

ASEAN Regionalization

Professor Dr. Lawan Thanadsillapakul
Kyushu University



ASEAN Regionalization

- ✦ **Historical background**
- ✦ **Economic cooperation Programs and the new framework Agreements for ASEAN regionalization**
- ✦ **ASEAN Regionalization and FTA**

Historical Background of ASEAN

- ✦ SEATO (1954),
- ✦ Afro-Asian Conference (1955),
- ✦ ASA (1961),
- ✦ MAPHILDO (1963),
- ✦ ASPAC (1966),
- ✦ ASEAN (1967),
- ✦ Rationale for the creation of ASEAN: Why ASEAN?
- ✦ External Factors: Anti-Communism, Power Vacuum
- ✦ Internal Factors: Economic Self-reliance, Internal political instability,
- ✦ Bilateral confrontation,
- ✦ Border conflict
- ✦ Objectives of ASEAN

Development of ASEAN Co-operation

- ✦ **The First Phase: Survival of ASEAN from 1967- Bali Summit**
- ✦ **The Second Phase: Restructuring and accelerating Economic Cooperation from Bali Summit- Singapore Summit**
- ✦ **The Third Phase: New Paradigm of Open Regionalism from Singapore Summit**

Economic Cooperation in ASEAN: Initial Stage

- ✦ "The KANSU Report": a blueprint for ASEAN economic development in the initial stage
- ✦ The 1976 Declaration of ASEAN Concord
- ✦ ASEAN Industrial Projects (AIPs)
- ✦ ASEAN Industrial Complementation (AIC)
- ✦ Brand to Brand Complementation (BBC) Program

Economic Cooperation in ASEAN: Initial Stage

- ✦ ASEAN Industrial Joint Venture Scheme (AIJV)
- ✦ ASEAN Preferential Trading Arrangements (PTA)
- ✦ ASEAN Investment Guarantee Agreement (AIGA)
- ✦ ASEAN Financial Co-operation (AFC), ASEAN Banking Council,
- ✦ AJDC, INTERACT, ASEAN Swap Arrangement
- ✦ ASEAN Food Security Reserve (AFSR)

Economic Cooperation in ASEAN: New Launched Projects and the implementation of “ASEAN Open Regionalism”

- ◆ ASEAN Free Trade Area (AFTA)
- ◆ ASEAN Investment Area (AIA)
- ◆ ASEAN Industrial Cooperation (AICO)
- ◆ ASEAN Framework Agreement on Trade in Services (AFAS);
◆ a GATS- Plus Scheme
- ◆ ASEAN Framework Agreement on Intellectual Property Co-operation

ASEAN in the Global Context

✦ **ASEAN and Dialogue Parties**

✦ **ASEAN and the European Union (EU)**

✦ **ASEAN and USA**

✦ **ASEAN and Japan**

ASEAN in the Global Context

- ✦ **ASEAN and China**
- ✦ **ASEAN and the South Asian Countries**
- ✦ **ASEAN and APEC**
- ✦ **ASEAN and NAFTA**
- ✦ **ASEAN and WTO**

Examples of FTA in Asia

- ✦ FTA between USA and Singapore
- ✦ FTA between Thailand and Australia
- ✦ FTA between Thailand and India
- ✦ FTA between Thailand and China
- ✦ FTA between Thailand and Japan (under negotiation)
- ✦ FTA between USA and Indonesia
- ✦ FTA between Singapore and Japan

Objectives of FTA and its mechanism

- ✦ Liberalization of trade, investment, services
- ✦ Protection of investment
- ✦ Free repatriation of earning/income
- ✦ Protection of intellectual Properties
- ✦ Cooperation Program

ASEAN Regionalization: Complementarities to FTA in Asia

- ✦ “Fast Track” under AFTA
- ✦ “ASEAN Investor” under AIA and “rule of liberal establishment”.
- ✦ “ASEAN Service Provider” under AFAS.
- ✦ “ASEAN Rules of Origin” under AFTA (Cumulative rule of origin)
- ✦ The AICO scheme
- ✦ “Short-Term Measures” under Bold Measures

“Fast Track” under AFTA



ASEAN Free Trade Area (AFTA)

- ✦ The 1992 framework agreement of AFTA bound ASEAN states to the establishment of an ASEAN Free Trade Area initially within 15 years, beginning 1st January 1993
- ✦ Under AFTA, the Common Effective Preferential Tariff (CEPT) is the main instrument to encourage intra-ASEAN trade. The CEPT Agreement allows ASEAN member Countries to reduce their tariffs to 0-5% on a MFN basis among ASEAN members.
- ✦ In 1994 ASEAN adopted the acceleration of the AFTA time frame

AFTA

- Initially only fifteen categories of products identified in the AFTA Framework Agreement to be included in the CEPT scheme were subject to the fast track tariff reduction towards a nil tariff. The time frame for fully implementing AFTA has been set at 10 years for the more advanced economies of ASEAN and 15 years for the new ASEAN members.



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AFTA

- ✦ They are vegetable oils, cement, chemicals, pharmaceuticals, fertilizer, plastics, rubber products, leather products, pulp, textiles, ceramic and glass products, gems and jewellery, copper cathodes, electronics, and wooden and rattan furniture

AFTA

- -The fast track is to reduce tariff rates above 20% to 0-5% by 1st January 2000, and to reduce tariff rates at or below 20% to 0-5% by 1st January 1998. The normal track is to reduce tariff rates above 20% to 20% by 1st January 1998 and subsequently from 20% to 0-5% by 1st January 2003, and to reduce tariff rates at or below 20% to 0-5% by 1st January 2000.

- ✦ However, in 1998 the ASEAN countries agreed to further enhance the realisation of AFTA and they agreed that
- ✦ Each individual country would commit to achieve a minimum of 85% of the inclusion list with tariffs of 0-5% by the year 2000,
- ✦ And a minimum of 90% of the inclusion list in the 0-5% tariff range by the year 2001.

AFTA

- By 2002, 100% of items in the inclusion list would have tariffs of 0-5%. They also agreed to implement, as soon as possible, tariff reductions to 0% and to accelerate the transfer of products which are currently not included in the tariff reduction scheme into the inclusion list.

AFTA

- ✦ The new members of ASEAN also agreed to reduce their tariff lines between 0-5% by 2003 for Vietnam, and 2005 for Laos and Myanmar; to expand the number of tariff lines in the 0% category by 2006 for Vietnam, and by 2008 for Laos and Myanmar.

**“ASEAN Investor”
and
“rule of liberal establishment”
under AIA**



Framework Agreement on the ASEAN Investment Area (AIA)

- ✦ The Framework Agreement on the ASEAN Investment Area was signed on 8th October 1998 aiming at the establishment of "the ASEAN Investment Area".
- ✦ The objective of the Framework Agreement on AIA is to establish a competitive ASEAN Investment Area in order to "attract greater and sustainable levels of FDI into the region and to realise substantially increasing flows of FDI from both ASEAN and non-ASEAN sources by making ASEAN an attractive, competitive, open and liberal investment area"

✦ The agreement on AIA provided three pillars of broad-based programs for encouraging investment in the ASEAN region:

- ✦ co-operation and facilitation;
- ✦ promotion and awareness;
- ✦ Liberalisation

✦ The AIA aims to promote the freer flow of capital, skilled labour and professionals, and technology among the member countries.

AIA and its mechanism

- ✦ Under the Framework Agreement on the AIA,
- ✦ national treatment will be made fully available within six months after the date of signing (7th October 1998) of the Agreement for ASEAN investors in the manufacturing sector, subject to certain exclusions.

AIA and its mechanism

- ✦ These exclusions will be progressively phased out by the six ASEAN countries by the year 2003 instead of waiting for 2010 as initially agreed. Myanmar will also join the six ASEAN countries to fully implement the obligation in 2003 instead of the year 2015. Vietnam and Laos will exert their best efforts to achieve the early realisation of AIA in 2010 instead of 2013 and 2015 respectively.

✦ Initially, Art. 4 of the AIA agreement provided that national treatment is extended to ASEAN. The implementation of the Framework Agreement will be reviewed every two years to ensure that the objectives of the AIA are met.

Definition of ASEAN Investor

- ✦ In defining an ASEAN investor, a liberal definition has been adopted: an ASEAN investor is defined as equal to a national investor in accordance with the equity condition requirement of the respective host member countries.

ASEAN Investor

- ✦ The status of ASEAN investor enables such an investor to be entitled to immediate NT/MFN treatment.
- ✦ Under AIA, a national or any juridical person of a member state who invests in any ASEAN country is regarded as an ASEAN investor. Since Art.1 refers to a juridical person constituted in a member country, it is not limited to locally-owned entities. Thus, it does not exclude non-ASEAN investors who have formed a company in a member country, and they may be entitled to “ASEAN investor” status, provided it also meets the conditions for “effective ASEAN equity” on a cumulative basis.

- ✦ AIA extends NT to all investors, not only investor from member countries, (immediately to ASEAN investor and to non-ASEAN by 2020) subject only to negative lists (Art. 4 (b), 7).
- ✦ Moreover, all industries are opened for investment to ASEAN investors by 2002 (initially by 2010), and to all investors by 2020 (Art.4 (c), 7).
- ✦ MFN is not, in principle, extended to non-ASEAN firms (Art. 8 and 9) unless they meet the criterion of "ASEAN Investor"
- ✦ Furthermore mutual NT is extended to ASEAN investors [Art.7(2)].

ASEAN Investment Area

- ❖ The Council tasked the Coordinating Committee on Investment (CCI) to begin work on AIA, especially on the submission of the Temporary Exclusion List and Sensitive List for opening up of sectors for investment and the granting of National Treatment. The initial package of TEL and SL were to be submitted within six months after the signing of the AIA Agreement for opening up investment in manufacturing sector for ASEAN investors.

ASEAN Investment Area

- ◆ The other sectors would be gradually open and all industries would be opened by the year 2003 for ASEAN investors and by the year 2010 for all investors. Therefore, even though AIA provided for the opening up of all industries for investment to ASEAN investors by 2003 (initially 2010) and to all investors by 2010 (initially 2020), they are subject to the Temporary Exclusion Lists (TEL) and Sensitive List (SL).

Bold Measures

- ✦ The “Bold Measures” agreed upon by the ASEAN Leaders at the sixth ASEAN Summit in December 1998 accelerated the time frame from 2010 to within 6 months after the date of signing the agreement or the date the agreement enters into force.



Bold Measures

- ◆ The Bold Measures enhance ASEAN Investment Climate that accelerates the implementation of AIA. These practical measures cover the following areas:
- ◆ minimum three years corporate income tax exemption or a minimum 30% corporate investment tax allowance;
- ◆ 100% foreign equity ownership;
- ◆ duty-free imports of capital goods;

Bold Measures

- ✦ domestic market access;
- ✦ minimum industrial and leasehold period of 30 years;
- ✦ employment of foreign personnel;
- ✦ and speedy customs clearance.
- ✦ All these measures are applicable to all investors, ASEAN and non-ASEAN investors.

AICO Scheme

- ◆ In relation to the AICO Scheme, ASEAN countries agreed to waive the 30% national equity requirement under the AICO Scheme
- ◆ The AICO scheme is to encourage companies located and operating in different ASEAN countries to cooperate with one another in the manufacture of approved AICO products. A minimum of two companies in two different countries is required to form an “AICO arrangement”.

AIA and Industrial Schemes

- ✦ In conjunction with the launch of the AIA, other industrial schemes (both revised and new schemes) are to be implemented based on preferential treatment. Prior to the launch of AIA,
- ✦ ASEAN had implemented some other industrial programs such as the Revised Basic Agreement on ASEAN Industrial Joint Ventures of 1987,
- ✦ the Memorandum of Understanding on the Brand-to-Brand Complementation Scheme of 1988, and the ASEAN Industrial Co-operation Scheme (AICO) of 1996.

AIA and Industrial Schemes

- These ASEAN industrial programs implement the regional industrialisation program model as they involve regimes for encouraging intra-regional investment by the setting up of regional enterprises with capital from more than one member country. They encourage cross-border investment by way of regionally integrated enterprises and projects

The major privilege of AICO

- ✦ The major privilege of AICO is that approved AICO products will enjoy preferential tariff rates of 0-5% for all ASEAN countries immediately upon approval of such an AICO arrangement. The immediate application of the 0-5% preferential tariff rate will provide a head start to AICO products compared to non-AICO products, since the general reduction of tariff to the 0-5% range will not occur under the CEPT until 2003.

The major privilege of AICO

- ◆ Other incentives include local content accreditation where applicable, and other non-tariff incentives to be provided by the participating member countries. The preferential tariff rates of 0-5% will also be applicable to the importation of intermediate products and/or raw material inputs for the manufacture of AICO Final Products and/or AICO Intermediate Products.

The major privilege of AICO

- ✦ The scheme is open to any company that fulfils the criteria: incorporated and operating in any ASEAN country; having a minimum 30% ASEAN national equity; and undertaking resource pooling, industrial complementation or industrial co-operation activities.

“ASEAN Service Provider” under AFAS.

- ✦ **Art. VI denies benefits or privileges to a juridical person owned or controlled by non-ASEAN persons only if such a juridical person is not “engaged in substantive business operations” in an ASEAN country.**
- ✦ **Therefore, a company duly constituted under the laws of an ASEAN country (which is, in principle, an ASEAN juridical person) if it engages in “substantive business operations” in an ASEAN country is thus entitled to the benefits and privileges offered under AFAS as an ASEAN service provider**

“ASEAN Service Provider” under AFAS.

- ◆ **Consequently, non-ASEAN nationals who establish a company in an ASEAN country, which genuinely engages in substantive business in that country, are able to enjoy benefits under AFAS. Since there are no other limitations or specific conditions under AFAS, such a foreign-owned company can gain advantages from the more liberal establishment rule to benefit from the liberalisation in intra-ASEAN services trade, subject only to limitations or conditions made by each individual ASEAN country under GATS-Plus, which are also generally applied to all ASEAN service providers alike.**

"ASEAN Rules of Origin" under AFTA (Cumulative rule of origin)

- ✦ The ASEAN rules of origin also allow up to 60% of non-members' originating input incorporated in the ASEAN products entitled to the CEPT under AFTA. Also ASEAN applies a cumulative ASEAN original input for CEPT products, so that in practice the 'net' cumulative regional content may be lower than the 40% and the eligibility for ASEAN-origin is still valid.
- ✦ For example, if product A has a value of 100, of which 40% is local content in Singapore, it may be exported to Malaysia at a CEPT rate, where 5% local content is added for a total value-added in Malaysia of 100. Upon export to Thailand it is considered to have 45% ASEAN content even though "net" cumulative content is 22.5% of 200.

✦ **Rule 3 (ii) of the ASEAN Rule of Origin provides that “(ii) Subject to Sub-paragraph (i) above, for the purpose of implementing the provisions of Rule 1 (b), products worked on and processed as a result of which the total value of the materials, parts or produce originating from non-ASEAN countries or of undetermined origin used does not exceed 60% of the FOB value of the product produced or obtained and the final process of the manufacture is performed within the territory of the exporting Member State”.**

◆ Hence, ASEAN is indirectly able to grant preferences to non-members in practice. ASEAN is able under AFTA to grant preferences to non-members including even developed countries, although under GATT such preferential treatment has to be accorded among member countries that are developing countries only. Although AFTA is legally based on the "Enabling Clause" but it practically complies with Art. XXIV of the GATT/WTO.

Conclusion

- ◆ **The implementation of ASEAN economic cooperation programs result in the liberalization of trade and investment both at the regional and national level that further liberalize trade and investment of ASEAN members with they partners, non-ASEAN countries, including FTA made between them.**