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## Trade & Customs - Singapore

### Introduction to the ASEAN Economic Community

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#### Introduction

#### ASEAN Structure

#### ASEAN Free Trade Area

#### Other Aspects of the AEC

#### Free Trade Agreements

#### Outlook

### Introduction

The Association of Southeast Asian Nations (ASEAN) was founded on August 8 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. They were subsequently joined by Brunei, Cambodia, Laos, Myanmar and Vietnam. ASEAN activities are coordinated by the ASEAN Secretariat, which is based in Jakarta, Indonesia.

ASEAN has emphasized regional cooperation on the three pillars of security and sociocultural and economic integration. It has made most progress in economic integration and aims to create an ASEAN Economic Community (AEC) by 2015. The AEC would have a combined population of over 566 million people and a gross domestic product of over \$1.173 trillion.

The foundation of the AEC is the ASEAN Free Trade Area (AFTA), a common external preferential tariff scheme to promote the free flow of goods within ASEAN. Other elements of economic integration, such as the free flow of investment and services and the elimination of non-tariff barriers, have been added by the ASEAN leaders.

Through agreements such as the ASEAN Charter, signed in November 2007, ASEAN's leaders are attempting to build a single market, but without either a strong central executive (comparable to the European Commission in the European Union) or a well-developed body of laws and dispute settlement mechanisms (like those of the North American Free Trade Association (NAFTA)). ASEAN members' historical reluctance to encourage either of these elements stems from a fear of impinging on ASEAN's long-held principles of non-interference and consensus. However, failure to integrate ASEAN's diverse markets will mean a loss of investment and economic opportunities to regional competitors, such as China and India. This tension between the need to integrate and the reluctance to yield national sovereignty is the main factor affecting the development of the AEC.

### ASEAN Structure

The supreme authority in ASEAN is the ASEAN Summit of national leaders. Decisions made at the summit are intended to represent a consensus among the ASEAN nations, although the legal authority of such decisions has not been tested. Summit meetings have been held annually, but the charter foresees meetings twice a year, along with special meetings when necessary. The chairmanship rotates among the members every year by alphabetical order.

The charter establishes councils at ministerial level to handle substantive matters. The ASEAN Economic Community Council, formerly known as the ASEAN Economic Ministers meeting, will meet twice yearly and coordinate the development of the AEC. The council is supported by the Senior Economic Officials Meeting, a grouping of national-level bureaucrats that meets between the council meetings.

The charter also requires each member to station a permanent representative in Jakarta. A committee of permanent representatives will liaise with the secretariat, ministerial councils and national secretariats to be

established within the members' national governments.

The ASEAN Secretariat provides administrative support to ASEAN. The staff of the secretariat are hired competitively on fixed-term contracts. The secretary general heads the secretariat and is appointed for a five-year term. The nationality of the secretary general also rotates based on alphabetical order.

## **ASEAN Free Trade Area**

### ***Common Effective Preferential Tariff scheme***

Unlike the European Union, the ASEAN Free Trade Area (AFTA) does not apply a common external tariff on imported goods. Rather, each member may impose tariffs on goods entering from outside ASEAN based on its national schedules. However, for goods originating within ASEAN, members must apply a tariff rate of between 0% and 5%, although the most recent members - Cambodia, Laos, Myanmar and Vietnam - have been given additional time to implement the reduced tariff rates. This is known as the Common Effective Preferential Tariff (CEPT) scheme.

Members may exclude products from the CEPT in three cases:

- Temporary exclusions are for products for which tariffs will ultimately be lowered to between 0% and 5%, but which are being protected temporarily by a delay in tariff reductions;
- An exclusion for sensitive agricultural products covers commodities such as rice - members have until 2010 to reduce the tariff levels to between 0% and 5%; and
- General exceptions may apply to products which an ASEAN member deems necessary for the protection of:
  - national security;
  - public morals;
  - human, animal or plant life and health; and
  - articles of artistic, historic or archaeological value.

Members have agreed to enact zero tariff rates on virtually all imports by 2010 for the original signatories and 2015 for the four recent members.

### ***Rule of origin***

The CEPT applies only to goods originating within ASEAN. The general rule is that local ASEAN content must constitute at least 40% of the free on board value of goods. The local ASEAN content can be cumulative - that is, the value of material, labour and processing inputs from various ASEAN members can be combined to meet the 40% requirement. Free on board value is calculated as the sum of:

- the raw material cost;
- the direct labour cost;
- the direct overhead cost;
- the profit; and
- the inland transport cost.

However, special rules apply under certain regulations, namely:

- the Change in Chapter Rule for Wheat Flour;
- the Change of Tariff Subheading for Wood-Based Products; and
- the Change in Tariff Classification for Certain Aluminium and Articles thereof.

The exporter must obtain a Form D certification from its national government attesting that the goods have met the 40% requirement. The form must be presented to the customs authority of the importing government to qualify for the CEPT rate. Difficulties have sometimes arisen regarding the evidentiary proof needed to support such a claim and the question of how ASEAN national customs authorities can verify Form D submissions. These difficulties arise because each authority interprets and implements the Form D requirements without much coordination with the other authorities.

### ***Administration***

The administration of AFTA is handled by the national customs and trade authorities in each state. The ASEAN Secretariat has authority to monitor and ensure compliance with AFTA measures, but has no legal authority to enforce compliance. This has led to inconsistent rulings by ASEAN national authorities. The charter is intended to bolster the secretariat's ability to ensure consistent application of AFTA measures.

National authorities have traditionally been reluctant to share or cede sovereignty to authorities from other ASEAN members, although ASEAN trade ministries routinely make cross-border visits to conduct on-site

inspections in anti-dumping investigations. Unlike in the European Union or NAFTA, joint teams to ensure compliance and investigate non-compliance have not been widely used. Instead, ASEAN national authorities must rely on the review and analysis of other ASEAN national authorities to determine whether AFTA measures (eg, rule of origin) are being followed. Disagreements may result between the national authorities. The secretariat may mediate in a dispute, but has no legal authority to resolve it.

ASEAN has attempted to improve customs coordination through the implementation of the Single Window project, which would allow importers to make a single electronic submission of all information related to a transaction. This information would then be shared with all other ASEAN national customs authorities.

### ***Dispute resolution***

Although the ASEAN national customs and trade authorities coordinate their activities, disputes can arise. As the secretariat has no legal authority to resolve such disputes, they are resolved bilaterally by informal means or through dispute resolution.

The Protocol on Enhanced Dispute Settlement Mechanisms governs formal dispute resolution in AFTA and other aspects of ASEAN. Members may seek mediation and 'good offices' consultations. If these efforts are ineffective, they may ask the Senior Economic Officials' Meeting to establish a panel of independent arbitrators to review the dispute. Panel decisions can be appealed to an appellate body formed by the Economic Community Council.

The protocol has almost never been invoked because of the role of the Senior Economic Officials Meeting in the dispute resolution process. Its decisions require consensus between all ASEAN members and since the aggrieved party and the alleged transgressor both participate, such consensus cannot be achieved. This discourages members from invoking the protocol, and often they seek dispute resolution in another forum, such as the World Trade Organization or the International Court of Justice. This can be frustrating for companies affected by an AFTA dispute, as they have no right to initiate dispute resolution, even if their home ASEAN government is unwilling to invoke the protocol. The secretary general has stated that dispute resolution must be reformed if the AEC is to be administered properly.

### **Other Aspects of the AEC**

#### ***ASEAN Investment Area***

The ASEAN Investment Area (AIA) will encourage the free flow of investment within ASEAN. Its main principles are:

- the opening of all industries to investment, with exclusions to be phased out according to schedules;
- the immediate granting of national treatment to ASEAN investors (with a few exceptions);
- the elimination of impediments to investment;
- the streamlining of investment processes and procedures;
- enhanced transparency; and
- the undertaking of measures to facilitate investment.

Full realization of the AIA and the removal of temporary exclusion lists in manufacturing, agriculture, fisheries, forestry and mining are scheduled by 2010 for most ASEAN members and by 2015 for the newest members.

#### ***ASEAN Framework Agreement on Trade in Services***

The ASEAN Framework Agreement on Trade in Services was adopted at the Bangkok summit in December 1995. Members are negotiating intra-regional services liberalization in several sectors, including air transport, business services, construction, financial services, maritime transport, telecommunications and tourism. Although some sectors, such as air transport, have liberalized more rapidly, others remain the subject of continued negotiation, as do efforts to expand the scope of the agreement.

#### ***ASEAN Industrial Cooperation Scheme***

The ASEAN Industrial Cooperation Scheme provides an 'early harvest' of the CEPT scheme for companies with cross-border operations within ASEAN. Companies must be incorporated in ASEAN with 30% or more ASEAN-origin equity and must involve some form of resource sharing (such as shared technology, market sharing or consolidated purchases of raw materials). The output of approved projects enjoy the CEPT rate of 0% to 5% tariffs immediately, as do raw materials and intermediate products.

The scheme has provided an early indication of how the administration of further economic integration is likely to proceed. The approval process was relatively slow and disjointed, with individual national governments often applying inconsistent or contradictory criteria in assessing applications. The scheme remains relevant in the newest member countries where implementation of the CEPT has a longer phase-in

period.

## Free Trade Agreements

ASEAN has signed agreements on trade in goods and services with China and Korea<sup>(1)</sup> and has finalized the Comprehensive Economic Partnership Agreement with Japan on trade in goods.

ASEAN is also negotiating free trade agreements with India, the European Union, Australia and New Zealand. Individual members, such as Singapore, Thailand, Indonesia and the Philippines, have also concluded bilateral free trade agreements. Harmonizing these national bilateral agreements with the ASEAN agreements is an ongoing issue.

## Outlook

The development of the AEC is in its early stages and many of the key foundations of an integrated market, such as predictability, transparency and the right to seek dispute resolution, are not as well grounded as in nation states or other regional economic blocs, such as the European Union. Nevertheless the continued competitive pressures from regional competitors, such as China and India, will force ASEAN to reform and refine its economic integration processes. The AEC is a work in progress that is worth watching.

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## Endnotes

(1) Thailand is not a party to the agreement with Korea.

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