasing services relating to construction machinery and equipment, and to office machinery and equipment, etc., which deal with products manufactured in Malaysia, funding in respect thereof may consist of up to 51% Japanese equity participation. Also in case of maintenance and repair services by locally incorporated rental/leasing corporation for equipment and machinery manufactured in Malaysia covering copying machines, facsimiles, boilers, turbines, compressors, etc., funding may consist of up to 51% Japanese equity participation.

- With respect to foreign equity participation restrictions, liberalization commitments with a level higher than that of GATS were made regarding specific

services (such as accounting (35%), engineering, market surveying (35%), research and development regarding medical services, etc., (49%), domestic travel agencies (35%), etc.).

- In the telecommunications sector, Malaysia committed to improve the level of liberalization commitment. For example, regarding the foreign equity participation restriction (30% as the upper limit) reserved under GATS, Malaysia committed to alleviate such restriction to 49% for ASP (application service provider), and also made new commitments to the disciplines regarding the telecommunications sector with respect to which no commitment had been made in the reference document under GATS (the disciplines regarding the allocation and use of scarce rare resources) and committed to revise the substance of the disciplines close to the model reference document of GATS (the disciplines regarding universal services, public availability of licensing criteria and independent regulator).
- In the tourism sector, it made new commitments with respect to “hotel lodging services,” including the alleviation of foreign equity participation restrictions. In the transport sector, it made new commitments with respect to “rental of cargo vessel with crew charter for international shipping” with certain conditions on market entry.

(ii) MFN Treatment (on conditions competitive with non-member country enterprises)

Malaysia committed to accord to Japanese enterprises unconditional MFN treatment, provided that such enterprises are in respect of certain rental and leasing services, or maintenance and repair relating to construction machinery and equipment or to office machinery and equipment. With respect to other sectors, when Malaysia executes agreements with a non-member country in the future, the Malaysian government must consider according to Japan the same preferential treatment it accords to any such third party country pursuant to Japan’s request.

• Japan –Thailand EPA

In Thailand, the Foreign Business Act defines foreign business (with 50% or more foreign equity participation), and the scope of business activities conducted by these foreign businesses in Thailand according to the type of business and is under restriction. Comparatively, a company is deemed to be a Thai company in principle if domestic capital accounts for a majority.

According to the commitment under GATS, the upper limit of the foreign equity participation ratio is set to be 49% as a horizontal commitment over all service sectors. The Japan-Thailand EPA contains the same horizontal commitment of at maximum 49% foreign equity participation.

(i) Commitments with respect to specific sectors

For manufacturing industry-related services, commitments of GATS plus were made with respect to sectors such as maintenance and repair, wholesale trade and retailing services, computer and related services and advertising services.

Regarding maintenance and repair, by limiting the scope to household electrical appliances, Thailand committed to allow an equity participation ratio up to 60% for Japanese capital with respect to products manufactured in Thailand, which is applicable to the suppliers of such services: (a) who for themselves manufacture and wholesale those products as well; and (b) whose group companies under the same brand, and the same commitment was made with respect to products manufactured in Japan, which is applicable to the suppliers of such

services whose group companies under the same brand. (In addition, there are conditions on the composition of board of directors).

Regarding the wholesale trade and retailing services, with products manufactured in Thailand, Thailand committed to allow an equity participation ratio up to 75% for Japanese capital, which is applicable to the suppliers of such services: (a) who for themselves manufacture and wholesale those products as well and (b) whose group companies under the same brand; and with automobiles manufactured in Japan, it made the same commitment, which is applicable to the suppliers of such services whose group companies under the same brand. (In addition, there are conditions on the composition of board of directors, etc.)

In general, Thailand made international commitments with respect to services sectors in a restrictive way. Regarding such maintenance and repair, and the wholesale trade and retailing services, it recognizes a foreign equity participation ratio of more than 50% for Japanese capital but limits the requisite for such participation to the condition that the suppliers of such services for themselves should manufacture the related products in Thailand; or their group companies under the same brand should manufacture the related products in Thailand or in Japan. (In other words, it made commitments in the scope of “single brand” to allow a foreign equity participation ratio of more than 50% for Japanese capital.)

Thailand committed to allow equity participation ratio of less than 50% for Japanese capital with respect to computer and related services and up to 50% for Japanese capital with respect to advertising services. (As for advertising services, there is the condition that the loan to capital ratio of three to one or lower should be maintained.)

In the tourism sector, regarding “hotel and lodging services,” it committed to alleviate the upper limit of the foreign equity participation ratio from 49% to 60% with certain conditions, and in the transport sector, in addition to the elimination of the reservation on full participation by vessels of third countries in traffic between Thailand-China and Thailand-Viet Nam pertaining to “maritime freight transportation services”, it made new commitments with respect to “maritime cargo handling services” and “maritime agency services” with certain restrictions.

(ii) MFN treatment

The EPA did not provide unconditional MFN treatment. If a contracting party country (Thailand) concludes an EPA/FTA with a third party country (i.e. the U.S.) and accords to it treatment better than that accorded to the other contracting party country (Japan), then the other contracting party country may request that the same treatment be accorded and the contracting party country will consider the matter.

• Japan-Chile EPA

In the service chapter of the Japan-Chile EPA, and then the Japan-Mexico EPA, the negative list approach was adopted. Reservations were divided into two categories, one made based on existing laws and regulations (with the obligation of maintaining the status quo of laws and regulations) and the other made in relation to the sectors without the obligation of maintaining the status quo of laws and regulations).

(i) Sectors for which reservations were made based on existing laws and regulations (also including investments in service sectors)

Communications (national and international long-distance telecommunications), energy (crude oil, natural gas, uranium), mining, fishery, and printing/publishing and professional services (legal services)

- (ii) Sectors for which reservations were made without being based on existing laws and regulations (also including investments in service sectors)

Satellite broadcasting, measures regarding minorities, cultural industries, environmental services (production and distribution of drinking water, the collection and disposal of waste water, etc.).

In addition, in the service chapter of the Japan-Chile EPA, it was provided that the MFN treatment be accorded except in some sectors for which Chile made reservations with respect to the MFN treatment, Japan is entitled to the unconditional and automatic application of the preferential treatment accorded to a third party country.

• Japan-Brunei EPA

Brunei's policy on foreign capital requires Brunei's domestic capital participation regarding sectors employing local resources such as foodstuff and energy, but there are no particular restrictions imposed by sector-specific laws regarding other services sectors. However, it is required that at the time of accepting foreign capital, each project should be approved by the relevant government authority, and in addition, in its international commitments made under GATS, AFAS (ASEAN Framework Agreement of Services) and the EPA with Japan, nothing is committed ("unbound") regarding the foreign equity participation in its horizontal commitment over all service sectors.

In the commitments made under the Japan-Brunei EPA, there are 43 sectors with respect to which commitments were made (including sub-sectors). This is a lower number compared to those of other ASEAN countries. The commitments of GATS plus are as follows:

(i) Commitments with respect to specific sectors

Regarding advertising and market research services, Brunei committed to allow an equity participation ratio of up to 30% for Japanese capital (scheduled to offer according to AFAS). No commitments made under the EPA among China, Korea and ASEAN EPA.)

In the tourism sector, Brunei made new commitments with respect to "hotel lodging services." In the transport sector, it made new commitments with certain restrictions with respect to "maritime transport services." In addition, it made new commitments regarding the commitment pertaining to the availability of some services (i.e. pilotage, emergency repair services, etc.) at the port.

In the construction services sector, it made the following commitments:

- (a) The foreign equity participation ratio will be alleviated from "less than 50%" under the WTO commitment to "less than 55%." As a result of this, the stable management by Japanese construction industry has been permanently secured;
- (b) The commitment covers the whole construction sector.

(ii) MFN treatment

Unconditional MFN treatment was provided in the EPA. However, in the List of MFN Treatment Exemptions (the list of sectors for which the exemption from MFN treatment is exceptionally recognized), in addition to industries like the radio and television industry and the financial industry, Brunei made reservations for three years with respect to the treatment (sectors to be liberalized) under the Trans-Pacific Strategic Economic Partnership Agreement

of which Brunei is a member (commonly known as P4, which is an EPA/FTA consisting of the four countries of Brunei, Chile, Australia and New Zealand). No exception has been established relating to any sort of ASEAN regional agreement or framework.

• Japan-Indonesia EPA

In Indonesia, the types of industries with respect to which there are foreign equity participation restrictions and the conditions are indicated in a list pursuant to the Presidential Decree based on the Investment Law, thus regulations have higher transparency in general. Regarding the regulations themselves in service sectors, in sectors such as communications, construction and transport, there are restrictions on the ratio of equity holding by foreign capital, and in medium-sized and small retailing sectors, restrictive regulations to completely block foreign capital have been imposed.

The horizontal commitment over all service sectors made by Indonesia under GATS allows an equity participation ratio of 49% for foreign capital. The horizontal commitment under the Japan-Indonesia EPA, like the commitment made under GATS, allows the same ratio of 49% for foreign capital, but among the commitments with respect to specific sectors, Indonesia made the following ones with a higher level of liberalization than those made under GATS.

(i) Commitments with respect to specific sectors

For manufacturing industries-related services, Indonesia made commitments of GATS plus with respect to sectors such as maintenance and repair, the wholesale trade and retailing services, computer and related services and the audiovisual services.

Regarding the maintenance and repair services, Indonesia made commitments relating to such services of household electrical appliances, office machineries, construction machineries and automobile (excluding motor cycles) only for the suppliers of such services who have manufacturing activities in Indonesia for themselves or by their local group companies. It was provided that commitment should be according to the existing laws and regulations at the time that this EPA comes into force; be maintained for ten years and then be reviewed. Regarding such services of household electrical appliances, office machineries and construction machineries, as there exists no foreign equity participation restrictions, Indonesian commitments practically mean no restrictions imposed on Japanese capital. Regarding such services of automobile (excluding motor cycles), as Indonesia imposes restrictions on a foreign equity participation ratio of up to 49% in respect to the “car maintenance and reparation” according to the Presidential Decree (List of Restrictions on Foreign Capital) which entered into force in July 2007, the restriction should be maintained as committed under the EPA.

Regarding the wholesale trade services, commitments were made with the same scope and substance as in the case of maintenance and repair services.

Regarding computer and related services, Indonesia made commitments that no restrictions would be applying for three years after the entry into force of this EPA but then be reviewed. Therefore, Indonesia committed to allow Japanese enterprises to conduct business in Indonesia without imposing foreign equity participation restrictions.

Regarding financial lease services, there was the regulation that the highest amount of the borrowed capital shall not exceed 15 times the equity capital in the case of “on-shore” borrowing and shall not exceed 5 times the equity capital in the case of “off-shore” borrowing, but pursuant to Japan’s request, Indonesia committed not to differentiate “on-

shore” and “off-shore” borrowing and to reform the system to allow borrowing at a ratio of up to 10 times the equity capital. Japanese-affiliated financial leasing companies raise funds mostly from the overseas market, and the reform of this system enabled them to raise funds smoothly.

In the telecommunications sector, along with the expansion of the scope of liberalization commitment by making new commitments with respect to private leased circuit services, online information and database retrieval, etc. to which it did not commit under GATS, Indonesia also committed to improve the level of liberalization commitment, for instance, by alleviating the upper limit of the foreign equity participation restriction (35% as its upper limit) reserved under GATS to 40%.

Regarding the audiovisual services sector (motion picture and video tape production and distribution, motion picture projection), as no commitments were made under GATS, Indonesia committed to allow an equity participation ratio of up to 40% for Japanese capital.

In the tourism sector, in addition to the alleviation of the restrictions on number of service providers with respect to “travel agent and tour operator services,” it made new commitments with respect to three other sub-sectors. In the transport sector, it made new commitments with certain restrictions with respect to “maritime cargo handling services.” In addition, new commitments were made with respect to “rental of vessels without crew” with certain restrictions.

(ii) MFN treatment

Like the Japan-Malaysia EPA, Indonesia adopted the approach of listing the qualified sectors with respect to which the MFN treatment is accorded to Japan and committed to accord the MFN treatment only with respect to the construction and non-banking financial sectors.

• Japan-Viet Nam EPA

The Vietnamese government adopted the foreign investment promotion policy, and actively implemented measures such as corporate tax benefits to foreign-invested companies. Although the preferential treatment for foreign investment was abolished in July 2006, the government continued to implement promotional policies for foreign investment by designating 8 sectors (including new materials and high-tech products, application of ecological technologies, labor-intensive businesses, education and training, and medical businesses) where foreign and domestic investments were treated equally in order to foster the industries in these sectors. It also designated social and economic poverty areas, in which investment was incentivized.

Japan and Viet Nam had a bilateral agreement on investment (effective in January 2004) with high level of liberalization, which includes investment in services sectors. Since December 2003 they have also had the “Japan-Viet Nam Joint Initiative,” which was designed to work as a framework of dialogue and cooperation for both countries to improve the business and investment environment in Viet Nam. In addition, Viet Nam provided high-level liberalization commitments in service sectors under GATS once it became the 150th WTO Member country in January 2007.

Overview of the commitments provided under the Japan-Viet Nam EPA is as follows:

As for horizontal commitments over all service sectors, an establishment of a commercial presence in Viet Nam is permitted only through three types of investments: (i) a business cooperation contract, (ii) a joint venture, and (iii) a 100% Japanese capital investment. No commitment is made on the creation of a branch office of a foreign company, unless otherwise specified in the provisions for individual sectors. Representative offices are allowed as long as they do not engage in businesses directly linked to income generation. The

nationality requirement provides that at least 20% of managers, directors, and experts hired by a foreign company must be Vietnamese. Regardless, there may be at least three non-Vietnamese employees per company.

(i) Commitments with respect to specific sectors

Regarding computers and related services, a 100% foreign-owned company may provide services only to foreign enterprises in Viet Nam until January 11, 2009 (two years after its joining in WTO), after which this restriction will be lifted. Starting on January 11, 2010, the establishment of a branch office of a foreign company will be allowed. Regarding advertising and market research services, Viet Nam committed to allow an equity participation ratio of no more than 51% for Japanese capital, but this restriction will be lifted after January 1, 2009. Foreign equity participation of up to 49% in maintenance and repair of equipment (excluding maritime vessels, aircraft or other transport equipment) is permitted at this point. This restriction will be reduced to allow for 51% foreign equity participation on January 11, 2010, and 100% on January 11, 2012. Distribution services (commission agents' services, wholesale trade services and retailing services) are required to do businesses through a joint venture with a Vietnamese company until January 1, 2009, after which this restriction will be lifted and 100% Japanese capital investment will be allowed. Items such as cement, tires, automobiles, motorcycles, paper, iron, and audio equipment are excluded from liberalization in the distribution service sector. However, the restriction on these items will be partially lifted on January 1, 2009, and completely removed for all items on January 11, 2010. However, in retailing services, Viet Nam retains the discretionary leeway to impose quantitative restriction on the opening of two or more shops by requiring justification under an Economic Needs Test. Regarding franchising services, any restrictions on equity participation will be lifted as of January 1, 2009, and the establishment of a foreign company's branch will be allowed after January 11, 2010. With respect to telecommunications services, internet connection services may be provided by a non-facilities-based supplier only through a form of joint venture with a telecommunications carrier legitimately licensed in Viet Nam with a maximum foreign equity participation of 51%. This restriction is valid until January 11, 2010, and when the permissible ratio of foreign equity participation will be raised to 65%. The requirement of the Vietnamese joint venture partner will also be removed. Internet connection services provided by a facilities-based supplier will be allowed after the EPA goes into effect, but only through a form of joint venture with a telecommunications carrier legitimately licensed in Viet Nam and with a maximum foreign equity participation of 50%. Regarding financial services, the establishment of a branch office of a foreign company will be allowed in the insurance and insurance-related service sectors other than life insurance (i.e. damage insurance only) after January 11, 2012 (with the possible implementation of prudential regulation). Establishment of commercial base will also be allowed in the banking and other financial service sectors, with certain restrictions.

(ii) MFN treatment

The Japan-Viet Nam EPA provides the principle of MFN treatment with the exception that more favorable treatment accorded by the contracting party country (for example, Viet Nam) under the EPAs/FTAs concluded with a third country is exempted from the Japan-Viet Nam EPA as long as the more favorable treatment is accorded under EPAs/FTAs that satisfy the requirements of Article V of the GATS. Under the Japan-Viet Nam EPA, the contracting party country is obliged to consult with the other contracting party country (Japan in the above example) whether such more favorable treatment accorded to the third country may be accorded to the other contracting party country.

• Japan-Switzerland EPA

The Japan-Switzerland EPA is the first EPA that Japan concluded with a developed Western country. It is the third EPA that adopts the negative list approach, following the Japan-Mexico EPA and the Japan-Chile EPA. In the negative list approach, the reservation is made by specifying the sectors where the liberalization may not be accorded, and thus, a wider range of liberalization commitments is accorded in the Japan-Switzerland EPA than those accorded in the EPAs with the ASEAN member states, which have adopted the positive list approach. In addition, as it was concluded between developed countries, the level of liberalization ensured thereunder is generally high. The Japan-Switzerland EPA is significant because it can be a model for the future EPAs/FTAs which include one to be concluded with the EU.

(i) Sectors for which reservations are made by Switzerland (including investment in services sectors)

Trade services (commission agents' services, wholesale services, and retail trade services); construction work; sale of motor vehicles (limited to weapon, ammunition and dual-use goods for military purposes); trade services related to medicinal products and medical devices; retail trade services limited to precious metals; pipeline transport services; leasing or rental services concerning vessels without operator; internal waterways transport services; air transport services (passenger transportation, freight transportation, specialty photography services, etc.); postal and courier services; audiovisual services (radio and television services, television cable services, etc.); insurance services (fire and natural disaster insurance, health insurance, etc.); pension services; banking services; securities trading services; accounting and auditing services; real estate services; leasing or rental services (video tapes and other content carriers); research and development services; legal services (representation services in courts, legal advisory services, patent attorneys, etc.); advertising services (radio and television programs, outdoor advertising services, etc.); agricultural and forestry services.

(ii) MFN treatment

The Japan-Switzerland EPA provides the principle of MFN treatment with the exception that more favorable treatment accorded by the contracting party country under the EPAs/FTAs concluded with the third country is exempted from the Japan-Switzerland EPA as long as the more favorable treatment is accorded under the EPAs/FTAs that satisfy the requirements of Article V of the GATS. Under the Japan-Switzerland EPA, the contracting party country is obliged to notify the other contracting party country without delay and endeavor to accord to the other contracting party country treatment no less favorable than that provided under the EPAs/FTAs concluded with the third country. Upon request by the other contracting party country, the contracting party country has to negotiate the incorporation into the Japan-Switzerland EPA of treatment no less favorable than that provided under the EPAs/FTAs concluded with the third country.

• Japan-India EPA

The Consolidated FDI Policy Circular 2 of 2010 (a document in effect from October 2010) consolidates policies and regulations on foreign direct investment. “FDI policy” hereafter) provides foreign investment restrictions and approval procedures for each service sector in India. India’s Schedule of Specific Commitments, Mode 3 provides that sector-wise commitments as well as regulations prescribed in the FDI Policy shall be applied. However, at the same time it is necessary that the sector wise commitments shall be applied to the extent that there is neither invalidation nor infringement. In other words, standstill obligation which is mentioned in this Chapter (2) ⑦ is not provided in the Japan-India EPA. However, the obligation of maintaining status quo is imposed in the application of FDI policy, and even if the FDI policy is revised in the future and is changed to more restrictive regulations than the conditions and restrictions inscribed in sector wise commitments in the Schedule of Commitments, in relation to the India-Japan EPA, conditions and restrictions inscribed in the Schedule of Commitments shall continue to be applied.

With respect to sector-wise commitments, including commitments not made as per GATS or EPA/FTAs entered so far, India has made commitments to improve restrictions on foreign investment in basic telecommunications, foreign equity participation for single brands and franchise of single brands, to give favorable consideration to applications by Japanese banks to set up their branches, and to abolish some of the reservations in Mode 1 of international maritime transport service.

(i) Commitments with respect to specific sectors

With respect to distribution services, foreign investment is permitted up to 100% for wholesalers/wholesale, 51% for retail (single brand), and up to 100% for franchise of single brand (although not a commitment under the agreement, up to 100% of foreign investment for single brand retail and up to 51% for multi-brand retail may be permitted on the condition of acquiring individual authorization of the government and meeting certain other conditions). Even restrictions on foreign investments in telecommunication services are eased to 74%. With respect to financial services, for bank licenses, commitment to give favorable consideration to applications by Japanese banks to set up their branches has been made. (Similar commitment is made in the India-Korea EPA). Also, commitment is made to improve Mode 1 of international maritime transport service (to eliminate the reservation of at least 40% of regular ship cargo for Indian flagged vessels).

(ii) MFN treatment

The EPA did not provide unconditionally equal MFN treatment. If a contracting party country (India) concludes an EPA/FTA with a third party country, and accords to it treatment better than that accorded to the other contracting party country (Japan), then the other contracting party country may request that the same treatment be accorded, and the contracting party country will consider the matter. In addition, when such treatment is accorded, the overall level of commitment of both parties should be maintained.

• Japan-Peru EPA

Under the Japan-Peru EPA, both countries make commitments at higher levels than WTO commitments, and shall ensure transparency by enumerating domestic measures that are continuously maintained under the principle of national treatment respectively in the annex. In addition, a chapter on telecommunications is created which provides rules for access to the telecommunications sector that surpass WTO.

[Figure III-2-2] Comparison of Commitments Provided in Service Chapters of the EPAs Concluded with the ASEAN Member States (already in force):

(Chart below describes the commitments that go beyond those under the GATS. Blank space indicates that the commitments made under the GATS are the same as those under the GATS.)

	EPAs Already in Force					
	Singapore	Malaysia	Thailand	Indonesia	Brunei	Philippines
	At the time of entry into force in 2002	Results of review in 2007				
Commitments in major sectors that go beyond those under the GATS	Maintenance and repair of rental equipment, rental and leasing services	With respect to (i) rental and leasing services for construction equipment, office equipment, etc., (limited to products manufactured in Malaysia), and (ii) maintenance and repair services conducted by locally incorporated rental/leasing corporations (for equipment and machinery manufactured in Malaysia covering office machinery, boilers, etc.) foreign equity participation is restricted to 51%	Committed to allowing Japanese equity participation ratio of up to 60% for maintenance and repair services of household electrical appliances (which are limited to in-house products of companies in Thailand or Japan).	In the maintenance and repair services of household electrical appliances, office machinery, construction machinery, and automobiles (excluding motor-cycles), Indonesia committed to the application of existing laws and regulations for the next ten years to suppliers of such services, performed upon domestically manufactured products (this means that no restriction is imposed on Japanese capital investment in these service sectors as there are no foreign equity		

		EPAs Already in Force					
		Singapore	Malaysia	Thailand	Indonesia	Brunei	Philippines
		At the time of entry into force in 2002			participation restrictions under the existing Indonesian laws and regulations).		
		Results of review in 2007			In certain sub-sectors of computers and related services, Indonesia committed to the application of existing laws and regulations for the next three years. Hence Japanese enterprises may conduct business in Indonesia without any foreign equity participation restrictions for this period, as the existing laws and regulations do not impose any such restrictions.		
Computers and related services		Committed to no restriction on foreign equity participation		Committed to allowing equity participation ratio of less than 50% for Japanese capital (conditional upon fulfillment of a certain loan to capital ratio).			Enterprises in certain sub-sectors which satisfy the conditions on minimum capital investment, etc. may be 100% funded by Japanese equity participation (for other companies, Japanese equity participation is limited to 40%).
Distribution services		Committed to unrestricted foreign equity participation (however, the handling of		Committed to allowing Japanese equity participation ratio of up to 75% in wholesale trade and retailing services for	Commitment made in the wholesale trade services sector has the same scope and substance as in the case of maintenance		An enterprise in the wholesale services sector which satisfies the conditions on minimum capital investment, etc. may

EPAs Already in Force							
	Singapore		Malaysia	Thailand	Indonesia	Brunei	Philippines
	At the time of entry into force in 2002	Results of review in 2007					
	banned imports, etc. is reserved as out of scope of the commitment).			in-house products of companies in Thailand, and automobiles manufactured in Japan under the same brand.	and repair services.		be 100% funded by Japanese equity participation (for other companies, Japanese equity participation is limited to 40%).
Other manufacturing industry-related services				Foreign equity participation in logistics consulting services (limited to consulting and does not include actual logistics services) is restricted to 51% (conditional upon fulfillment of a certain loan to capital ratio).			
Financial services	Issued new license to insurance companies. Eliminated restriction on foreign equity participation in insurance	Committed to an additional full banking license. Eliminated restriction on the number of wholesale banking			In the financial leasing industry, Indonesia committed to not differentiate “on-shore” and “off-shore” procurement, with regard to regulations on the ratio of borrowed capital to		Committed to a maximum of 60% Japanese equity participation for commercial banking, etc.

EPAs Already in Force						
	Singapore	Malaysia	Thailand	Indonesia	Brunei	Philippines
	At the time of entry into force in 2002					
	companies			equity capital.		
	establishments					
Telecommunication services	Committed to unrestricted foreign equity participation	Committed to eliminate the foreign equity participation restriction in certain services and to improve the level of liberalization commitment in other areas.		New commitment made with respect to certain sub-sectors, such as privately leased circuit services. Upper limit of the foreign equity participation restriction in the basic telecommunications services is reduced to 40%.		New commitment is made with respect to certain sub-sectors, such as privately leased circuit services.
Transport services	New commitments are made in certain sub-sectors, such as international maritime (passenger) transport services, maritime freight forwarding	New commitment made with respect to the rental of cargo vessels for international shipping.	New commitments made with respect to maritime cargo handling services and maritime agency services, in addition to the elimination of the reservation on cargo for maritime freight transportation services.	New commitments made with respect to maritime cargo handling services and rental of vessels, with certain restrictions.	New commitment is made with respect to international maritime services and port facilities services.	Committed to eliminate foreign equity participation restrictions with respect to maritime agency services and international maritime freight forwarding services. Additional commitments made for certain subsectors, such as transport services

EPAs Already in Force						
	Singapore	Malaysia	Thailand	Indonesia	Brunei	Philippines
	Results of review in 2007					
	At the time of entry into force in 2002					
	services, storage and warehousing services and leasing or rental services relating to aircraft, cars, etc.					to availability of port facilities services.
Others		Accounting; engineering; research and development for medical services; market surveying; domestic travel agencies (hotel lodging services); etc.	Committed to an equity participation ratio up to 50% for Japanese capital with respect to hotel and lodging services, advertising services, etc. (conditional upon fulfillment of a certain loan to capital ratio).	New commitments made, including the elimination of restrictions on the number of service providers for travel agent and tour operator services.	New commitment made with respect to hotel lodging services. In the construction services sector, an additional commitment was made and the restriction on the foreign equity participation was reduced, allowing for a ratio of 55% or less. Committed to a Japanese equity participation ratio of	Japanese equity participation may be used to fund up to 30% of an enterprise in advertising services (however, all the executive and managing officers must be the Philippine citizens). Japanese equity participation in services related to mining (investigation

EPAs Already in Force					
	Singapore	Malaysia	Thailand	Indonesia	Philippines
	At the time of entry into force in 2002				
	Results of review in 2007				
					up to 30% in advertising and marketing research services, etc.
					and development of petroleum, etc.) , with certain conditions. New commitment made with respect to tour guide services.

Figure III-2-3 Effective/Signed EPAs between Japan and other Countries: Overview of the Provisions in the Chapter on Services

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Brunei EPA	Japan-Indonesia EPA
Effective/Signed as of	Effective on 2002.11.30	Effective on 2005.4.1	Effective on 2006.7.13	Effective on 2007.9.3	Effective on 2007.11.1	Effective on 2008.7.31	Effective on 2008.7.1
Approach on Liberalization Commitments	Positive approach	Negative approach	Positive approach	Negative approach	Positive approach	Positive approach	Positive list approach
Most-Favored Nation Treatment (MFN)	△ No provision in the agreement. However, regarding the preferential treatment to a third party by a	○ In principle unconditional MFN treatment is provided, exceptions inscribed in the annex (MFN Schedule of Reservations).	△ In principle unconditional MFN treatment is provided. However, in the annex (MFN List of Exemptions) which provides exceptions,	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex of Reservations).	△ When a contracting party has accorded better treatment to a third party country, if requested by the other contracting	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).	△ In principle, unconditional MFN treatment is provided. However, in the annex (MFN List of Exemptions) which provides exceptions, on

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Brunei EPA	Japan-Indonesia EPA
	contracting party country, it is provided that upon request from the other contracting party country it should consider whether to accord the equal treatment to the other contracting party country.	reservations on according the MFN treatment are made with respect to all sectors except a few, in which the MFN treatment is accorded as an exception to the exceptions.	party country, it should consider according no less favorable treatment to the other contracting party country than to a third party country.	according the MFN treatment are made with respect to all sectors except a few in which the MFN treatment is accorded as an exception to the exceptions.	accorded in the sectors inscribed in the Schedule of Specific Commitments.	accorded in the sectors inscribed in the Schedule of Specific Commitments.	accorded in the sectors inscribed in the Schedule of Specific Commitments.
National Treatment (NT)	<input type="radio"/> National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	<input type="radio"/> In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	<input type="radio"/> National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	<input type="radio"/> In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	<input type="radio"/> National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	<input type="radio"/> National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	<input type="radio"/> National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.
Market Access Commitments	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the Schedule of Specific	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the	<input type="radio"/> Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than that undertaken and specified in the

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Brunei EPA	Japan-Indonesia EPA
	Commitments.	annex (Schedule of Reservations).	Commitments.	annex (Schedule of Reservations).	Commitments.	Specific Commitments.	
Transparency Requirements	<p>△ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p>	<p>○ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p> <p>As commitments are made in the form of the negative list approach, regarding the sectors reserved through the standstill obligation based on the existing measures, the descriptions on those measures are explicitly provided</p>	<p>△ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p> <p>There are provisions in the service chapter obliging each contracting party to provide the other contracting party with (i) information on the measures affecting its commitments related to market</p>	<p>○ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p> <p>As commitments are made in the form of the negative list approach, regarding the sectors reserved through the standstill obligation based on the existing measures, the descriptions on those measures are explicitly provided</p>	<p>△ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p> <p>Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to the commitments of market access and agreed under the agreement</p>	<p>○ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p> <p>Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to the commitments of market access and</p>	<p>△ Each contracting party is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party's inquiries about these measures.</p> <p>It is also provided that a contracting party to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p>

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Brunei EPA	Japan-Indonesia EPA
Standstill Obligation	No provision in the agreement.	<p>in the Schedule of Reservations.</p> <p>○ This obligation is provided regarding any existing measures which are non-conforming to NT, MFN, or market access obligation, and which are maintained by a contracting party at the central or local</p>	<p>access and national treatment; and (ii) copies of annual reports or any other publication generally available to the public.</p> <p>○ This obligation is provided only for sub-sectors indicated by the “SS” mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those</p>	<p>in the Schedule of Reservations.</p> <p>○ This obligation is provided regarding any existing measures which are non-conforming to NT, MFN, or market access obligation and which are maintained by a contracting party at the central or local</p>	<p>(transparency list). Said list shall be exchanged with other party.</p> <p>○ This obligation is provided only for sub-sectors indicated by the “SS” mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those</p>	<p>national treatment accorded under the agreement (transparency list). Said list shall be exchanged with other party. It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p> <p>No provision in the agreement.</p>	<p>national treatment accorded under the agreement (transparency list). Said list shall be exchanged with other party. It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p> <p>○ This obligation is provided only for sectors or sub-sectors indicated with the “SS” mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on</p>

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Brunei EPA	Japan-Indonesia EPA
Prohibition of Restrictions on Payments and Transfers	<p>△Same provision as GATS, where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.</p>	<p>government level. These measures are set out in the annex (Schedule of Reservations).</p> <p>○ In the separate of Chapter Exceptions (which identifies exceptions excluded from the entire agreement), there is a provision prohibiting restrictions of international transfers and payments for current transactions relating to cross-border trade in services of all sub-sectors and sub-sectors.</p>	<p>based on relevant existing measures which are non-conforming to NT or market access obligation.</p> <p>○ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors; not limited to just those sectors and sub-sectors inscribed in the Schedule of Specific Commitments.</p>	<p>government level. These measures are set out in the annex (Schedule of Reservations).</p> <p>No provision in the agreement.</p>	<p>based on relevant existing measures which are non-conforming to NT or market access obligation.</p> <p>△Same provision as GATS where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.</p>	<p>based on relevant existing measures which are non-conforming to NT or market access obligation.</p> <p>△ Same provision as GATS where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.</p>	<p>relevant existing measures which are non-conforming to NT or market access obligation.</p> <p>○ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors; not limited to just those sectors and sub-sectors inscribed in the Schedule of Specific Commitments.</p>

Name	Japan-Philippine EPA Effective on 2008.12.11	Japan-Switzerland EPA Effective on 2009.9.1	Japan-Viet Nam EPA Effective on 2009.10.1	Japan-India EPA Effective on 2011.8.1	Japan-Peru EPA Effective on 2012.3.1
Approach on Liberalization Commitments	Positive list approach	Negative list approach	Positive list approach	Positive list approach	Negative list approach
Most-Favored Nation Treatment (MFN)	<p>○ In principle, unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).</p>	<p>△ In principle, unconditional MFN treatment is provided. Exceptions are subject to measures inscribed in the annex (Schedule of Reservations) and the treatment accorded under other EPAs/FTAs that satisfy the requirements under Article V of GATS. The contracting party country is obliged to endeavor to accord to the other contracting party country treatment no less favorable than that provided under the EPAs/FTAs concluded with the third country.</p>	<p>△ In principle unconditional MFN treatment is provided. Exceptions are subject to measures inscribed in the annex (MFN List of Exemptions) and the treatment accorded under other EPAs/FTAs that satisfy the requirements under Article V of GATS. The contracting party country is obliged to give the other the contracting party country an opportunity to consult on whether the more favorable treatment accorded to the third country may be accorded to the other contracting party country.</p>	<p>△ If a contracting party accords better treatment to a third party country, then at the request of the other contracting party country, according better treatment will be considered.</p>	<p>○ In principle, unconditional MFN treatment is provided, with exceptions inscribed in the annex (MFN List of Exemptions).</p>
National Treatment (NT)	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>	<p>○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).</p>	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>	<p>○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).</p>
Market Access Commitments	<p>○ Same provision as Article XVI of GATS on</p>	<p>○ In principle, the same provision as Article XVI of</p>	<p>○ Same provision as Article XVI of GATS on market</p>	<p>○ Same provision as Article XVI of GATS on market</p>	<p>○ In principle, the same provision as Article XVI of</p>

Name	Japan-Philippine EPA	Japan-Switzerland EPA	Japan-Viet Nam EPA	Japan-India EPA	Japan-Peru EPA
	<p>market access, which obliges each contracting party to accord no less favorable treatment than that undertaken and specified in the Schedule of Specific Commitments.</p>	<p>GATS on market access is provided. Exceptions are inscribed in the annex (Schedule of Reservations).</p>	<p>access, which obliges each contracting party to accord no less favorable treatment than that undertaken and specified in the Schedule of Specific Commitments.</p>	<p>access, which obliges each contracting party to accord no less favorable treatment than that undertaken and specified in the Schedule of Specific Commitments.</p>	<p>GATS on market access (except limitations on the participation of foreign capital) is provided. There is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations)</p>
<p>Transparency Requirements</p>	<p>○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to commitments of market access and national</p>	<p>○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>As the agreement adopts the negative list approach, details of existing laws and regulations which are reserved under the standstill obligations are specified in the annex (List of Reservations).</p>	<p>△ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p>	<p>○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to commitments of market access and national treatment accorded under the</p>	<p>○ Each contracting country is obliged to make efforts to respond to questions on the relevant laws and regulations from interested parties as much as possible, and to promptly make public (or otherwise make publicly available) the opinions and examination results of public comments on the adoption of final laws and regulations.</p>

Name	Japan-Philippine EPA	Japan-Switzerland EPA	Japan-Viet Nam EPA	Japan-India EPA	Japan-Peru EPA
	<p>treatment accorded under the agreement (transparency list). Said list shall be exchanged with other party.</p> <p>It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p>			<p>agreement (transparency list) (duty to endeavor provisions). Said list shall be exchanged with other party.</p> <p>It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p>	
Standstill Obligation	<p>○ This obligation is provided only for sectors or sub-sectors indicated by the “SS” mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on relevant existing measures which are non-conforming to NT or market access obligation.</p>	<p>○ This obligation is provided for any existing measures which are non-conforming to NT, MFN, or market access obligation, and which are maintained by a contracting party country at all levels of the government (at central, regional, or municipal level). These measures are set out in the annex (Schedule of Reservations).</p>	<p>No provision in the agreement.</p>	<p>No provision in the agreement. (However, there is a standstill obligation regarding application of FDI policy)</p>	
Prohibition on Restrictions on Payments and Transfers	<p>○ There is a provision prohibiting restrictions of international transfers and payments for current</p>	<p>○ There is a provision prohibiting restrictions of international transfers and payments for current</p>	<p>△ Same provision as GATS, where such prohibition is only applied to restrictions of international transfers and</p>	<p>△ Same provision as GATS, where such prohibition is only applied to restrictions of international transfers and</p>	

Name	Japan-Philippine EPA	Japan-Switzerland EPA	Japan-Viet Nam EPA	Japan-India EPA	Japan-Peru EPA
	transactions relating to trade in services of all sectors and sub-sectors; not limited to just those inscribed in the Schedule of Specific Commitments.	transactions relating to trade in services of all sectors and sub-sectors.	payments for current transactions relating to specific commitments.	payments for current transactions relating to specific commitments.	

(4) Substance of Agreements on Services in other Countries

If a member of the WTO enters into an FTA regarding trade in services, it must notify the WTO under Article V of GATS.

Prior to 1993, there were only two cases of regional economic integrations (which included integration in the services sector). Such cases were the European Economic Community, which entered into force in 1958 and the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which entered into force in 1989. In addition, from 1994 (after the conclusion of NAFTA) to 2000, there were only 10 regional economic integration agreements which included integration in the services sectors that entered into force. There were seven such cases in 2001, four such cases in 2002, and thereafter EPAs/FTAs regarding trade in services have entered into force at a rate of three to seven additions per year. A recent trend is that most economic integrations include trade in services. This Report analyzes nine of these agreements.

1) Overall Structure, etc.

Name (Abbreviated/ Shortened)	North American Free Trade Agreement (NAFTA)	EFTA-Singapore FTA	Australia-Singapore FTA	US-Singapore FTA
	Effective on January 1, 1994	Effective on January 1, 2003	Effective on July 28, 2003	Effective January 4, 2004
In-Effect/ Signed as of Approach on Liberalization Commitments	Negative list approach	Positive list approach	Negative list approach	Negative list approach
Most-Favored- Nation Treatment	○In principle	△In principle unconditional MFN treatment is provided, with exception of economic integration agreements (including most of EPAs/FTAs) notified under Article V of GATS.	△There is no unconditional MFN provision in the agreement. However, the agreement provides in the article of “Review of Commitments” that if, in an EPA/FTA to be entered into in the future by a contracting party country with a third party country, preferential treatment is to be accorded to such third party country, then the first country must consider according such treatment to the other contracting party	○In principle

			pursuant to its request.	
National Treatment	<input type="radio"/> In principle	<input type="radio"/> NT shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	<input type="radio"/> NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	<input type="radio"/> In principle
Market Access Commitments	No provision. However, similar concept of “quantitative restriction” is provided.	<input type="radio"/> Same provision as Article XVI of GATS on market access	<input type="radio"/> Same provision as Article XVI of GATS on market access	<input type="radio"/> Similar provision as Article XVI of GATS on market access, which in principle obliges each contracting party country to accord no less favorable treatment than that undertaken in all service sectors except the ones inscribed in the annex (Schedule of Reservations). Difference from Article XVI of GATS is the exclusion of prohibition on limitations on the participation of foreign capital, as this agreement provides Mode 3 in the chapter of investment.
Prohibition of Requiring Local Presence	<input type="radio"/>	Effectively covered in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint venture).	Effectively covered in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint venture).	<input type="radio"/>
Disciplines over Domestic Regulations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency Requirements	<input type="radio"/>	<input checked="" type="radio"/> Not Provided	<input type="radio"/>	<input type="radio"/>
Prohibition on Restrictions on Payments and Transfers	<input checked="" type="radio"/> Not Provided	<input checked="" type="radio"/> Not Provided		<input type="radio"/>
Denial of Benefits	<input type="radio"/>	<input checked="" type="radio"/> Not Provided	<input type="radio"/>	<input type="radio"/>

The nine agreements covered in this analysis share a common framework, but differ in substance, depending on the time they entered into force, the contracting countries, the substance of the provisions already existing in the EPAs/FTAs between the contracting party countries, etc. Among them, NAFTA is the only such agreement which entered into force before GATS, and the other eight agreements entered into force in 2003 or later. Such agreements can be classified into the following categories, depending on the manner of commitments and reservations: (i) NAFTA, the Australia-Singapore FTA, the U.S.A.-Singapore FTA, the U.S.A.-Australia FTA and the U.S.A. -Korea FTA, which adopt the negative list approach, and (ii) the EFTA-Singapore EPA/FTA, the Australia-Thailand EPA/FTA, the India-Singapore FTA and the EFTA-Korea FTA, which adopt the positive list approach. In the case of the negative list approach, Mode 3 is generally dealt with in the chapter on investment in the relevant agreements (only the Australia-Singapore FTA deals with Mode 3 in the chapter on services). The treatment of specific sectors (financial services, telecommunications and movement of natural persons) is often provided in separate chapters.

2) Basic Principles, etc.

The agreements which provide the accordance of MFN treatment in principle are NAFTA, the U.S.A.-Singapore FTA, the U.S.A.-Australia FTA and the U.S.A.-Korea FTA. The EFTA-Singapore FTA and the EFTA-Korea FTA also provide the accordance of such treatment in principle, but contain the exception of economic integration agreements notified under Article V of GATS. The India-Singapore FTA provides that if, in the EPA/FTA to be entered into in the future by a contracting party country with a third party country, preferential treatment is to be accorded to such third party country, then the first country must consider according such treatment to the other contracting party pursuant to its request. The Australia-Singapore FTA and the Australia-Thailand FTA do not contain MFN provisions, but contain provisions similar to the foregoing India-Singapore FTA in the provisions regarding “Review of Commitments.” All the agreements provide national treatment obligations. With respect to market access which is a concept devised under GATS, EPAs/FTAs that adopt the positive list approach follow Article XVI of GATS and contain similar provisions (the U.S.A.-Singapore FTA, the U.S.A.-Australia FTA and the U.S.A. -Korea FTA which adopt the negative list approach provide Mode 3 in the chapter on investment, but provide content practically identical to the measures of quantitative restrictions and restrictions or requirements concerning type of legal entity or joint venture; among all types of measures listed in provision of market access under Article XVI of GATS). NAFTA, the U.S.A.-Singapore FTA, the U.S.A.-Australia FTA and the U.S.A. -Korea FTA contain provisions prohibiting a contracting party country from requiring that the counterpart of the other contracting party country establish a local representative office or any form of enterprise; or be a resident in the territory of the requiring party county as a condition for the cross-border supply of a service. Disciplines over domestic regulations are provided in all the agreements. With respect to the disciplines on payments and transfers, the scope of application with respect to which the contracting party countries do not impose any restrictions on current transactions (payments and transfers relating to trade in services) is limited to the committed sectors in the case of EPAs/FTAs adopting a positive list approach, while no specific limitations on the scope were made in the case of EPAs/FTAs adopting a negative list approach. Provisions on recognition vary among the agreements. Some agreements (such as the India-Singapore FTA) explicitly provide that sectors subject to mutual recognition (“accounting and auditing, architecture, medical, dental and nursing” in case of the India-Singapore FTA), be negotiated by respective professional bodies and the timing of the

implementation of such mutual recognition be determined (“within twelve months of the date of entry into force of this Agreement” in case of the India-Singapore FTA) pursuant to a separate agreement; some agreements such as the Australia-Singapore FTA and the Australia-Thailand FTA “encourage” negotiations by relevant competent bodies with respect to mutual recognition, and some agreements provide that contracting party countries “may” recognize under certain conditions. Neither the EFTA-Singapore FTA nor the EFTA-Korea FTA contains any provisions with regard to the denial of benefits.

(5) *Economic Aspects and Significance*

As discussed in “Part II, Chapter 11, Trade in Services (4) Economic Aspects and Significance” hereof, trade in services by nature may include the movement of production factors as an element and the development of service industries, and has a great positive spill-over effect into other industries, as is clear with regard to the financial and telecommunication industries. Thus, although the liberalization of bilateral and regional trade in services has some temporary effect on the employment market for existing service providers (as it does in respect of efforts in multilateral trade), over the long term, it will contribute to the enhancement of the competitiveness of service industries as well as to the enhancement of manufacturing efficiency in other sectors and in manufacturing industries.

Column: Commitments with respect to distribution

Distribution services are one of the sectors with stringent domestic regulations in developing countries in particular, as they have a substantial impact on the economy. As a reflection of this fact, in the multinational negotiations of WTO, many developing countries did not make commitments with respect to distribution services. On the other hand, regarding how far commitments were made in negotiations on bilateral or regional EPAs, this Report tries to analyze the following two FTAs.

Note: “Distribution services” referred to here means DISTRIBUTION SERVICES under Item 4 of the WTO SERVICES SECTORAL CLASSIFICATION LIST (MTN.GNS/W/120). More specifically, it means commission agents’ services, wholesale trade services, retailing services, franchising, and other distribution services. However, a few other types of specific distribution services are not part of this sector under this classification: “services incidental to energy distribution” belongs to different sector and “motion picture and video tape production and distribution services” are classified as a sub-sector of Audiovisual services sector.

(1) Liberalization commitments by India with respect to distribution services in the Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (“India-Singapore CECA” hereafter).

a. Commission agents’ services and wholesale trade services

With respect to this sector, there were no commitments made by India in 1994 with its initial offer of Schedule of Commitments under GATS. In the India-Singapore CECA (which entered into force in 2005), commitments were made with respect to commission agents’ services and wholesale trade services excluding live animals. In details, India committed “none (limitations)” on market access and the national treatment regarding Mode 1 and Mode 2 of service supply; regarding Mode 3, they committed “none (limitations)” on national treatment while market access was subject to approval of the relevant authorities. No commitments were made with respect to Mode 4.

b. Retailing and franchise services

In this sector, no commitments were made under both GATS and the India-Singapore CECA.

(2) Liberalization commitments by Thailand with respect to distribution services in the Australia-Thailand Free Trade Agreement (“TAFTA” hereafter)

a. Commission agents’ services and wholesale trade services

Regarding commission agents’ services alone, Thailand made commitments in 1994 with its initial offer of Schedule of Commitment under GATS. In that Schedule, only Mode 2 of service supply in these services sector was committed as “none (limitations)” on market access and the national treatment while Mode 3 was conditionally committed as follows: national treatment was limited in a way that the foreign equity participation would not exceed 49%; and no limitations on market access except Mode 3 of service supply is permitted only through a limited liability company which is registered in Thailand and foreign shareholders must be less than half of the total number of shareholders of the company concerned. Regarding wholesale trade services, Thailand did not make any commitments.

On the other hand, in the TAFTA (which entered into force in 2005), the limitation on foreign equity participation was lifted (100% participation is permitted) only for wholesale trade services provided by Australian juridical persons established in Thailand relating to the distribution and installation of products manufactured by those Australian juridical persons.. However, regarding commission agents and wholesalers of distilled liquors, it required the form of a limited liability company and imposed an upper limit of 49% on the foreign equity participation. Regarding commission agents’ services of other commodities, it did not make commitments.

b. Retailing and franchising services

Regarding this sector, Thailand did not make any commitments under GATS. On the other hand, in the TAFTA, like wholesale trade services, regarding retailing services, the limitation on foreign equity participation was lifted (100% participation is permitted) only for retailing services provided by Australian juridical persons established in Thailand relating to the distribution and installation of products manufactured by those Australian juridical persons. In addition, like commission agents’ services and wholesale trade services, regarding retailing and franchising services of distilled liquors, it required the form of a limited liability company and imposed an upper limit of 49% on the foreign equity participation.

(3) Analysis

Both India and Thailand made partial commitments with certain restrictions in the foregoing bilateral agreements with respect to the distribution services sector to which they did not make any commitments under multinational agreements like GATS, and it is clear that at least such bilateral agreements have contributed to the enhancement of transparency of the international trade restrictions.

Further, in the case of Thailand, in the distribution services sector to which it made commitments under GATS on the condition of regulating foreign equity participation with a certain ratio, the foreign equity participation restriction was eliminated with respect to Australian juridical persons established in Thailand satisfying the special conditions. Incidentally, in the Japan-Thailand EPA which entered into force in 2007, though the conditions were different from those on which commitments were made to Australia, but still Thailand alleviated the foreign equity participation restriction with respect to wholesale trade and retailing services. Consequently, with respect to liberalization on trade in services, too, negotiations on the bilateral agreement are found to have played a substantive role.

However, as trade liberalization resulting from the bilateral or regional agreements is purely brought forth by the incentive to strengthen the economic relation between two countries or within a region, there is a high possibility that the disparity in trade balance would be encouraged to expand comparatively for another region where no effective remedies can be expected for unfair trade practices in the economic relations with a counterpart country or region due to the lack of such incentive and no proper MFN disciplines in place.. For instance, with respect to the specific distribution services sectors, Thailand made different liberalization commitments to Australia and Japan respectively, and as a result, the difference in the trade balance between Thailand-Australia and between Thailand-Japan is expected to further widen. And in order to adjust such structural imbalance, it has become important to establish in the bilateral or regional agreement the discipline over the unconditional MFN treatment or the review provisions¹ with respect to commitments.

¹ In the Japan-Thailand EPA, with respect to some services including distribution in particular, there is an Article which provides the obligation of entering into negotiations for a general review within a certain period after the agreement enters into force (Article 89).

Figure III-2-4 EPAs between Third Countries: Overview of the Provisions of the Chapter on Services

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	Free Trade Agreement between the India-Singapore (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)
In-Effect/Signed as of	Effective on 1994.1.1	Effective on 2003.1.1	Effective on 2003.7.28	Effective on 2004.1.4	Effective on 2005.1.1	Effective on 2005.1.1	Effective on 2005.8.	Effective on 2006.9.1	Effective on 2012.3.15
Approach on Liberalization Commitments	Negative list approach	Positive list approach	Negative list approach	Negative list approach	Negative list approach	Positive list approach	Positive list approach	Positive list approach	Negative list approach
Most-Favored-Nation Treatment	○ In principle unconditional MFN treatment is provided, with exceptions inscribed in the annex (Schedule of Reservations).	△ In principle unconditional MFN treatment is provided, with exception of economic integration agreements (including most of	△ There is no unconditional MFN provision in the agreement. However, the agreement provides in the article of “Review of Commitments”	○ In principle unconditional MFN treatment is provided, with exceptions inscribed in the annex (Schedule of Reservations)	○ In principle unconditional MFN treatment is provided, with exceptions inscribed in the annex (Schedule of Reservations).	× Not Provided	△ There is no unconditional MFN provision in the agreement. However, the agreement provides that if, in the EPA/FTA to be entered into	△ In principle unconditional MFN treatment is provided, with exception of economic integration agreements (including most of	○ In principle unconditional MFN treatment is provided, with exceptions inscribed in the annex (Schedule of Reservations).

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)
								EPAs/FTAs notified under Article V of GATS.	EPAs/FTAs notified under Article V of GATS.
			that if, in the EPA/FTA to be entered into in the future by a contracting party country with a third party country, preferential treatment is to be accorded to such third party country, then the first country must consider according such treatment to				in the future by a contracting party country with a third party country, preferential treatment is to be accorded to such third party country, then the first country must consider according such treatment to the other contracting party pursuant		

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)
			the other contracting party pursuant to its request.				to its request. (Article 7.6)		
National Treatment	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations).	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ Provide that Article XVII of GATS (National Treatment) shall be effectively apply. Therefore, National Treatment shall be accorded in the sectors	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations). Also there is a special provision on how to interpret the

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)
								inscribed in the Schedule of Specific Commitments.	accordance of treatment with respect to a regional level of government.
Market Access Commitments	No provision. However, similar arrangements concept of “quantitative restrictive	○Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than	○Same provision as Article XVI of GATS on market access, which in principle obliges each contracting party country to accord no less favorable	○Similar provision as Article XVI of GATS on market access which in principle obliges each contracting party country to accord no less favorable treatment than	○Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than	○Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than	○Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favorable treatment than	○Provide that Article XVI of GATS (Market Access) shall be effectively apply. Therefore, treatment with respect to market access shall be	○Similar provision as Article XVI of GATS on market access, which in principle obliges each contracting party country to accord no less favorable

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)
	tion ” is provi ded.	that undertaken and specified in the Schedule of Specific Commitments.	treatment than that undertaken in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	treatment than that undertaken in all service sectors except the ones inscribed in the annex (Schedule of Reservations). Difference from Article XVI of GATS is the exclusion of prohibition on limitations on the participation	that undertaken and specified in the Schedule of Specific Commitments.	that undertaken and specified in the Schedule of Specific Commitments.	that undertaken and specified in the Schedule of Specific Commitments.	accorded in the sectors with certain conditions undertaken and specified in the Schedule of Specific Commitments.	treatment than that undertaken in all service sectors except the ones inscribed in the annex (Schedule of Reservations). Difference from Article XVI of GATS is the exclusion of prohibition on limitations on the participation

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)
				of foreign capital, as this agreement provides Mode 3 in the chapter of investment.	investment.				of foreign capital, as this agreement provides Mode 3 in the chapter of investment.
Prohibition of Requiring Local Presence (i.e. establishing a local representative office or any form of enterprise; or being a resident in the territory of the requiring party county) as a condition for the cross-border supply of a service	○	Effectively covered in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint	Effectively covered in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint	○	○	Effectively covered in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint	Effectively covered in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint	No provision in the agreement explicitly covering this discipline. However, as provided that Article XVI of GATS (Market Access) shall	○

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)	
										be effectively apply, this agreement eventually covers this discipline in the market access provision as one of the treatments to be committed (restrictions or requirements concerning type of legal entity or joint venture).

<p>Name (Abbreviated/Shortened)</p>	<p>North American Free Trade Agreement (NAFTA)</p>	<p>Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)</p>	<p>Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)</p>	<p>Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)</p>	<p>Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)</p>	<p>Free Trade Agreement between Thailand and Australia (TAFTA)</p>	<p>India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)</p>	<p>Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)</p>	<p>Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)</p>
<p>Disciplines over Domestic Regulations</p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/> Provides that Article VI of GATS (Domestic Regulation) shall be effectively apply.</p>	<p><input type="radio"/> With slight modifications the same provision under U.S.A. -Australia FTA</p>
<p>Transparency Requirements</p>	<p><input type="radio"/></p>	<p><input checked="" type="radio"/> Not Provided</p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input type="radio"/></p>	<p><input checked="" type="radio"/> Not Provided</p>	<p><input type="radio"/></p>	<p><input type="radio"/> Provides that Paragraphs 1 and 2 of Article III of GATS (Transparency) shall be effectively apply.</p>	<p><input type="radio"/> With slight modifications the same provision under U.S.A. -Australia FTA</p>

<p>Name (Abbreviated/Shortened)</p>	<p>North American Free Trade Agreement (NAFTA)</p>	<p>Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)</p>	<p>Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)</p>	<p>Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)</p>	<p>Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)</p>	<p>Free Trade Agreement between Thailand and Australia (TAFTA)</p>	<p>India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)</p>	<p>Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)</p>	<p>Free Trade Agreement between Korea and the United States of America (U.S.A. - Korea FTA)</p>
<p>Prohibition on Restrictions on Payments and Transfers</p>	<p>× Provided</p>	<p>× Not Provided</p>		<p>○</p>	<p>○</p>	<p>○</p>	<p>○</p>	<p>○</p>	<p>○ Identical to the provisions in U.S.A.-Australia FTA. However, Article 11.G provides an exception that entitles Korea to apply restrictive measures pursuant to Article 6 of its Foreign Exchange Transactions Act.</p>

Name (Abbreviated/Shortened)	North American Free Trade Agreement (NAFTA)	Free Trade Agreement between the EFTA States and Singapore (EFTA-Singapore FTA)	Singapore-Australia Free Trade Agreement (Singapore-Australia FTA)	Free Trade Agreement between the United States and Singapore (U.S.A.-Singapore FTA)	Free Trade Agreement between the United States and Australia (U.S.A.-Australia FTA)	Free Trade Agreement between Thailand and Australia (TAFTA)	India-Singapore Free Trade Agreement (India-Singapore FTA) Official name: Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore (CECA)	Free Trade Agreement between the EFTA States and Korea (EFTA-Korea FTA)	Free Trade Agreement between Korea and the United States of America (U.S.A.-Korea FTA)	Denial of Benefits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	× Not Provided	○ Identical to the provisions in U.S.A.-Australia FTA. In addition, an obligation of notification and consultation is provided before denying a “free rider.”
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Name (Abbreviated/Shortened)	Free Trade Agreement between the EU and Korea (EU-Korea FTA)	ASEAN Framework Agreement on Services (AFAS)	China-ASEAN Agreement on Trade in Services	Korea-ASEAN Agreement on Trade in Services	Australia-New Zealand ASEAN Agreement on Trade in Services
Effective/Signed as of	Effective on 2011.7.1	Effective on 1998.3.31.	Signed 2007.1.14.	Effective on 2009.5.1.	Effective 2010.1
Approach on Liberalization Commitments		Positive list approach	Positive list approach	Positive list approach	
Most-Favored-Nation Treatment		× Not Provided	× Not Provided	× Not Provided	
National Treatment		× Not Provided	○	○	○
Market Access Commitments	○ Same provision as Article XVI of GATS	○ Provided in liberalization clause	○	○	
Prohibition of Requiring Local Presence (<i>i.e.</i> establishing a local representative office or any form of enterprise; or being a resident in the territory of the requiring party country as a condition for the cross-border supply of a service)		× Not Provided	× Not Provided	× Not Provided	× Not Provided
Domestic Regulations	○	× Not Provided	○	○	
Transparency Requirements		× Not Provided	○ Provides that Paragraphs 1 and 2 of Article III of GATS (Transparency) shall be effectively applied.	○	○
Prohibition of Restrictions on Payments and Transfers		× Not Provided	○	○	
Denial of Benefits		○	○	○	

Column: AFAS (ASEAN Framework Agreement on Services)

Liberalization of intra-ASEAN trade in services

Recognizing the growing importance of trade in services, the ASEAN member states agreed in the ASEAN Summit held in Bangkok (Thailand) in December 1995 to eliminate substantial restrictions on trade in services among the member states. In order to improve the

efficiency and competitiveness of service industries in the ASEAN community, they also agreed to offer deeper and wider liberalization commitments than those made under the GATS. A noteworthy feature of the ASEAN Framework Agreement on Services (AFAS) is that liberalization commitments are reviewed so frequently by the member states.

When signed in 1995, the AFAS specified seven priority service sectors (air transport services, business services, construction services, financial services, maritime transport services, communication services, and tourism), and each ASEAN member state studied possible liberalization commitments in these priority sectors. In 2001, they agreed on the principle of liberalization of trade in all services sectors, except six sensitive areas: manufacturing industry-related services, agriculture, fishery, forestry, mining, and quarrying. Since then, they have engaged actively in negotiations and discussions for liberalization of trade in services, an example of which is shown by the working groups established for six sectors, which are business services, construction services, healthcare services, logistics and transportation, information technologies and telecommunications, and tourism.

According to the Blueprint published by the ASEAN Economic Community (AEC) in 2007, the ASEAN member states will remove all restrictions on trade in four priority services sectors (air transport, e-ASEAN, healthcare, and tourism) by 2010, and in the fifth priority services sector (logistics services) by 2013. They will virtually remove all restrictions on trade in all other services by 2015. To achieve these goals, they agreed to hold consecutive rounds of negotiations every two years until 2015. In the Blueprint, the numerical targets are set for the minimum number of sub-sectors based on the middle classification of the GATS W/120 list, with respect to which liberalization commitments should be made. These numerical targets are 10 sub-sectors in 2008, 15 in 2010, 20 in 2012, 20 in 2014, and 7 in 2015. In order to eliminate the restrictions on foreign investment in services sectors, targets are also set for the maximum percentage of foreign equity participation to be allowed in each member state in individual sectors.

Of course, the scope and extent of liberalization commitments is determined at the sole discretion of each member state depending on the scale and structure of each member state's industries. However, given the stalled WTO Doha Round talks, it is commendable that the ASEAN member states are actively promoting trade liberalization.

Implementation of packages of commitments under the AFAS thus far

The first package: December 1997 (Kuala Lumpur)

The second package: December 1998: (Hanoi)

The third package: December 2001: (-)

The fourth package: September 2004: (Jakarta)

The fifth package: December 2006: (Cebu)

The sixth package: November 2007: (Singapore)

The seventh package: February 2009: (Cha Am, Thailand)

The eighth package: October 2010: (Hanoi)

(The AFAS is scheduled to issue an amendment to the packages of commitments for the years 2014, and 2015.)

Japan and the ASEAN concluded the Agreement on Comprehensive Economic Partnership (AJCEP) for the trade in goods, but up until now, they had not signed any agreement on trade in services. However, Japan had entered into bilateral EPAs with each of the ASEAN member states (except for Laos, Myanmar, and Cambodia) which incorporate chapter on services (see Figure III-2-3). In some service sectors, the level of liberalization commitments offered by the ASEAN member states in trade in services under the bilateral agreements with Japan is higher than those agreed among the ASEAN member states under

the AFSA. However, as mentioned above, some ASEAN member states, such as Malaysia, consistently take steps to eliminate restrictions on foreign equity participation in trade in services and to improve their liberalization commitments pursuant to the results of negotiation for liberalization. Accordingly, it is expected that the level of liberalization in certain service sectors under the bilateral agreement between Japan and the ASEAN member states may be inferior to those realized within the ASEAN community under the AFAS.

Some people argue that Japan should negotiate with the ASEAN to conclude an agreement on trade in services. It is also possible for Japan to negotiate with each of the ASEAN member states under the bilateral EPAs, since these EPAs incorporate provisions that parties to the EPA should review liberalization commitments to ensure that the commitments made for the contracting party country are no less favorable than those made by the other contracting party country under an agreement that the latter country has concluded with a third party country on trade in services.