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PROMOTING INTERNATIONAL TRADE IN ASEAN ECONOMIC COMMUNITY**

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ABSTRACT

This paper analyses the important of regional investment agreements for promoting international trade in ASEAN countries. To visualize the above idea, this work will explain the roles of regional investment agreements to serve investment, trade facilitation and to protect regional investment interests. It is argued that regional investment agreements can serve as a vehicle for dialogue, coordination on and to response regional issues including regulatory harmonization, infrastructure development, and collaboration among members to facilitate investment. The paper shows how regional agreements will commit to eliminate barriers on substantially trade and investment, create positive welfare gain, the productivity and stimulus to growth in the region. This paper also analyses the effect of the establishment of an ASEAN Economic Community (AEC) by 2015 to the regional investment policies. AEC aiming at transforming ASEAN into a single market and production base with a highly competitive economic region, equitable economic development, free movement of goods, services, investment, skilled labor, and freer flow of capital, will likely accelerate regional integration and cooperation in the investment sectors fully integrated into the international trade. Then, this work demonstrates the implementation of regional investment cooperation into the formal instruments/agreements of investment policy architecture promoting and protecting cross border investment among nationals of ASEAN member states, such as ASEAN Investment Guarantee Agreement (IGA), the ASEAN Investment Area (AIA) and ASEAN Comprehensive Investment Agreement (ACIA). However, it is realized that the ASEAN members may resist and protest against the regional investment agreements because of conflicting their national interest. The paper proposed that the regional investment agreements need to be strengthened by harmonization and structural adjustment due to the member's resistance and protest. This idea may spark challenge because each member has fundamental differences on the nature and character of legal and economic systems reflecting different political systems, economic and social cultures in accordance with the philosophy of life values and national interests of each country. To overcome the challenge, this paper argues that ASEAN member countries need to unilaterally and collectively come up with structuring trade and investment policy harmonization to move ahead and reap the benefits from regional investment agreement as a common tool for contesting their interest in international trade. In addition, pre-agreed flexibilities to accommodate the interests of all ASEAN countries may eliminate the problem.

Keywords: regional, investment, agreement, ASEAN Economic Community, international trade.

1. INTRODUCTION

Imbalance position in the international trade relations encourages countries in certain region to strengthen regional cooperation and agreement for protecting their interest in era of global competition of the international trade. For the purposes, some countries consolidate and strengthen their regional cooperation in the regional communities and agreements such as European Economic Community, the ASEAN Economic Community, AFTA, NAFTA, etc. The countries believe that regional integration and agreements contribute the promotion of the regional development progress, economic growth and trade, strengthen the bargaining power, enhance the global competitiveness and investment attractiveness. The regional economic integration has integral part of investment agreements and facilitation. Investment is an instrument to structural adjustment of the relevant economies and realization of the benefit of dynamic ²⁸ effects of the regional economic integration. Therefore, it is important to deepen economic integration in ASEAN, as well as investment agreement, and facilitation

This article analyses the important of regional investment agreements for promoting international trade in ASEAN countries. To start this point of view, it will explain the roles of regional investment agreements and to analyses the effect of the ¹² establishment of an ASEAN Economic Community (AEC) to the regional investment policies. The implementation of regional investment cooperation into the formal instruments/agreements of investment policy (ASEAN ¹⁵ Investment Guarantee Agreement (IGA), the ASEAN Investment Area (AIA) and ASEAN Comprehensive Investment Agreement (ACIA) and ASEAN Charter) will be also deeply explained. Finally, the article proposes that the regional investment agreements need to

be strengthened by harmonization and structural adjustment due to the member's resistance and protest.

2. THE ROLE OF REGIONAL TRADE AGREEMENTS

Since a single country cannot encounter international trade issues and investment problems individually, cooperation and integration in region may offer the solution to address the problems and strengthen position in international trade relation. The trade cooperation and integration can be promoted by establishing new regional trade agreements. The arranging regional trade agreement is allowed by WTO under ⁵⁶ Article XXIV of the GATT, which is the legal basis for the most important regional arrangements in the WTO. According to Article XXIV:44 GATT ² 'the contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.' This article expresses a positive approach of the GATT towards the existence and proliferation of regional trade agreements. It also reflects the character of regional trade agreements by emphasizing the purpose such agreements should have in order to fit into the multilateral trading system. (Hermann, 1998, p.3). This article means to ensure that such regional schemes facilitate ⁵⁹ trade between their members without raising barriers to trade with third countries. (Nagarajan, 1998, p.3)

The regional agreements serve as trade facilitation and focus also on efforts to protect national and regional economic interests against the penetration of developed countries which are increasingly dominant. The regional trade agreements may also response the economic issues

associated with regional industry, investment and trade protection. Moreover, the regional trade agreements may function as substantive negotiations in WTO forum, as most WTO decisions have been taken by consensus and very few matters are subject to a vote (Schott, 2008, p. 12). The consensus rule is likely to continue, consequently, the consensus building has become more important for both ASEAN members in order to produce WTO agreements which protect their interest. Regional trade agreements among developing countries necessarily add weight to their members influence in WTO negotiations, although it depends whether the country accepts responsibility and contributes commensurate to its economic standing in the trading system (Schott, 2008, p.12). Regional trade agreements often create commitments in areas beyond the scope of existing WTO obligations. Regional trade provisions can set useful precedents for future multilateral negotiations. Regional trade agreements strengthen relationships among partner countries and help build alliances for WTO reforms in areas of common interest (Schott, 2008)

Regional trade agreements can serve as a vehicle for dialogue and coordination on regional issues including regulatory harmonization, infrastructure development, and collaboration among members to facilitate trade (Tumbarello, 2007, p.4). It helps to reduce participating country trade barriers beyond the countries' current WTO commitments. (Schot, 2008, p. 8). Regional agreements will commit to eliminate barriers on substantially trade between the partner countries, create positive welfare gains, the productivity and stimulus to growth in the region, those countries will likely have a bigger stake in world trade and in WTO negotiations. Regional associations also can develop their capacity to participate in WTO negotiations, if members are willing to pool resources and share information (Schoot, 2008).

According to Schott (2008), regional trade agreements benefit to reduce uncertainty about the business and the regulatory environment, because it prevents governments from

protectionist demands that may be politically facilitating but economically undesirable. Regional trade agreements “lock-in” domestic policy reform because they raise the cost of policy reversal, if the change violates the terms of the agreement and makes the country potentially liable to trade retaliation (Schott, 2008, p.9).

Regional investment agreements will promote international trade because it helps cross border trade and business expansion. It can be significant in terms of enhanced trade and investment flows and employment opportunities. Trade and foreign direct investment flows are correlated since the ability to physically enter a foreign market for investing, formatting international production and distribution network is an important aspect of international trade. (Chia, 2007, p.6).

For ASEAN countries, the ASEAN trade cooperation/ integration and ASEAN investment agreements will be a mechanism for enlarging economic activities and gaining profit from increasing intraregional trade and investment. The ASEAN trade integration can improve the ASEAN countries standing in the global competition versus to other regions and thereby attract investment and enhance trade. The establishment of the investment agreements between the ASEAN and other countries or regions indicates the ASEAN countries effort to widen their economic linkages, to increase investment attractiveness and trade competitiveness. ³⁰ Agreement for gradual but complete elimination of tariffs, quotas and exchange controls on trade among the member countries is the fundamental impact of economic integration (Haas, 1958).

According to the Mansfield and Reinhardt (2003), the regional integration and agreements improves the bargaining power of the region in negotiations with other states, regions or international institutions. A single state in the ASEAN may lack resources to bargain attractive trade agreement with northern states or regions, thus if ASEAN states constitute an integration

and act collectively, their impact on negotiations will increase. Integrating their economies will improve their standing in global competition and enlarge their bargaining power. Thereby the ASEAN member states can profit from regional integration for improving regional and national trading and investment conditions.

The regional economic integration has an integral part of investment liberalization and facilitation. Investment is an instrument to structural adjustment of the relevant economies and realization of the benefit of dynamic effect of the regional economic integration. ASEAN economic integration will accelerate the region integration into global markets. Creating a larger market and more efficient production may strengthen ASEAN trade relationship and make the region a more attractive partner for trade agreement and investment.

Regional integration will likely have the significant effects on manufacturing, where diminished barrier to trade and investments should generate production networks, wider access to product varieties, and larger economics of scale (Petri, Plummer & Zhai, 2011). Deeper integration would enable ASEAN to combine and exploit more fully the production advantages offered by its diverse member. As the manufacturing productivity rises, resources will shift toward manufacturing, in turn leading to greater imports and exports of primary material and services to global trade. In addition, the potential for developing a stronger manufacturing in the fully integrated ASEAN affects to the tradable products, improve productivity, increase specialization and create wider access to product variety. The productivity gains will affect resource allocation, the region intra regional trade, trade with other countries, and international trade (Petri, Plummer & Zhai, 2011).

3. ASEAN ECONOMIC COMMUNITY (AEC) AND REGIONAL INVESTMENT POLICIES

A. ASEAN Economic Community (AEC)

The ³⁹ Association of Southeast Asian Nations (ASEAN) was established in 1967 by Indonesia, Malaysia, Philippines, Thailand and Singapore, later joined by Brunei in the 1984, and by ³⁷ Vietnam in 1995, Myanmar and Laos in the ³⁷ July 1997 and Cambodia in April 1999. The main three main objectives of ASEAN, first, ASEAN founders tried to reduce tensions and competition among themselves. Second, by promoting domestic socio-economic development, it would be easier for ASEAN countries to tackle internal ²⁵ communist challenges or deal with externally sponsored communist insurgencies. Third, they sought to reduce the regional military influence of external actors by expressly stating that foreign military bases in the region should be temporary.

Adopted in December 1997, ASEAN vision ¹ envisaged a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and free flow of capital, equitable economic development and reduced poverty and socio economic disparity by the year 2020. To realized the vision, at the Bali Summit in October 2003, ASEAN Leaders ⁴⁶ signed the Declaration of the ASEAN (Bali) Concord II and declared ²⁰ that the ASEAN Economic Community (AEC) shall be the goal of regional economic integration by 2020 (ASEAN Secretariat, 2008). The ⁴⁶ Declaration of ASEAN Concord II stated that “the ASEAN Economic Community is ⁹ the realization of the end goal of the economic integration as outlined in ¹ the ASEAN vision 2020, to create a stable, prosperous, and highly competitive ASEAN economic region in which there is a free flow of goods, services,

investment, and freer flow of capital, equitable economic development and reduced poverty and socio economic disparity in year 2020 (ASEAN Secretariat, 2003) (Shimizu, 2009).

Then, the ⁴³ ASEAN leaders agreed to accelerate the establishment of an ASEAN Community by 2015 during the 12th Summit in January 2007 and ⁴⁹ signed the Cebu Declaration on the Acceleration of the Establishment of ²¹ an ASEAN Community by 2015 for the purpose to transform ASEAN into a region with free movement of goods, services, investment, skilled labor, and freer flow of capital.

AEC aiming at transforming ASEAN into a ¹⁷ single market and production base with a highly ¹⁶ competitive economic region, equitable economic development, free movement of goods, services, investment, skilled labor, and freer flow of capital, will likely accelerate regional integration and cooperation in the investment sectors fully integrated into the international trade. The AEC is the ⁹ realization of the end goal of economic integration, ⁹ which is based on interests convergence of ASEAN Member Countries to deepen and broaden economic integration through existing and new initiatives with clear timelines (ASEAN Secretariat, 2008). The AEC ⁵ will establish ASEAN as a single market and production base making ASEAN more dynamic and competitive with new mechanisms and measures to strengthen the implementation of its existing economic initiatives; accelerating regional integration in the priority sectors; facilitating movement of business persons, skilled labor and talents; and strengthening the institutional mechanisms of ASEAN. In establishing the AEC, ASEAN shall act in accordance to the principles of an open, outward-looking, inclusive, and market-driven economy consistent with multilateral rules as well as adherence to rules-based systems for effective compliance and implementation of economic commitments.

B. ASEAN Economic Community Blue Prints

The AEC envisages the following key characteristics or objectives which inter-related and mutually reinforcing: (a) a ⁸ single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy (ASEAN secretariat, 2008, p.6). Incorporating the required elements of each characteristic in one Blueprint shall ensure the consistency and coherence of these elements as well as their implementation and proper coordination among relevant stakeholders.

At the ASEAN Economic Ministers Meeting (AEM) in August 2006, ASEAN leaders agreed to develop ²⁰ a single and coherent blueprint for advancing the AEC by identifying the characteristics and elements of the AEC with clear targets and timelines for implementation of various measures as well as pre-agreed flexibilities to accommodate the interests of all ASEAN Member Countries, AEC blueprint was adopted in the following 13th Summit in November 2007. (ASEAN Secretariat, 2008). Declaration on the AEC Blueprint stipulates ¹² that each ASEAN member country shall abide by and implement the AEC by 2015. The AEC ¹² Blueprint is a binding declaration of commitments by all ASEAN member countries (Hadi Sutanto, p.48). The Blueprint can be instrumental in coordinating the many efforts to achieving the AEC objectives and to drive the process of regional trade integration.

The AEC Blueprint looks like a master plan or comprehensive roadmap directing the Member Countries on generating AEC objectives as target outcomes by managing sets of core elements and within a scheduled timeframe. The AEC Blueprint designed along the AEC objectives will transform ASEAN into a ⁸ single market and production base, a highly competitive

economic region, a region of equitable economic development, and a region fully integrated into the global economy (ASEAN Secretariat, 2008, p.3).

According to AEC Blueprints, a free and open investment regime is key to enhancing ASEAN's competitiveness in attracting foreign direct investment (FDI) as well as intra-ASEAN investment (ASEAN Secretariat, 2008, p 12). Sustained inflows of new investments and reinvestments will promote and ensure dynamic development of ASEAN economies. ASEAN investment cooperation is being implemented through the Framework Agreement on the ASEAN Investment Area (AIA) 1998, while investment protection is accorded under the ASEAN Agreement for the Promotion and Protection of Investment 1987 or commonly referred to as ASEAN Investment Guarantee Agreement (IGA). Both AIA and IGA have been adopted as a formal instrument of investment policy architecture that promote and protect cross border investment among nationals of ASEAN member states (Jarvis, 2007, p.2). To enhance regional integration and to maintain a competitive investment area, both the Framework Agreement on the AIA and the ASEAN IGA has been reviewed into the ASEAN Comprehensive Investment Agreement (ACIA).

4. IMPLEMENTATION OF REGIONAL COOPERATION INTO INVESTMENT AGREEMENT

Trade and foreign direct investment (FDI) play a crucial role in the economic development and industrialization of most ASEAN countries. ASEAN countries pursue simultaneous policies to attract FDI and promote exports. In regional level, the implementation of regional investment cooperation into the formal agreement of investment policy architecture promote and protect cross border investment among nationals of ASEAN member states, such

³ as THE ASEAN Agreement for the Promoting and Protection of Investment (AAPPI), ASEAN ¹⁵ Investment Guarantee Agreement (IGA), the ASEAN Investment Area (AIA) and ²⁹ ASEAN Comprehensive Investment Agreement (ACIA).

A. THE ASEAN INVESTMENT GUARANTEE AGREEMENT (IGA)

The first major attempt to enhance ASEAN regional investment cooperation was the ¹³ 1987 ASEAN Agreement on the Promotion and Protection of Investment (AAPPI) commonly referred to as ASEAN Investment Guarantee Agreement (IGA) which then was amended under 1996 Protocol (Velde & Fahnbulleh, 2003, p. 37). Concluded in 1987 at ASEAN Heads of Government Meeting in Manila, ASEAN IGA evolves ASEAN investment regime, procedural, cooperative, consultative and dispute process (Jarvis, 2007). The provisions of the agreement are confined to three areas, (a) investor treatment, (b) investor protection and compensation, and (c) disputation mechanism. ASEAN IGA was designed as a facilitation mechanism for expansion of intra ASEAN investment to “at least ten percent of total foreign investment by turn of century” (Jarvis, 2007) and deeper regional economic integration.

In the area of investor treatment, ASEAN IGA obligated the Member Countries to observe fair and equitable treatment and full protection of investment as defined in Article III (2), Article IV (1) and IV (2) ASEAN IGA. For investors protection and compensation, investor suffering damages from national emergencies were entitled compensation and restitution (Article IV (3) ASEAN IGA). Investors also have a right to the repatriation of their capital and earning, and freely transferred of funds across borders and protection from expropriation and nationalization (Article VII ASEAN IGA). ASEAN IGA also established a dispute settlement mechanism in case of disagreement between contracting parties. Due to the ASEAN’s nature,

there was no specialized institution or intergovernmental body established to administer or monitor compliance with ASEAN IGA (Desierto, para3). According to Article IX (1) ASEAN IGA, disputes related to the implementation or interpretation of ASEAN IGA were settled between the parties. The parties can access to international arbitration bodies, most notably the International Centre for the Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL). Another mechanism was submitting the disputes to the ASEAN Economic Ministers (AEM) Meeting (Article IX (2) ASEAN IGA).

In 1996, ASEAN IGA was amended in a Protocol signed by Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand for promotion and protection of Investment. This amendment obligated Member States to : simplify and streamline investment procedures and approval process to facilitate investment flow; ensure the provision of up to date information on all laws and regulations pertaining to foreign investment in its territory and take appropriate measures to ensure that such information be made as transparent, timely and publicly accessible as possible.

B. The 1998 ASEAN Investment Area (AIA)

At the ASEAN Summit in Bangkok in December 1995, the ASEAN members decided to establish the ASEAN Investment Area (AIA) to attract Foreign Direct Investment (FDI) from outside and within ASEAN region. The objectives of AIA are : a) to establish a competitive ASEAN Investment Area with a more liberal and transparent investment environment amongst Member States in order to increase FDI inflows from both ASEAN and Non-ASEAN sources into ASEAN, jointly promote ASEAN as the most attractive investment area, strengthen and increase the competitiveness of ASEAN's economic sectors, and reduce or eliminate regulations

and conditions which impede investment flows and the operation of investment projects in ASEAN; and b) to contribute towards free flow of investments by 2020 (Pupphavesa , p.122).

The AIA endeavored to establish a regional investment area and thus represented a significant step towards greater regional investment cooperation such as ASEAN Industrial Cooperation scheme (AICO Scheme). Furthermore, under the framework agreement on ASEAN Investment Area (AIA) concluded in 1999, ASEAN members agreed to liberalize their investment regimes in non-service sectors (manufacturing, agriculture, forestry, fisheries and mining sectors) by the provision of national treatment to investors and investments of ASEAN countries with some exceptions as listed in member countries' Temporary Exclusion Lists (TEL) and Sensitive Lists (SL). According to the Agreement, ASEAN-6 (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) countries are obliged to accord unconditional national treatment to investors and investments of other members in all sectors by 2010 and 2020 for non ASEAN investors (Weber, 2009, p.9). The AIA grants national treatment for the establishment, acquisition, expansion, management, operation, and disposition of investment to ASEAN members immediately (Velde & Fahnbulleh, 2003, p. 37). In addition, the most favored nation treatment was also granted to ASEAN investors (Pupphavesa, p.123). The Agreement also calls for transparency in the Member State's relevant measures, laws, regulations, and administrative guidelines pertaining to or affecting this agreement and including international agreements pertaining to or affecting investment to which the Member States are also signatory. Finally, laws restricting foreign shareholders in national companies have been deregulated and a short term measure has been implemented which suspended laws regulating equity joint ventures between foreign and local enterprises and 100% foreign equity (Velde & Fahnbulleh, 2003, p. 37).

C. The ASEAN Comprehensive Investment Agreement

To enhance regional integration and maintain a competitive investment area, and more comprehensive investment agreement, both the AIA and the ASEAN IGA have been reviewed with improved features, provisions and obligations by considering international best practices that would increase the investor confidence in ASEAN. In addition, The ASEAN Economic Community Blueprint calls for a review of the AIA 1988⁴⁵ and the ASEAN Investment Guarantee Agreement (IGA) with the objective to realize an ASEAN Comprehensive Investment Agreement (ACIA).⁴⁵ (Puphavesa, p. 128). The ACIA completed and signed by 26 February 2009 in Thailand, has been designed to supersede both the ASEAN IGA and ASEAN AIA. According to the Article 47 ASEAN ACIA, since the entry²⁹ force of the ASEAN Charter, the ASEAN IGA and the AIA Agreement shall be terminated.

The ASEAN ACIA brings a new dimension to the combination of ambitious aims, flexibilities, and effective implementation mechanism are the important ingredients for the desired accomplishment.” (Nazaroeidin, 2010, p.2). The ASEAN ACIA covers investment protection, facilitation and cooperation, promotion and awareness, and liberalization (Puphavesa, p. 128). Related to investment protection, the ASEAN ACIA provide enhanced protection to all investors and their investments to be covered under the comprehensive agreement by; (a) strengthening among others the following provisions; (b) providing investor-state dispute settlement mechanism; (c) ensuring transfer and repatriation of capital, profits, dividends, etc.; (d) promoting transparent coverage on the expropriation and compensation; (e) providing full protection and security; and (f) facilitating treatment of compensation for losses resulting from strife (ASEAN Secretariat, 2008, p. 13).

With respect to facilitation and Cooperation, the ASEAN ACIA promotes more transparent, consistent and predictable investment rules, regulations, policies and procedures. More specifically, in this area, ACIA try to : (a) harmonise, ¹¹ investment policies to achieve industrial complementation and economic integration; streamline and simplify procedures for investment applications and approvals; (b) promote dissemination of investment information: rules, regulations, policies and procedures, including through one-stop investment centre or investment promotion board; (c) strengthen databases on all forms of investments covering goods and services to facilitate policy formulation; (d) strengthen coordination among government ministries and agencies concerned; (e) consultation with ASEAN private sectors to facilitate investment; and (f) identify and work towards areas of complementation ASEAN-wide as well as bilateral economic integration (ASEAN Secretariat, 2008).

On promotion and awareness, *the ACIA* Promote ASEAN as an integrated investment area and production network by; (a) Creating the necessary environment to promote all forms of investment and new growth areas into ASEAN; (b) Promoting intra-ASEAN investments, particularly investments from ASEAN-6 to CLMV; (c) Promoting the growth and development of SMEs and MNEs; (d) Promote industrial complementation and production networks among MNCs in ASEAN; (e) Promoting ¹¹ joint investment missions that focus on regional clusters and production networks; (f) Extending the benefits of ASEAN industrial cooperation initiatives in addition to the AICO Scheme to encourage regional clusters and production networks; and (g) ³⁴ Work towards establishing an effective network of bilateral agreements on avoidance of double taxation among ASEAN countries (ASEAN Secretariat, 2008, p.13-14).

The ACIA promotes progressive liberalization of ASEAN ²⁴ Member Countries' investment regime to achieve free and open investment by 2015 including : (a) ²³ extend non-

discriminatory treatment, including national treatment and most-favored nation treatment, to investors in ASEAN with limited exceptions; (b) minimize and where possible, eliminate such exceptions; (c) reduce and where possible, eliminate restrictions to entry for investments in the Priority Integration Sectors covering goods; and; (d) reduce and where possible, eliminate restrictive investment measures and other impediments, including performance requirements (ASEAN Secretariat, 2008, p. 14).

D. ASEAN Charter

ASEAN formalized their regional cooperative commitments into a rule based system through the 2008 ASEAN Charter.(Desierto, 2011). ASEAN Charter implements ASEAN Vision 20120, which set the policy for the ASEAN countries' organizational objectives : (a) closer economic integration with the free flow of goods, capital, services and investment among ASEAN countries; (b) an increasingly unified ASEAN identity under institutions that promote ASEAN regional political, social, and security interest toward compliance with the international legal order.

ASEAN countries simultaneously consolidate intra ASEAN investment under the ACIA, while pursuing regional investment treaty negotiations with key trading partners such as China, India, Australia, New Zealand, Europe and the United States under the ASEAN Charter (Zhong, 2011). Investment treaty regulation under the New ASEAN Charter affirms the cautious, gradual and differentiated strategies of ASEAN toward full economic integration. Under the Charter, ASEAN has taken more direct and participatory institutional roles in the monitoring, coordination, oversight, the review of the implementation of regional investment agreements. It also permitted parties to exercise direction in more policy areas that conceivably affect returns on

investment. Unlike the minimal regulation and full liberalization policies seen in the ASEAN IGA, and the increased regulation and restrictive terms of the ASEAN AIA, the new regional investment treaties of ASEAN attempts a balance between the consistent and stable investment rules, and the regulatory latitude that ASEAN countries need to retain in order to advance their respective development agendas (Disierto, para 32).

5. IMPLEMENTING AND HARMONIZING THE ASEAN REGIONAL INVESTMENT AGREEMENTS

A. IMPLEMENTATION

To implement the regional investment agreements, especially AEC and its Blueprint, the challenges and issues that ASEAN needs to address: (a) removal the barrier to trade and investment; (b) expediting investment and services trade liberalization; (c) strengthening the ASEAN Dispute Settlement Mechanism (DSM); (d) deal with the proliferation of FTAs and; (e) narrow down the development gap among ASEAN Member Countries (Soesastro, p 53). In addition, to implement the regional investment agreements, the critical attention need to be considered : (a) coordination with other relevant agencies; (b) improvement of technical infrastructure; (c) changes in legislation; (d) post marketing surveillance. (Soesastro, p.56).

For guiding the implementation of regional agreements, ⁴⁴ The ASEAN Policy on Standard and Conformance provides the guiding principles for the join implementation among member countries. The principles focus ⁵⁴ on harmonization standards, implementation of the relevant conformity assessment schemes, it adoption and use in technical regulations.

More specifically, the implementation mechanisms to be developed consist of the elements : (a) relevant sectoral ministerial bodies ⁷ are responsible for implementation and for monitoring of

commitments under **their respective** domain; (b) The ASEAN Economic Minister (AEM) who are in charge of the economic integration in the newly established Council of AEC are accountable for the overall implementation; (c) The AEM organized the regular consultations meeting with stakeholders; (d) ASEAN Secretary General prepares progress report on the implementation of the AEC to relevant Ministerial meetings and summits; (e) The ASEAN Secretary reviews and monitors the compliance of the implementation.

ASEAN member countries must organize themselves to implement the regional investment agreements. In essence, each member country must begin this implementation by preparing detailed national action plans. At regional level, ASEAN sectoral bodies will be involved in coordinating the implementation, while the related government agencies are responsible for overseeing and monitoring. The participation of all stakeholders in preparation of national action plans and in regular consultations on implementation will be ensured by forming partnership arrangements with government agencies, sectoral bodies, business associations and civil society.

B. HARMONIZATION

The regional trade integration and agreements will lead to political demands for harmonization to trade barriers like different product standards and thereby to spill over processes and integration. However, ASEAN members may resist and protest against the regional investment agreements because of conflicting their national interest. However, the regional investment agreements need to be strengthened by harmonization and structural adjustment due to the member's resistance and protest. Harmonization of laws is very important so that the investment agreement between countries in regional business can be more

effectively and efficiently. The investment policy of each ASEAN members which is commonly consisting of investment protection, facilitation and cooperation, promotion and awareness, and liberalization, need to be harmonized at regional level. Although each country has different style, character and economic systems reflecting different political system, economic and social culture in accordance with the philosophy of life value, and interests of each country, harmonization of national interest based on ASEAN agreement is a must. ASEAN's trade and investment agreements need to be accompanied by harmonization and structural adjustment because here will be the members that resist and protest the agreement. Without structural adjustment and harmonization, structuring and implementing of the ASEAN trade and investment agreements will be difficult to realize. Therefore, ASEAN member countries need to unilaterally and collectively come up with structuring trade and investment to move ahead and reap the benefits from trade and investment agreement.

The synchronization of perception and actions of each ASEAN countries in the regional agreements is essential to protect the regional interests of ASEAN. Protection of the economic interests of ASEAN are expected to provide fundamental basis for contesting national interests of each ASEAN member. The identification of economic interests in investment and trade is substantial for regional interest protection ⁵⁸ in the context of the international trade. This step can be started by identifying interest and certain problems of ASEAN member, followed by the discussion of some aspects which will be regulated and mutually agreed to be protected. In addition, pre-agreed flexibilities to accommodate the interests of all ASEAN countries may eliminate the problem.

6. CONCLUDING REMARKS

For promoting international trade and investment in ASEAN, the ASEAN economic integration (AEC) and ASEAN investment agreements (AIA, IGA, ACIA, ASEAN Charter) are instrumental to such purpose. To strengthen ASEAN integration and ASEAN investment agreement run effectively and efficiently, ASEAN member countries should make stronger commitment to collective approach and common time frame of trade and investment liberalization. In addition, it is important for ASEAN member countries to faster acceleration and harmonization of trade and investment liberalization and facilitation. ASEAN member countries should also unilaterally and collectively set up and implement structural adjustment and reform assistance and capacity building measures and facilities to erase the adversely affected parties.

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