

Non-Tariff Barriers is a Problem in the Integration of ASEAN to Achieve the Goal of ASEAN Economic Community

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Abstract

ASEAN is committed to integrating member economies and establishing an AEC. The AEC aims to convert the ASEAN economies into a market and a production place like investment, services, goods and skilled manpower. The NTBs which have been considered by the whole ASEAN to be as threat as tariffs represent serious obstacles to intraregional trade as they threaten to undermine the AEC process in the sense that they are able to impede the flow of goods: raise transaction costs, lower productivity and eventually distort the economic incentives for trading in South-East Asia. The purpose of this paper is to learn the factor and any influence of NTBs on the territory integration in ASEAN towards AEC. This writing will provide an integrated and updated illegal literatures on the AEC and NTBs. An ASEAN customs Union as an initiative to move beyond AEC will be proposed at the end of this paper.

Keywords: ASEAN, Non-tariff barriers (NTBS), ASEAN Economic Community (AEC)

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1. Introduction.

In the purposes of ASEAN in 2020, ASEAN has been thought of as a destination "ASEAN economic region that is stable, prosperous and competitive in order to achieve investment goods, capital and services more freely". In accordance with this vision, the ASEAN implement two ways: First, through the four pillars as such by treaty effective tariff scheme for the ASEAN Free Trade region (CEPT-AFTA) passed in 1992, the initial agreement Cooperation of Scheme ASEAN Industrial (AICO) which was passed in 1996 Agreement in the ASEAN Investment plan (AIA) was enacted in 1998 and ASEAN in Services (AFAS) passed in 1995. The second, by adopting and explore cooperative efforts, such as the development of economic projects for the development of ASEAN, and arrange a way to further promote trade in this region. Indonesia, Malaysia, Philippines, Singapore and Thailand are the five founders of the Association of Southeast Asian Nations (ASEAN), which has been ratified in August 1967 subsequently extended to include the countries of Southeast Asia such as Brunei Darussalam, passed in January 1984, Laos and Myanmar in July 1997, and Cambodia in April 1999. In the ASEAN Declaration states, ASEAN established itself as a union of regional cooperation with two objectives namely: first to reduce the problem of

history and culture to encourage regional stability and peace without intervention in the affairs in the country and the second accelerate social progress, economic growth and cultural development in each region [1].

In achieving the current progress of ASEAN must estimate the strengths, opportunities, weaknesses and threats such as Strength ASEAN, ASEAN: the number and the diversity of natural resources; productive capacity in agriculture, manufacturing and services; diversion of exports by destination and product; mostly young, growing population and expanding middle class; Strong foreign direct investment (FDI) with strong production network; Strategically located in the dynamic Asian region; market of 600 million people; Progressive trade and open investment regimes; general economic growth strong; good macroeconomic fundamentals (especially among Indonesia, Malaysia, Thailand, Philippines, Singapore, and Vietnam known as ASEAN); and a track record of advancing regional cooperation [2].

ASEAN is an issue suitability weaknesses such a development in the case, capital, people, institutions, and infrastructure revenue and the absence of distributive local ordinances; supremacy of law and compliance in good governance; conformity in population growth and aging of the population, with regard to suitability in leading economic improvement deficit large workforce for profit between countries that support illegal migration; decision-making and implementation is very slow even slower than

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AEC commitment for all the shortcomings are needed in the progress of building consensus domestic reform; weak ASEAN Secretariat with inadequate human and financial resources; weak links between ASEAN and sub regional programs such as the Greater Mekong Sub-region (GMS) and ASEAN growth triangles.

ASEAN's Opportunities. Strategic location center, with the advantages of very high market in the RRC and India; strong historical, cultural links throughout Asia; strong economic links with ASEAN+1 FTA markets in Australia, New Zealand, the PRC, India, Japan and the Republic of Korea; potential development of region-wide FTA with India, Australia, China, Republic of Korea, Japan and New Zealand (RCEP); manufacturing in manufacturing and technology relationship with Northeast Asia; financial cooperation with PRC-Japan-Republic of Korea in reserve pooling through the multi-lateralized Chiang Mai Initiative (CMIM); and monitoring through the ASEAN + 3 Macroeconomic Research Office (AMRO).

ASEAN's Threats. Political-security conflicts in Asian region arising from unresolved intra- and extra-regional territorial disputes; vulnerability of export-dependent economies to obstacles outside of the US and Europe; appearance RRC and India overshadow ASEAN relevance; lack of effective regional cooperation on climate change, water-energy-food security, and disaster management (drought, floods, earthquakes, volcanic eruptions).

By virtue of the above discussion, it is important to note that regionalism in ASEAN operates both at the bilateral and regional levels. While ASEAN recognizes the importance of engaging the rest of Asia through FTAs, it is also increasingly conscious of the fact that economic integration would help it maximize the complementarities among member countries to achieve economies of scale and become an efficient and competitive global manufacturer of the products. Deeper economic integration

among ASEAN while improving its competitiveness would also improve its bargaining position as a relationships and networks in Asia FTA [3].

Why ASEAN economic anxiety has always been more to deepen the economic integration of the region? First, by increasing the pace of economic integration in order to remain competitive and become a major force in bringing about the development of ASEAN as the achievements in China. Economic growth is very high, especially in the labor sector and the industrial sector in a country can disrupt the development of ASEAN. Rising wages and costs could shift the balance of China in ASEAN by reducing the comparative advantage of the region under the industrial structure. Like China with cheap labor managed to be the greatest in the export market for electronic products, while ASEAN is now lost comparative advantage in production in the industrial sector. India has also been successful in the business process outsourcing services, such as China and become the preferred production investment [4].

Therefore, as it has been designed by the Bali Concord II in 2003 eventually all ASEAN countries have started to advance ASEAN Economic association in 2020. This is because ASEAN seen to be developing into major markets through trade in services, goods, labor and capital free in 2020, which had begun in 2015. This has to be aware that the economic integration of ASEAN will make narrowing the economic gap or discrepancy between the member countries and the ASEAN countries (Cambodia, Lao PDR Myanmar and Vietnam). This requires the establishment of institutional and legal construction designed to facilitate economic integration. Because most of the ASEAN countries in the AFTA is not a lot of support and even against investments in its territory who apply AEC [3].

Table 1. Intra-ASEAN Trade as % of Country Total Trade, 1990-2012.

Country	1990	1995	2000	2005	2010	2012
Indonesia	9.3	14.6	18.2	22.9	24.6	26.1
Brunei Darussalam	27.5	35.3	33.9	34.1	24.7	19.6
Malaysia	24.3	22.4	25.4	25.5	30.4	26.0
Philippines	9.3	11.7	15.6	18.1	23.9	21.2
Singapore	19.5	26.2	26.1	31.3	27.3	26.5
Thailand	12.6	15.6	18.1	20.0	19.8	24.3
Cambodia	56.6	73.6	24.8	15.8	45.9	23.4
Lao PDR	63.2	55.7	65.1	65.2	62.2	64.0
Myanmar	26.9	39.1	35.6	51.2	43.2	46.3
Vietnam	16.6	25.0	23.5	21.2	18.0	17.2
ASEAN10	17.0	21.1	22.8	25.5	25.6	25.0

Source: ASEAN Secretariat trade statistics [7].

There are some impediments to the development of integration in ASEAN, First, external impediment to ASEAN as a hindrance global economic processes in the region which is an inhibiting factor integration process. Second, from the ASEAN trade barriers such as tariffs and

non-tariff barriers (NTB). Third, integration related impediments in the implementation process. These obstacles should be done with a strong commitment as a business to participate in the deal for the ASEAN integration of domestic and national reform in ASEAN.

Fourth, there is action and an effective way of ASEAN members that may occur if the conflict with the interests of ASEAN economic integration as a whole. Because in fact, there are many ups and downs in bilateral relations between ASEAN members and can take effect impede economic integration as political factors [5].

Viewed from the fact that there is an imbalance in trade, resulting ASEAN countries are more advanced than countries like MLCV (Myanmar, Laos, Cambodia, and Vietnam). Less developed member countries to be a problem in the pace of ASEAN economic integration because imports to exceed 90 percent and have export share of intra-ASEAN, ASEAN is still dominant and superior in intra-ASEAN trade. In fact, there is a fear that their domestic producers face the problem of strong competition from Member States more advanced without compensation expand exports, intra-ASEAN itself or export more, if they act too quickly in opening their markets to competition intra -ASEAN. May be a concern that before the rates can be reduced to one alternative or identifiable manner as in government revenue from the rich countries which

constitute a high proportion of customs duties for the member states that have not evolved [6].

2. The ASEAN Economic Community.

By going through preferential trade in 2015, the AEC will be realized to be connected in trading partners in 10 countries, namely South Korea, Australia, China, Japan, India and New Zealand, it will cultivate skilled workers as well as the free flow of such investment, services, goods and capital. To achieve economic integration have been implemented in each region through the ASEAN Framework Agreement on Services (AFAS), ASEAN Free Trade Area (AFTA) and ASEAN Investment Area (AIA) [4].

To achieve deeper economic integration, ASEAN leaders can carry out new tasks through the ASEAN Economic Community. Here's proposed new strategy to advance the development of AEC [4].

Table 2. FTA status, ASEAN, as of January 2011.

Country	Proposed	Framework agreement signed	Under Negotiation	Concluded signed	Concluded in Effect	Total
Indonesia	4	1	1	0	8	14
Brunei	2	0	1	0	6	9
Cambodia	6	1	2	1	7	17
Laos	2	0	1	0	6	11
Malaysia	3	2	6	2	9	22
Myanmar	2	1	1	0	6	10
Philippines	4	0	1	0	7	12
Singapore	4	1	9	3	18	35
Thailand	6	4	3	0	11	24
Vietnam	4	1	2	0	7	14

Source: DB-ADRIC Database [8]

2.1. Formulate a Common Framework for Bilateralism and Regionalism.

Agreement on free trade has been pursued by the members of ASEAN. However, this development has occurred without a general framework that makes agreement different and not the same with the other these efforts can be potentially dangerous for each region are doing agreement. It is also referred to as "spaghetti bowl" effect, where there are any different agreements will have different rules and it would make the cost of business in the region more expensive and there is also a tariff reduction schedule, so this FTA initiative can be a stumbling block.

Political bilateralism in the FTA which acts in each region is clearly incompatible with the principle of building the ASEAN Community. Cooperation is a relationship important this will cause many problems as it would appear

distrust each other in ASEAN relationship if you do not have the same rules.

To lower the transaction costs of doing business in the region-the region bilateralism, a common framework is needed to ensure the same rules, but it also can lower the tariff schedule, standards harmonized, rules of origin (ROO) and the practical steps other in providing trading services that are useful to do better business in the region bilateralism. The entire existing problems can be solved when following a clear common framework correctly. In fact today everything is do not benefit from the FTA and instead are driven by market forces that are not good. Different rules can make the cost of business in each region will be different and become more expensive. Likewise, the new rules can switch the input source from the partnership arising from the FTA different. It is important to remember that the production base of the global production network is the role of each region. Thus, to avoid anything that could

undermine market forces in the region, a single common framework should be designed as possible, thus improving its business processes in this trade.

In addition, the general framework to avoid problems between members of ASEAN for ASEAN member individual lots are pursuing bilateral FTA, it is very useful for managing external relations, particularly in East Asia that ASEAN make it easy to set up an appointment. It can be in a relationship outside of the ASEAN region through convergence and merging of different agreements, so it is obviously a general framework is the right thing to do to give a clear consistency [9].

2.2. Accelerate Implementation of the Unfinished Agenda of AFTA, ACIA and AFAS.

Distributive effects among members of accelerated integration is an issue that is more important for ASEAN at this stage. To make the people who survive may have mutual trust, belongingness and sense of collective identity between countries. However, if members can't be fair to share the benefits of integration will be difficult to achieve. There is no assurance that the benefits and costs of integration that has been in and accelerated going equally to members, considering the many stages of diverse developments from members. To benefit from deeper integration is likely one of the members can be sacrificed. If we look at the majority socialists and the poor are getting bigger then the probability to be greater than the difference between the new members and the original members of a prosperous and democratic will look.

2.3 Intensify Regional Efforts of Bringing in The Myanmar, Laos, Cambodia and Vietnam into the integration Process.

Ultimately this will lead to all members of ASEAN, the AEC slowly will be judged on its economic prosperity and not on the complete implementation of the various agreements. Work Plan adopted in 2000 was the beginning of the initiative and efforts throughout the region in ASEAN Integration (IAI).

The goal is to advance the countries in order to compete with the original members in the integration process, countries should be promoted such as Myanmar, Cambodia, Laos, and Vietnam East Asia. Priority should be given to the direct implementation of projects and programs that have been identified for this contribution is very important to be able to make a success of the integration process, a program of regional economic integration include the fields of information, human resource development (HRD), communications, infrastructure, and technology (ICT). Therefore to facilitate the success and integrity of the whole economy without any obstacles and threat of any project this is one of the ASEAN agenda that must be resolved seriously in AEC.

2.4. Pooling of Sovereignty.

ASEAN-Way is a process to guide decision-making in ASEAN involving the norms of non-interference, ASEAN voluntarism, consensus, and informality. ASEAN Way is the practice after a walk, continuing cooperation in the region and characteristic of the ASEAN process. However, ASEAN Way has always been considered to produce decisions that are not good and too slow. This process is often criticized because the process is very time consuming.

The important factor in building the ASEAN economic community, is to do Adoption of some degree of flexibility in the ASEAN Way. The willingness of the ASEAN members in determining national autonomy for certain interests under a common agenda and pursue collective action in some areas by determining the height of economic integration in AEC are included in the development and harmonization of the regulatory system than the system of national policy

2.5. Formulate an Institutional Framework.

Institutionalization of ASEAN has been adapted by adjusting the external environment and changes in the region itself in line with the progress of time, ASEAN is the institutionalization of the world to carry out its programs but it differs from the European Union which has a policy coordination under the direction of the European Commission in the supra-national.

Moreover, the process involves the ASEAN economic ministers, foreign ministers, heads of government and international committees in a number of meetings between its members at all levels. These things always happen in the process of formal institutions and choose a solution that is more flexible, easier, and less fundamental for ASEAN economies are highly ambivalent. Until now it is doubtful whether they can be effective ASEAN Way in Building an economic community because there are many more complex issues on the agenda of ASEAN are yet to be finalized. Thus in supporting and building a community economic development plan must exist for the purposes in developing and supporting the institutionalization of ASEAN economies [10].

3. Non-Tariff Barriers to Trade (NTBs).

The AEC Blueprint clearly states that “the main focus of ASEAN towards 2015 will be placed on the full elimination of NTBs”. Why NTBs are a concern for ASEAN economic integration? The region is host to the global production networks (GPN) of multinational companies (MNCs) from developed countries such as Europe, Japan, America and others. If it does not follow the GPN will keep them out of the area and production enhancement will become a bottleneck. The existence of this GPNs will produce a very large mobility are sourced

from labor and capital; Also the rules of origin requirements are deleted progressive; and create incentives for ASEAN to reduce transaction costs by way of trade barriers or problems can be reduced, therefore the existence of GPN is very helpful in increasing production and resistance in trading.

By definition, NTB are a set of all measures imposed under specific conditions that restrict trade flows. They come in various form: quantitative restrictions, outright import bans, licensing, technical regulations, sanitary and phytosanitary measures (SPS), price controls, customs and administrative procedures, tariff measures, among others. The use of NTBs, however, has been increasingly a subject of debate because of the legitimacy of their application. Some NTBs may serve legitimate purpose as when they are designed to overcome market failures such as protection for the environment or plant, animal and human health. Examples of this nature are technical regulations and standards which are intended to reduce health risks. Other NTBs may also operate directly to restrain competition as when they discriminate against foreign suppliers, or when they support outright monopolies [1].

So for developing countries that do not meet the requirements, in some practices and cases that exist these

countries will be hampered in the trade, this occurs when there is a legitimate reason to make regulations, strict regulation would obviously restrict trading by developing countries are not eligible. There are some experiences of developing countries that the application of which requires international certification by a recognized institution is more stringent than the standards set, this will obviously hamper the trading process, especially if there are no international standards in general and standards that vary each country can also complicate the cost and damage export markets.

In stressing and improve awareness of the role of NTB to trade is important, it is very difficult. More difficult to ensure and measure rates than the estimate value added and their effect on trade. Their applications are often not transparent and therefore, provide opportunities for discretionary application. It is hard to conclude that the result is inefficiency while provisions in terms of restrictions in trade is still there; or when they produce some efficiency gains, whether this is sufficient to offset losses from weak social protections [1].

Table 3. NTBs face by exporters in some ASEAN countries.

NTB	Export	Export Markets
MFA quota	Textile, garments	US, Ca, EU
Child Labour Law	Garments	US
Sanitary regulation	Shrimp, poultry, aquatic, products, fruits, meat, fish	US, EU, other
Technical Barriers to trade	Many	Many
Antidumping measures	Agricultural products	US, EU, other
Safeguard quotas	Footwear, textile products, tableware	US, EU, Japan, others
Packaging and labelling	Fabric, textile, apparel	US
Technical standards	Leather goods, coffee, tea, electrical machinery	US, EU
Testing inspection and quarantine requirement	Meat, coffee, tea, oils, nuts, seeds, kernels	Japan, EU
Licensing	Fish, first products, coffee, tea, wood, fruits	US, EU
Tariff quota	Textiles and garments	Japan, EU
Bilateral quotas	Textiles and garments	US, EU
Import inspection	Wood	China

Integration in ASEAN in accelerating the pace of economic and trade growth will obviously be hampered by the presence of NTB. In an effort to protect domestic manufacturers declined many lots are declining interest in the use of which resulted in the shift of the increased use. It is very clear to have the potential to undermine the integration of each country in trade. For protection purposes is no way such as the exploitation of administrative, and technical regulations in the case of export restrictions, import quotas, antidumping actions and voluntary including common forms of NTB [5].

Member States which are members of ASEAN have committed to emphasize that there should be a reduction in the number of non-tariff barriers (NTB) Under the CEPT. In fact, in an effort to protect domestic production in many countries prefer and interested in such NTB-ASEAN import tariffs. In resolving this issue, for a good cause from

welfare ASEAN Secretariat has drafted a list of the NTB. The list has been drawn from various sources and instead of that list No list provided to Myanmar or Cambodia and from the data that show many significant differences.

In addition to that, the private sector has complained about the problems of NTBs that prevent them from exporting goods to ASEAN countries. The NTBs tremendously hurt exporting businesses because this type of tariff is not obviously written. The issue of transparency in ASEAN thus started to be a real problem after the tariff rates had been reduced. ASEAN members decided to establish a central committee of ASEAN, the so-called ASEAN Consultative Committee on Standards and Quality (ACCSQ), which is responsible for promoting the harmonization of product standards in 20 product groups. These products include manufactured consumer goods, and parts of electronics and appliances. The harmonization of

standards was created to respond to the high growth of intra-ASEAN trade in this sector [11].

Agricultural goods are more problematic because it is difficult for every country to have the same standard of health and food safety. The use of NTBs in several cases has served as a political mechanism to prevent the importation of agricultural goods in favour of farmer unions. On the other hand, small farmers who face NTB problems may not file complaints to the authority. Most reported cases are likely to come from manufacturing exporters rather than small or medium agricultural exporters [11].

The ASEAN's commitment to eliminate NTBs in the priority sectors for integration permeates ASEAN's official documents. Specific recommendations were first outlined in 2004 by the High Level Task Force (HLTF) on ASEAN Economic Integration. To ensure transparency on NTMs and eliminate those that are barriers to trade, the HLTF recommended the following (HLTF on ASEAN Economic Integration 2004) [1].

- a. Adopt the WTO agreements on Technical Barriers to Trade; Sanitary and Phyto-Sanitary and Import Licensing Procedures and develop implementation guidelines appropriate for ASEAN by the end of 2004;
- b. In 2005, all of the criteria of obstacles and problems that exist did identification and do the planning and the steps to resolve trade problems;
- c. Can eliminate all obstacles in 2005, to validate a clear work program for every problem;
- d. Establish ASEAN Database on NTMs by mid—2004.

4. Conclusion.

Non-tariff barriers and certification rules will not be followed by a commercial policy that is promoting the single market by a customs union (CU). The reasons why the global economy is on the CU is slightly due initially to reduce the national policy, each country must have the commercial policy and the sovereignty of their own, then look at the rates in ASEAN countries is the dispersion then in achieving a common tariff for the entire ASEAN agreed by those countries is indeed very difficult, with Singapore - Brunei Darussalam having essentially zero MFN applied tariffs and CLMV having relatively higher tariffs.

The AEC has come a long Way, but it has fallen short of the high standard and time frame it has set for itself. With

the completion of the AEC at end 2015, ASEAN would have achieved a level of deep economic integration not commonly found in the developing World. Much remains to be addressed. With its role as an entrepot and its heavy dependence on imports for consumption and inputs into production, a positive CET would undermine Singapore's cost competitiveness and cost of living, as well as subjecting it to WTO sanctions.

A customs union would become more feasible if overall ASEAN's MFN applied tariffs are reduced to zero or near zero. However, as commercial policy covers not only tariffs but also the removal and harmonization of NTBS (including natural resource subsidies, and preferential treatment of state-owned enterprises), This difficulty is felt by the ASEAN countries is therefore necessary to surrender national sovereignty for a CU. Businesses surveyed are not so much concerned with tariffs inhibiting trade and investment, as with obstacles posed by various NTBs and institutional practices.

References

- [1] M.S. Austria, Tackling Non-Tariff Barriers in ASEAN, AEC Blueprint. Asian Studies Center, Singapore, 2009, p.15-24.
- [2] S.Y. Chia, The ASEAN Economic Community: Progress, Challenges and Prospects, The Future of the world Training System, Asian Perspective, 2013, p.93.
- [3] R. Sen, Bilateral Free Trade and Economic Cooperation Agreements in ASEAN: Evolution, Characteristics and Implications for Asian Economic Integration, ISEAS Working Papers, Economics and Finance, 2007, p.1-40.
- [4] M.S. Austria, East Asia: An International Quarterly 29 (2012) 141, doi:10.1007/s12140-011-9169-5
- [5] D.J. Dennis, Z.A. Yusof, Indicators developed ASEAN Integration - analysis survey for Road Map, Final Report of REPSF Project, 2003, available at <http://aadcp2.org/file/02-001-Final-Report.pdf>
- [6] D. Hew, Economic Integration In East Asia: An Asean Perspective. Unisci Discussion Papers 11 (2006), available at <https://www.ucm.es/data/cont/media/www/pag-72530/UNISCI11Hew.pdf>.
- [7] ASEAN, ASEAN Secretariat trade statistics Year Books 2013, ASEAN Secretariat, Jakarta, 2014, p.12.
- [8] DB-ADRIC in H. Ahamat, N.A. Rahman, Asian Journal of WTO & International Health Law and Policy, 8 (2013) 2, p. 543-564.
- [9] Z. Zhiyong, Peking University Journal of Legal Studies, 4 (2013), p.262-282.
- [10] L.H. Tan, International and comparative law quarterly, 53 (2010) 04, p.935-967.
- [11] S. Areetharnsirikul, The impact of ASEAN enlargement on economic integration: Successes and impediments under ASEAN political institution, Ph.D Thesis, The University of Wisconsin Madison, 2008.