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Chapter 5

The ASEAN Economic Community – a Myth or a Reality?

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From the ASEAN to the AEC

The aim of some of the South East Asian countries in the late 1960s was to integrate in order to set stability and increase competitiveness. In addition, an objective was to group together countries which had development potential.

South East Asia has the opportunity to turn the economy toward an attractive climate, promoting a promising environment for investment, exchange and trade, as well as benefitting from a strong resource pool including a young workforce. Several countries could potentially fast-track their development; however, by doing so, South East Asia has in the past and will continue to face many challenges, including factors such as diversity of cultures, whereby diversity can prohibit integration, which in fact is a vital requirement for the whole region to go in the same direction. Secondly, the stage of development of the states significantly varies between countries which are fully developed and those which are developing or at an early stage of development. This is evident when comparing the Gross Domestic Product (GDP) of countries such as Myanmar and Singapore, or Thailand and Lao PDR. Thirdly, stability is not only an asset, but a prerequisite which allows countries to sit at the same table and share their points of view, enabling them to agree the best way forward to support their progress.

A number of states understood at an early stage the need to boost their own economy. Those countries also realised that pursuing such aims would require solidarity between states, and that pooling their resources together would enable and facilitate their own growth independently.

Taking into consideration the above-mentioned points, a single vision was established on 8 August 1967, where the Association reunited five states into one single entity with the ambition of establishing a certain stability in the region. The five countries – namely, the Philippines, Indonesia, Malaysia, Singapore and Thailand – decided to not only sit together, but to create what is now seen as the "European Union of South East Asia", the Association of South East Asian Nations (ASEAN).

Seeing each member as a "key partner" allowed the countries to envisage an acceleration in social progress, cultural development among the members, and the promotion of their economic growth. Committing the countries through treaties and declaration were the necessary steps for the implementation of an economic area. Therefore, integration initiatives and concrete economic co-operation measures have been taken over the past few decades.

Whilst most regional economic integration plans in Asia were taken in the 1990s, ASEAN positioned its visions in advance, an example being ASEAN entering into a Preferential Trade Agreement (PTA) in 1977.

According to the PTA, arrangements had to apply to basic goods such as rice and crude oil, products of industrial projects, along with products of interest for the contracting states. Long-term contracts, procurement by Government entities, and support for the financing of purchases, were the tools used notably by the contracting members to set those concrete measures. Member States are required to apply a tariff rate of 0–5%. Sovereignty has been preserved, since goods entering from outside the ASEAN region can be imposed based on the national schedules of the country.

Having observed the evolution of the five founding states, several countries decided to join ASEAN and established a partnership with the other states, with Brunei joining in 1984, Lao PDR and Myanmar in 1997, followed by Cambodia in 1999.

Expanding the area was not only a way to enlarge the ASEAN zone, but was also a path to boost and stimulate resolutions, engagements and commitments. Thirty years after its creation, ASEAN took a strategic step.

Following the Asian economic crisis in July 1997, ASEAN leaders initiated discussions on establishing specific economic policies and regulations, both to support economic growth and to protect the region from potential future economic shocks. The road was defined at the Kuala Lumpur Summit, held on 12 December 1997.

ASEAN decided to turn the Association not only into a stable and highly competitive region but into a fair economic development zone, engaging in incorporating an economic community. Officially referred to at the Bali Summit held in 2003, the Association anticipated a 17-year period to implement what was seen as a major step for South East Asia's economy. Accordingly, the ASEAN Economic Community (AEC) had to be established by the year 2020.

ASEAN envisioned the 10 Member States' markets as a unique and single market. They agreed to become a single production base capable of producing and commercialising goods/services anywhere in the region. From the perspective of emphasising both production and capacity in exporting to third countries, the Member States committed to increasing their competitiveness outside the ASEAN zone. While the commitments were clear, their effectiveness was not yet concrete.

Time was needed for the implementation process, and so ASEAN set up a Blueprint in 2006, at the 38th ASEAN Economic Ministers' Meeting (AEM). The Blueprint had to take effect in order to create a comprehensive framework, charting ASEAN's journey towards the final establishment of the AEC.

Less than a year after, the *Cebu Declaration on the Acceleration of the Establishment of the ASEAN Community by 2015* was signed on 13 January 2007. The engagement of the Member States revealed a real commitment: the will to hasten implementation. By putting in place rule-based systems, the AEC had to be established by 31 December 2015.

The ASEAN Market

The AEC is the seventh largest economy in the world, offering many perspectives and opportunities to the business community and general public.

With over 600 million people, ASEAN's potential market is larger than the European Union and North America. Nestled between the People's Republic of China and India, ASEAN has the world's third-largest labour force, which remains relatively young. Sixty-five per cent of ASEAN's population is under 35 years old, which is one of the advantages of being composed mostly of developing countries.

The adoption of the Blueprint in 2006 has had a significant impact within ASEAN, an example of this being that the Association's GDP has almost doubled over the past 10 years. In 2014, ASEAN's GDP reached USD 2.57 trillion, whereas in 2007 it was approximately USD 1.33 trillion. As a direct result of this growth, the pace of structural change will accelerate rapidly and is expected to generate some 14 million additional jobs by 2025, and providing that the growth trends continue, the AEC could become the fourth largest economic zone by 2050.

Despite subsequent periods of economic growth, the AEC is still facing a lack of homogeneity among its members as a result of the significant income diversity within the area. The average *per capita* income is estimated at USD 4,100 per year, ranging from a low of around USD 100 in Cambodia to more than USD 50,000 in Singapore.

On Which Principles Does the AEC Work?

There are four basic initiatives/pillars which have led to the implementation of the AEC:

- creating a single market and production base;
- increasing competitiveness;
- promoting equitable economic development; and
- further integrating ASEAN within the global economy.

The most significant commitment has been to create a single market and production where the aim is to have an area with the free flow of goods, services, investment, skilled labour and capital.

A greater, liberalised market shall provide its population and businesses with better opportunities to trade and operate within the member countries, whilst reducing trade costs and timewasting, and improving investment rules, thus making ASEAN/AEC a more attractive investment destination for both international and domestic investors.

The second pillar aims to create a business-friendly and innovation-supporting regional environment. This is achievable through the adoption of common frameworks, standards and mutual co-operation across many areas, including agriculture and financial services, and in competition policy, intellectual property rights, as well as consumer protection.

It also supports improvements in transport connectivity and other infrastructure networks. These have facilitated cross-border transportation and contributed to reducing overall costs of doing business, while providing ASEAN people and businesses with better opportunities to work together more productively.

The third pillar seeks to achieve sustainable and balanced growth, as well as development through equitable economic development, by urging the creation of small and medium-sized enterprises.

The final pillar promotes ASEAN's full integration into the global economy. This is achieved through the attention and care that must be brought to external economic relations, including through free trade areas and comprehensive economic partnership agreements.

Examples of the realisation of some of the goals outlined above are listed below:

- as at 31 October 2015, the implementation rate of the full AEC Scorecard stood at 79.5%, with 486 out of 611 measures;
- Equitable Economic Development and Integration in the Global Economy are from now on considered as fully implemented;
- 256 of the measures for the Single Market and Production Base have been implemented, out of a total of 277; and
- out of the 170 measures necessary for setting up the Competitive Economic Region, only 16 remain to be taken.

AEC Policies in Terms of Free Movement of Investment and Investors: What are the Benefits? What Investment Protection Mechanisms are in Place?

A legal entity is the natural vehicle of any business project and perspective.

The ASEAN/AEC area has become naturally attractive since the increase of its members in the economy. As a consequence, integrating the AEC marketing is becoming a real asset as well as a real business strategy for those seeking to do business in Asia.

The area is attractive for both local and foreign companies. Setting up under the laws of a Member State could become a first step toward a larger scale, embracing other countries with a long-term perspective. In addition, a company incorporated into ASEAN will have the benefit of a cheap and efficient workforce.

One country which has benefitted from incorporation into the ASEAN region is Vietnam, where it benefits from an opened-up environment for Foreign Direct Investment (FDI). For the last two decades, it has been one of the most booming markets and this development continues to grow. The population is young, dynamic and the cost of the workforce is one of the cheapest, and the workforce itself is one of the most competitive in the world.

As a member of the AEC, a Vietnamese legal entity will be allowed to take advantage of the elimination/reduction of tariff barriers among the members, and enjoy free trade (importation/exportation) and circulation of products and services.

AEC Policies (Actual and Future) in Terms of Free Movement of the Workforce

Despite the millions of workers in other Member States, ASEAN's leaders decided to set up Mutual Recognition Agreements (MRAs) with regard to qualifications, easing the free movement of professionals. However, nowadays only a few sectors are covered, and MRAs have done little to overcome other barriers like nationality requirements. Liberalisation to facilitate movement of labour has been emphasised with respect to skilled workers. The tourism sector aside, MRAs require a minimum number of years of experience.

The requirements below illustrate the specific conditions that must be fulfilled in order for an MRA to apply:

- dental and medical practitioners are required to be in active practice for not less than five continuous years in the country of origin before being eligible to apply;

- engineers must have seven years' experience after graduation, of which two years involve significant engineering work; and
- architects must have been in practice for at least 10 years.

Therefore, the ASEAN Member States are not yet willing to facilitate a wholly unrestricted "free" flow of skilled labour, as is commonly understood from the literature and other regions.

Moreover, the Agreement on the Movement of Natural Persons (MNP) and the ASEAN Comprehensive Investment Agreement (ACIA), which entered into force on 29 March 2012, do not apply to individuals seeking employment, citizenship, residence, or permanent residence in another Member State. The ACIA applies only to individuals employed by a registered company in their country of origin. In other words, the AEC does not guarantee or seek full labour mobility even among the highly skilled; it only facilitates its movement.

In this regard, we are far from the European Union (EU) or the European Economic Area (EEA), where citizens can freely move, reside and seek employment in any Member State, regardless of skill level. However, Bilateral Labour Agreements (BLAs) and Memoranda of Understanding (MOUs) concluded among ASEAN Member States have been and remain among the best examples of substantive co-operation on labour market access.

AEC – What are the Remaining Restrictions?

Naturally, BLAs, whilst opening up means of mobility, also set restrictions. Most of the time those restrictions apply to the length of stay in the host country. This can be seen with the MOUs agreed between Lao PDR and Thailand in 2002.

MOUs remain a good tool for Member States in regulating the entry of migrant labour, coping with irregular migration, but also ensuring notably the protection of both legal and illegal workers.

Last February, Thailand signed MOUs with Myanmar allowing Myanmar migrant workers to legally work in Thailand for an employment period for each person that shall not exceed four years. Some countries seem to follow a "local first, ASEAN second" *modus operandi*. For instance, in Singapore, measures have been introduced to protect locals. From August 2014, employers have had to advertise vacancies on a Government jobs bank for at least 14 days before they can search for a skilled foreign worker, allowing the authorities to try to find a suitable resident worker locally in the first instance.

Thailand still applies restrictive rules in terms of capital requirements and minimum employment of local staff for foreign nationals with whom no MOU has been signed with their home country. On the contrary, Vietnam has adopted a very liberal and flexible policy when it comes to the employment of foreigners or the issuance of long-term business visas or permanent residency.

What Are the Industries Where a Visa Will be Easier to Get for AEC Nationals Willing to Work in Other AEC Countries?

On paper, eight groups of professions will enjoy easier access to regional talent: engineers; tourism professionals; dentists; architects; surveyors; accountants; nurses; and doctors.

Within the AEC, Singapore, Thailand, Malaysia and Brunei Darussalam are net receivers of both legal and illegal labour migration while Indonesia, the Philippines, Cambodia, Lao PDR and Vietnam are net labour exporting countries.

The Trans-Pacific Partnership and the AEC

Signed on 4 February 2016, the Trans-Pacific Partnership (TPP) is a trade agreement between 12 Asia-Pacific countries which is not yet in force. Of those 12 countries, four of them are also members of ASEAN and the AEC; namely Brunei, Malaysia, Singapore and Vietnam. These four countries will benefit from both Asian dynamism and the strength of their developed partners as part of the TPP.

Trade and investment made as part of the TPP is significant because the US, Japan and Australia (all TPP members) are among the top 10 trading partners of ASEAN – representing USD 510 billion worth of trade. The US, Japan, Australia and Canada are among the top 10 sources of Foreign Direct Investment (FDI) inflow to ASEAN.

Due to the high standards required by the TPP, ASEAN-TPP members will be urged to boost their economic management capacities, which will result in faster development.

The TPP is a groundbreaking partnership widely considered one of the most ambitious free trade agreements in history. It is a partnership of unprecedented scope, gathering together 12 countries from across the Asia-Pacific region, among which Chile, Mexico, Peru and New Zealand are also included.

This area constitutes USD 510 billion worth of trade and represents 40% of total global output. At the time of writing, the TPP is expected to make up 38% of global GDP and 28% of world trade.

The purpose of the Partnership is to deepen economic ties, liberalise trade and investment, and create new opportunities for workers and businesses among the signatory countries. ASEAN states will find benefits in new market access opportunities from the strength of their developed partners, within a seamless trade and investment network as well as a more transparent regulatory framework.

The TPP's main features are focused on expanding mutual market access for goods and services among member countries, by lowering trade barriers, minimising tariffs, and cutting non-tariff barriers, such as import licensing requirements or discriminatory standards.

According to estimations, the TPP will have raised member country GDP by 0.4–10% by 2030. Only 15% of the GDP increase will be due to tariff cuts, whereas lowering non-tariff barriers for goods and services will account for 53% and 31% of the total increase in GDP.

In addition to promoting a comprehensive market, the partnership seeks to encourage regional supply chain integration by enhancing physical connectivity along with regulatory policies facilitating trade. Policy highlights include provisions that seek to enhance the consistency of labour and environmental regulations, to ensure fair competition among signatory states, and to increase effectiveness in the enforcement of intellectual property rights.

The AEC and the rest of the ASEAN community will soon reap significant benefits from the implementation of the TPP. With these ASEAN markets well-situated to become increasingly competitive, it is expected that these countries will also see increased FDI.

Many industries within the ASEAN states are set to take advantage of enormous gains with the opening of signatory markets and an advantageous tariff scheme, including the electronics and rubber markets in Malaysia and the general diversification of Brunei's economy beyond the oil and gas industries.

Vietnam is seen as one of the most well-positioned countries to benefit from the TPP, with Malaysia following closely behind, due to its specialisation in production at competitive costs, strong workforce and ideal geographic location.

Provided that the agreement is fully implemented, Vietnam's GDP growth is expected to be 10% higher (Malaysia: 8%), while textile and garment exports are expected to expand 28% by 2030, up to 8.7 percentage points in export markets such as the United States, compared to a baseline with no TPP.

Trade advantages of the TPP, such as the reduction and elimination of tariffs in TPP signatory states, are also likely to spur investment from non-TPP countries, such as China, that want to take advantage of such benefits. Chinese companies including Texhong Textile Group Ltd., Shenzhou International Group Holdings Ltd., and Pacific Textile Holdings Ltd. have already relocated operations to Vietnam. With more demand in such manufacturing industries, Vietnam can also expect to see more domestic job creation and productivity growth to match a flourishing economy.

Given the demands in negotiations with some of the world's largest economies and the high regulatory standards required by the TPP, ASEAN-TPP members will find that their legal and economic framework will be significantly affected. However, reforms to boost economic management capacities are sure to result in stronger and faster development towards a brighter and more globalised economic future.

The TPP is equally important for countries which are part of the agreement as it is for those outside of it, not only because of its scope, but because of the diversity of the countries involved. With participation from a large number and wide variety of different players, this is demonstrative of the fact that the TPP is a living agreement that is open to the inclusion of other countries that may want to be signatories to this progressive endeavour.

Although the Partnership was signed on 4 February 2016, it has not yet been ratified at this time, and has yet to come into force. The full implementation of the TPP will lead to many opportunities, creating an attractive investment area.

Conclusion

The combination of ASEAN and the AEC cannot fail to remind us of the early stages of the implementation of the European Union in 1993; and even before that, the 1951 European Coal and Steel Community. However, unlike the European Union, the AEC only aspires for economic and financial integration, without a monetary union or political integration, which may be the explanation for the lack of common organs, such as a supra-state Court in charge of resolving disputes of Member States or even a Parliament. ASEAN and the AEC are consultative organs only.

The main restrictions of the AEC relate to the length of the process and delays, which are partly due to an absence of common organs, especially with regard to labour mobility regulations, which will remain under the rules of the individual states.

What should be kept in mind is that the AEC was only implemented on 31 December 2015. Notwithstanding the restrictions, the ASEAN zone remains one of the most attractive places for investors, where they can benefit from its economic dynamism, whereas Western countries are still trying to get over the 2010 crisis.

In the meantime, more and more countries are opening up in the area. As an illustration, President Barack Obama's visit to Vietnam in late May 2016 to lift the US embargo over Vietnamese weapons, testifies to a will to strive to form links between the two nations.

Moreover, on the other side of South East region, democracy has taken root in Myanmar since free elections took place in November 2015 and a full civil government is now officially running the country for the first time since 1962.

As a global growth leader and a top FDI region, offering great consumption potential with its domestic market, ASEAN keeps on growing and expanding. The Association will most likely enrol new members in the coming years. Potential enlargement of the ASEAN zone has been discussed for years concerning the accession of two new countries: Papua New Guinea and Timor-Leste.

Envisioning a better economic environment has allowed the founding members to evolve the Association into one of the world's most dynamic regions with accelerated economic performance in recent years. ASEAN will celebrate its 50th anniversary next year.

The question is which path the State Members will use for the AEC and what they will do with this unique and unprecedented tool of governance and trade within the next 10 years. South East Asian Nations have surprised the whole world by adopting a system that places dialogue, consultation and free trade at the heart of their relationships, resulting in a peaceful environment free of zones of international conflict. While it will be difficult to predict what the next 50 years will bring for ASEAN members, let's look at where the European Union was 50 years ago: a simple economic community, just like the AEC.

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Jean-François is recognised internationally as an expert in immigration law, and he brings a wealth of experience in providing comprehensive immigration law services to corporations and high-net-worth individuals.

He also brings extensive experience in commercial legal matters, and in particular has advised on many high-value due diligence and merger and acquisition activities for a broad range of international and multinational industries.

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In 2004, Bastien Trelcat relocated to Shanghai where he advised several leading companies throughout China and Europe in their M&A transactions, including structuring and negotiation of joint ventures.

Mr. Trelcat is a partner of HLG and acts as the Managing Partner of HLG Thailand. He also plays an important role in the development of the South East Asia market.

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Founded in 1992 by Jean-François Harvey, the Montréal-based Harvey Law Group (HLG) has maintained a presence throughout Asia, South America, and the Middle East from the beginning. Today, it has evolved into a leading international immigration and business law firm that has developed a worldwide reputation of excellence by providing sophisticated legal representation to businesses and individuals. With offices notably in Hong Kong, Bangkok, Ho Chi Minh City, Hanoi, Da Nang and Yangon, along with a regional and international network, HLG has an extensive team that can provide exceptional support to a diverse global clientele.

In summary, the strength of HLG stems primarily from its well-recognised and respected expertise as well as its well-defined approach towards legal services based on quality and time-honoured practices, fused with a corporate culture that emphasises and cultivates a client-focused attitude. Simply and precisely put, HLG is veteran, yet pioneering; firmly grounded, yet progressive.

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