

9-1-2000

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Recommended Citation

George O. White, *From Snowplows to SIOPAO - Trying to Compete in a Global Marketplace: The ASEAN Free Trade Area*, 8 *Tulsa J. Comp. & Int'l L.* 177 (2000).

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**FROM SNOWPLOWS¹ TO SIOPAO²—
TRYING TO COMPETE IN A GLOBAL MARKETPLACE:
THE ASEAN³ FREE TRADE AREA⁴**

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Globalization is on the lips of everyone, sometimes with derision, at other times with affection, but always with discernment that it is the wave of the

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This Comment is dedicated to the memory of the author's late grandparents: George O. White, Louis C. Hill, and Kathryn C. Hill; their everlasting enthusiasm and conviction in the author's endeavors will never be forgotten. The author would also like to thank Professor Barry Hart Dubner and Adjunct Professor Robert Bejesky for their guidance and suggestions, Adjunct Professor Marie L. Wolfe for her editorial assistance and constant "pep" talks, and Professor Ronald R. Robel for taking the author under his wing and introducing him to the exotic world of Asia.

1. Peter Kenevan & Andrew Winden, *Recent Development: Flexible Free Trade: The ASEAN Free Trade Area*, 34 HARV. INT'L L.J. 224, 225 (1993) (stating that "[t]he PTA's flexible provisions resulted in widespread abuse of exclusion lists that ultimately limited the PTA to a rather comical free trade in snow plows and other Southeast Asian nonessentials"). See *infra* notes 65, 66 and accompanying text.

2. Telephone Interview with Rose Manio, Manager, Oriental Kitchen Corporation (July 11, 2000). Siopao are steamed dough cakes stuffed with different types of meat and vegetables. *Id.*

3. See discussion *infra* Part II.A. ASEAN is an acronym for Association of Southeast Asian Nations.

4. A version of this Comment won the Certificate of Merit for best paper in Scholarly Writing at Thomas M. Cooley Law School, Summer 2000.

future.⁵

*A fortress Europe, a fortress America and a fortress East Asia will be calamitous for us all But, if we don't hang together economically we will all hang separately.*⁶

I. INTRODUCTION

The world is in an extraordinary period of globalization. During this period, the world has become a much smaller place. Due to this "shrinkage," avenues of commercial trade have tightened.⁷ This tightening effect has increased market competition, causing countries throughout the world to develop trade partnerships (regimes) with their neighbors or allies for the purpose of gaining a competitive advantage.⁸ The primary forms of these trade regimes are usually in the shape of Free Trade Areas⁹ or Customs Unions.¹⁰ Thus, the advent of trade regimes has revolutionized the world's commercial landscape, creating intense competition for membership and economic prosperity.¹¹

5. Charles W. Thurston, *ASEAN Economics Prepare for Take-Off*, GLOBAL FIN., Jan. 2000, at 99 (quoting Joseph Estrada, President of the Philippines and Chairman of the Third ASEAN Informal Summit held in Manila on November 28, 1999).

6. Deborah A. Haas, Note & Comment, *Out of Others' Shadows: ASEAN Moves Toward Greater Regional Cooperation in the Face of the EC and NAFTA*, 9 AM. U.J. INT'L. L. & POL'Y 809, 823 n.69 (1994) (quoting Malaysian Prime Minister, Mahatir Mahamad, "who historically condemned the negative effects of trade blocs, respond[ing] to the recent explosion of trade blocs").

7. Telephone Interview with Robert Bejesky, Adjunct Professor of International & Comparative Law, Thomas M. Cooley Law School (July 11, 2000).

8. *Id.*

9. Robert Bejesky, Lecture on International Trade at Thomas M. Cooley Law School (Jan. 22, 2000) (notes on file with the author) (explaining that a Free Trade Area allows free trade between member countries, while applying, based on a particular member country's individual preference, certain restrictions and varied tariff levels on all external countries' goods). See also, e.g., Myung Hoon Choo, *Dispute Settlement Mechanisms of Regional Economic Arrangements and Their Effects on the World Trade Organization*, 13 TEMP. INT'L & COMP. L.J. 253, 255 (1999) (explaining that "[i]n the free trade area, tariffs between the members are eliminated, but they keep their original tariffs against other non-member countries").

10. See Bejesky, Lecture on International Trade, *supra* note 9 (explaining that in a Customs Union, the member countries are acting as a single unit, and apply the same tariff on all external countries). See, e.g., Myung Hoon Choo, *supra* note 9, at 255-56 (explaining that in customs unions "member states set up common customs tariffs vis-à-vis third party states, in addition to eliminating tariffs among themselves").

11. See generally Myung Hoon Choo, *supra* note 9, at 253-57.

The Association of Southeast Asian Nations (ASEAN)¹² is one group of countries presently implementing a Free Trade Area¹³ (ASEAN Free Trade Area or AFTA) for the purpose of gaining a competitive advantage in the global commercial trading market.¹⁴ However, there are many complexities involved with this process: (1) regional/country dynamics within ASEAN itself (there are many different levels of economic development in the group); (2) cohesiveness of the actual AFTA agreement; and (3) the question of what competitive advantages and disadvantages ASEAN will actually gain from the final implementation of the AFTA framework.

This article will examine the process of implementing the ASEAN Free Trade Area, with an emphasis on the economic benefits (by way of increased global trade) derived from its final implementation. After a discussion of the history of the Association of Southeast Asian Nations¹⁵ and the ASEAN Free Trade Area,¹⁶ this article will examine intra-ASEAN dynamics,¹⁷ cohesiveness of the ASEAN Free Trade Area,¹⁸ and the competitive advantages gained once the ASEAN Free Trade Area is fully implemented.¹⁹ This article concludes that the ASEAN Free Trade Area will create greater solidarity within the ASEAN regime, allowing for the eventual initialization of a centralized legal mechanism to handle trade disputes—ultimately leading to enhanced economic viability and increased global trade participation.

II. BACKGROUND

A. *Association of Southeast Asian Nations*

Before 1967, confrontations concerning territoriality and regional legitimacy between Indonesia, Malaysia, Singapore, and the Philippines were commonplace.²⁰ Due to the tensions amongst the states and uncertainty in the region, there was a fundamental need to develop a regional forum to alleviate pressures within the region and to promote

12. *See infra* Part II.A.

13. Telephone Interview with Robert Bejesky, *supra* note 7.

14. *See discussion infra* Part III.C.

15. *See discussion infra* Part II.A.

16. *See discussion infra* Part II.B.

17. *See discussion infra* Part III.A.

18. *See discussion infra* Part III.B.

19. *See discussion infra* Part III.C.

20. Shaun Narine, *Institutional Theory and Southeast Asia: The Case of ASEAN*, 161 *WORLD AFFAIRS* 33 (1998).

economic growth between the countries.²¹ Thus, the Association of Southeast Asian Nations, better known as ASEAN,²² was born on August 8, 1967 in Bangkok, Thailand, with the signing of the Bangkok declaration by the five original member countries:²³ Indonesia,²⁴ Malaysia,²⁵ the Philippines,²⁶ Singapore,²⁷ and Thailand.²⁸ Brunei²⁹ joined on

21. *Id.*

22. See generally *Association of Southeast Asian Nations: An Overview*, at <http://www.asean.or.id/history/overview.htm> (last visited May 17, 2000). This is the official site of the Association of Southeast Asian Nations.

23. *Id.* (describing the “establishment and membership” of ASEAN by the five original member states). See also Bureau of Public Affairs, U.S. Dep’t of State, *Background Notes: Association of Southeast Asian Nations, March 1992*, at http://www.state.gov/www/background_notes/asean_0392_bgn.html (last visited June 5, 2000).

24. Bureau of East Asian and Pacific Affairs, U.S. Dep’t of State, *Background Notes: Indonesia, August 1999*, at http://www.state.gov/www/background_notes/indonesia_0899_bgn.html (last visited June 5, 2000) (indicating that the Republic of Indonesia is made-up of over 17,000 islands with a geographic landmass of 736,000 square miles, “about three times the size of Texas”; it is the world’s fourth most populous country with an estimated total population of 201 million people and annual growth rate of 1.5%, a workforce of around 90 million people, a gross domestic product of \$90 billion with an annual growth rate of -13.7%, and annual per capita income of \$1,070 a year).

25. Bureau of East Asian and Pacific Affairs, U.S. Dep’t of State, *Background Notes: Malaysia, August 1999*, at http://www.state.gov/www/background_notes/malaysia_0899_bgn.html (last visited June 5, 2000) (indicating that Malaysia has a geographic landmass of 127,316 square miles, an area slightly larger than New Mexico, a population of 22.2 million people with an annual growth rate of 2.3%, a workforce of 8.6 million people, a gross national product of \$67 billion with an annual real growth rate of -7.3%, and per capita income of \$3,272 a year).

26. Bureau of East Asian and Pacific Affairs, U.S. Dep’t of State, *Background Notes: Philippines, August 1999*, at http://www.state.gov/www/background_notes/philippines_0899_bgn.html (last visited June 5, 2000) (indicating that the Republic of the Philippines is made-up of over 7,000 islands with a geographic landmass totaling 117,187 square miles, has a population of 75 million people with an annual growth rate of 2.3%, a gross domestic product totaling \$82 billion with an annual growth rate of -0.5%, and per capita income of \$857 a year).

27. Bureau of East Asian and Pacific Affairs, U.S. Dep’t of State, *Background Notes: Singapore, August 1999*, at http://www.state.gov/www/background_notes/singapore_0899_bgn.html (last visited June 5, 2000) (indicating that the Republic of Singapore encompasses 247 square miles, it is one of the most densely populated countries in the world having a population of 3.86 million people with an annual growth rate of 1.9%; it has a gross domestic product of \$84 billion with an annual growth rate of 1.2%, and per capita income of \$24,600 a year).

28. Bureau of East Asian and Pacific Affairs, U.S. Dep’t of State, *Background Notes: Thailand, August 1999*, at http://www.state.gov/www/background_notes/thailand_899_bgn.html (last visited June 5, 2000) (indicating that the Kingdom of Thailand encompasses 198,114 square miles, an area the size of Texas, has a population of 61 million people with

January 7, 1984,³⁰ Vietnam³¹ in July of 1995,³² Laos³³ and Myanmar³⁴ on July 23, 1997,³⁵ and Cambodia³⁶ on April 30, 1999.³⁷ With Cambodia's admission, ASEAN became home to all ten Southeast Asian countries.³⁸ Originally, ASEAN had three basic objectives: "to alleviate intra-ASEAN tensions, to reduce the regional influence of external actors, and to

an annual growth rate of 1.1%, a gross domestic product totaling \$119 billion with an annual growth rate of 2%, and per capita income of \$1,834 a year).

29. Bureau of East Asian and Pacific Affairs, U.S. Dep't of State, *Background Notes: Brunei, August 1999*, at http://www.state.gov/www/background_notes/brunei_0899_bgn.html (last visited June 5, 2000) (indicating Brunei Darussalam encompasses 2,227 square miles, being slightly larger than Delaware, has a population of 315,000 with an annual growth rate of 2.4%, and gross domestic product totaling \$4.9 billion with an annual growth rate of 1.0%).

30. *Id.* Brunei joined ASEAN, just one week after gaining complete independence from the United Kingdom, for the purpose of establishing stability by way of fortifying immediate economic and political ties with its neighbors. See generally *id.*

31. Bureau of East Asian and Pacific Affairs, U.S. Dep't of State, *Background Notes: Vietnam, August 1999*, at http://www.state.gov/www/background_notes/vietnam_899_bgn.html (last visited June 5, 2000) (indicating that the Socialist Republic of Vietnam encompasses 127,243 square miles, larger than Virginia, North Carolina, and South Carolina combined, has a population of 78 million people with an annual growth rate of 1.8%, a gross domestic product totaling \$26 billion with a real growth rate of 3%, and per capita income of \$333 a year).

32. *Id.*

33. Bureau of East Asian and Pacific Affairs, U.S. Dep't of State, *Background Notes: Laos, August 1998*, at http://www.state.gov/www/background_notes/laos_0898_bgn.html (last visited June 5, 2000) (indicating that the Lao People's Democratic Republic encompasses 91,430 square miles, an area roughly the size of Oregon, has a population of 5.2 million people with an annual growth rate of 2.8%, a gross domestic product totaling \$1.7 billion, and per capita income of \$385 per year).

34. 2 THE INTERNATIONALIST, THE INT'L BUSINESS GUIDE TO THE PACIFIC RIM & SOUTHEAST ASIA 34-41 (Patrick W. Nee ed., 2d ed. 1999) [hereinafter THE INTERNATIONALIST] (indicating that Myanmar, formerly known as the Union of Burma, encompasses 678,500 square kilometers, an area slightly smaller than Texas, has a population consisting of 47.3 million people with an annual growth rate of 1.65%, a gross domestic product of \$55.7 billion with a product real growth rate of 6%, and per capita income of \$1,190 a year).

35. *Association of Southeast Asian Nations: An Overview*, *supra* note 22.

36. Bureau of East Asian and Pacific Affairs, U.S. Dep't of State, *Background Notes: Cambodia, January 1996*, at http://www.state.gov/www/background_notes/cambodia_0196_bgn.html (last visited June 5, 2000) (indicating that the Kingdom of Cambodia encompasses 69,900 square miles, an area equal to Missouri, has a population of 10.56 million people with an annual growth rate of 4.1%, a gross domestic product of \$2.92 billion, and per capita income of \$275 a year).

37. *Association of Southeast Asian Nations: An Overview*, *supra* note 22.

38. *Id.*

promote the socioeconomic development of its member states as a further hedge against Communist insurgency.”³⁹ However, during ASEAN’s first decade of existence, not much was done to establish the “organizational initiatives” necessary for institutional development.⁴⁰ The primary principles for institutional development of ASEAN were established in the Treaty of Amity and Cooperation (TAC),⁴¹ which was signed at the Bali Conference, the very first ASEAN Summit, on February 24, 1976⁴²—implementing multilateral relations between the contracting parties and establishing “fundamental principles”⁴³ such as: (1) “[m]utual respect for the independence, sovereignty, equality, territorial integrity, and national identity of nations”;⁴⁴ (2) “[t]he right of every State to lead its national existence free from external interference, subversion or coercion”;⁴⁵ (3) “[n]on-interference in the internal affairs of one another”;⁴⁶ (4) “[s]ettlement of differences or disputes by peaceful manner”;⁴⁷ (5) “[r]enunciation of the threat of use of force”;⁴⁸ and (6) “[e]ffective cooperation among themselves.”⁴⁹ These tenets, over the years, have been the “backbone” of the ASEAN establishment, strengthening regional solidarity and self-reliance by emphasizing “economic, social, and cultural cooperation and development.”⁵⁰ With this in mind, ASEAN continues to expand and develop what is known as the “ASEAN way.”⁵¹ The “ASEAN way” has become an essential element of ASEAN’s success; in a nutshell, it is a pattern of “consultation and consensus building . . . based on Malay cultural practices” that has matured with the institution.⁵² Therefore, all

39. Narine, *supra* note 20, at 33.

40. *Id.*

41. *Association of Southeast Asian Nations: An Overview, supra* note 22. “The TAC stated that ASEAN political and security dialogue and cooperation shall aim to promote regional peace and stability by enhancing regional resilience. . . . which shall constitute the foundation for a strong and viable community of nations in Southeast Asia.” *Id.* See also *infra* text accompanying notes 42-49.

42. *Association of Southeast Asian Nations: An Overview, supra* note 22. See also Narine, *supra* note 20, at 33-34 (stating that the conference was prompted by the “reunification of Vietnam under Communist rule”).

43. *Association of Southeast Asian Nations: An Overview, supra* note 22.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Association of Southeast Asian Nations: An Overview, supra* note 22.

50. *Background Notes: Association of Southeast Asian Nations, supra* note 23.

51. Narine, *supra* note 20, at 34.

52. *Id.*

“[d]ecisions are made within ASEAN on the basis of consensus.”⁵³ If this consensus approach cannot be reached, then the states put their differences aside, go their separate ways, and adjust to the contrasting views of the other member states.⁵⁴ The “ASEAN way” model of diplomacy—non-confrontationalism—allows for problematic issues to be “pigeonholed” for consultation at a later time, thus not interfering with other important matters that currently need to be resolved.⁵⁵ The “ASEAN way” has established a trademark flexibility enabling ASEAN to survive some tremendously hard times,⁵⁶ thereby implementing a strong cohesion that now exists between the ASEAN member states.

B. *The ASEAN Free Trade Area*

The advent of the European Union (EU),⁵⁷ and then the North American Free Trade Agreement (NAFTA)⁵⁸ in the 1990s, had powerful effects on world trade patterns through their discriminatory tactics of reducing trade barriers amidst member states.⁵⁹ This has caused many countries throughout the world to follow course in developing relative regimes to compete in the global marketplace.⁶⁰ Concerned about the

53. *Id.*

54. *See id.*

55. *See id.*

56. Frank Ching, *An Emerging Asia*, FAR EASTERN ECON. REV., Dec. 16, 1999, at 36. *See also Recovery in ASEAN*, INDUS. WEEK, July 5, 1999, at 10. The Asian Financial Crisis, which began in Thailand in 1997, considerably weakened the ASEAN region. *See generally id.* However, the ASEAN nations are now more determined than ever to constitute a strong, cohesive force. *See id.* “The reality is that the patient is alive and well—[and] out of intensive care.” *Id.* *See also* H.E. Rodolpho C. Severino, *The Impact of the Economic Crisis on ASEAN: A Blessing in Disguise?*, 16 ASEAN ECON. BULL. 251 (Aug. 1999).

57. Myung Hoon Choo, *supra* note 9, at 254 n.7. The European Union is presently comprised of fifteen nations which makeup a Customs Union. They include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. *See id.* *See also supra* note 10 (defining customs union).

58. Faezeh Foroutan, *Does Membership in A Regional Trade Arrangement Make a Country More or Less Protectionist?* at <http://www.worldbank.org/research/trade/wp1898.htm> (last visited May 19, 2000). The NAFTA Treaty was signed by Canada, Mexico, and the United States and took effect on January 1, 1994. *See id.* *See also supra* note 9 (defining free trade area).

59. Ross Garnaut, *ASEAN and the Regionalization and Globalization of World Trade*, 14 ASEAN ECON. BULL. 215, 321 (Mar. 1998).

60. Carolina Alberto Lopez & Jacint Soler Matutes, *Open Regionalism Versus Discriminatory Trading Agreements: Institutional and Empirical Analysis*, 14 ASEAN ECON. BULL. 253, 254 (Mar. 1998). *See also* Haas, *supra* note 6, at 809-10.

ASEAN’s so-called “mini-dragons,” feeling threatened by potential

rapid proliferation of free trade areas and customs unions among important trading partners,⁶¹ the leaders of ASEAN decided to make a similar move towards regional economic integration.⁶² Previously, ASEAN had made a futile attempt at developing a free trade area with the signing of the Preferential Trading Agreements (PTA) on February 24, 1977.⁶³ This ultimately proved to be unsuccessful because “[t]he PTA’s flexible provisions resulted in widespread abuse of exclusion lists that ultimately limited the PTA to a rather comical free trade in snow plows and other Southeast Asian nonessentials.”⁶⁴

Therefore, at the Fourth ASEAN Summit in Singapore in 1992, the Framework Agreement on Enhancing Economic Cooperation was adopted—which included the launching of the Asian Free Trade Area (AFTA).⁶⁵ Because of the failure of the PTA, the ASEAN member states—this time—developed a much more rigid instrument, essential to an effective free trade agreement, in the AFTA.⁶⁶ This was a strategic

protectionist obstacles from the existing and proposed regional trading blocs, emerged from the shadows of the European Community (EC) and the North American Free Trade Agreement (NAFTA) to form a free trade agreement of their own. AFTA admittedly reflects a reaction to the proliferation of regional trading arrangements.

Id.

61. *ASEAN Trade with Major Trading Partners*, at <http://www.aseansec.org/stat/extra7.htm> (last visited May 17, 2000) (indicating that the United States is the largest trading partner of ASEAN, with total trade from January 1997 to June 1998 over \$123 billion dollars; Japan is second with total trade for the same period being around \$99 billion dollars; and the European Union is third for the same period with trade around \$86 billion dollars). See also Kong-Yam Tan et al., *Strategic Interests of ASEAN-5 in Regional Trading Arrangements in the Asia-Pacific*, 16 ASIA PAC. J. MGMT. 449, 452 n.3 (1999) (stating that “[a]bout 30% to 40% of each ASEAN member’s exportables are sold to the United States and Japan”).

62. Lopez & Matutes, *supra* note 60, at 254.

63. Kenevan & Winden, *supra* note 1.

64. *Id.* For example, “[t]he size of Thailand’s exclusion list [was] 63 percent of all their traded products, Indonesia’s 54 percent, Malaysia’s 39 percent, and the Philippine’s 25 percent.” *Id.* at n.12. Exclusion lists are indexes that register goods not covered under the free trade agreement; therefore tariffs (i.e., taxes) will be placed on the commodities. Telephone Interview with Robert Bejesky, *supra* note 7.

65. *Framework Agreement on Enhancing Economic Cooperation*, at http://www.aseansec.org/economic/afta/afta_ag1.htm (last visited May 17, 2000). See also Colin Ong, *The ASEAN Free Trade Area and the Necessity for the Creation of a Legal Mechanism for Resolving Private Disputes of an International Nature*, J. BUS. L., Mar. 1998, at 213. The actual implementation of this agreement began on January 1, 1993. *Id.*

66. Kenevan & Winden, *supra* note 1.

objective to increase the ASEAN region's competitive advantage⁶⁷ as a collective trading bloc.⁶⁸ The proposal for eliminating tariff and non-tariff barriers among the member countries was expected to promote greater economic efficiency, productivity, and competitiveness.⁶⁹ Shortly thereafter, the Agenda for Greater Economic Integration was adopted at the Fifth ASEAN Summit held in Bangkok, Thailand, in 1995.⁷⁰ This Agenda accelerated the timetable for the AFTA to take effect from a fifteen year time frame to ten years—the projected date was set for 2003.⁷¹ Again, at the Sixth ASEAN Summit in 1998, the process was further accelerated to hasten the implementation of the AFTA by setting a target date for the original ASEAN members to year 2002.⁷²

III. ANALYSIS

A. *Intra-ASEAN Dynamics*

Since the mid-1980s—withstanding the Asian Economic and Financial Crisis in 1997⁷³—Indonesia,⁷⁴ Malaysia,⁷⁵ the Philippines,⁷⁶ Singapore,⁷⁷ and

67. See *infra* note 146 and accompanying text.

68. Kong-Yam Tan, *supra* note 61, at 452.

69. *Id.*

70. *Association of Southeast Asian Nations: An Overview*, *supra* note 22.

71. *Id.* This “projected” date is only for the original six ASEAN members. See *id.* Vietnam, Laos, Myanmar, and Cambodia will be phased in at later intervals. See *id.*

72. *Id.* See Severino, *supra* note 56, at 252. See also *ASEAN Free Trade Area (AFTA): An Update*, at <http://www.aseansec.org/general/publication/afta-upd.htm> (last visited June 19, 2000).

73. *Recovery in ASEAN*, *supra* note 56. The Asian Economic and Financial Crisis began in Bangkok, Thailand, during the summer of 1997, due to an epidemic of bankruptcies stemming from profound insolvency problems occurring within the financial infrastructure causing Thailand's currency to plummet. See *id.* The contagion spread throughout Southeast Asia, but ASEAN countries have since rebounded and stabilized. See *id.* See generally *Economic Cooperation*, at <http://www.aseansec.org/asc/r9899/ar98993.htm> (last visited May 17, 2000).

74. See generally *Highlight on Indonesia's Homepage*, at http://www.aseansec.org/economic/summary/sum_ind.htm (last visited May 17, 2000) (stating that Indonesia has predominantly focused on policies for foreign investment in industries producing capital goods and raw material accrual).

75. See generally *Highlight on Malaysia's Homepage*, at http://www.aseansec.org/economics/summary/sum_mal.htm (last visited May 17, 2000) (stating that Malaysia's status as one of the founding members of the WTO has enabled the country to fully subscribe to trade liberalization. Malaysia has an ongoing relationship with over 100 countries trading goods and services).

76. See generally *Highlight on Philippine's Homepage*, at http://www.aseansec.org/economic/summary/sum_phi.htm (last visited May 17, 2000) (stating that the Philippines, by

Thailand⁷⁸ have experienced high economic growth that has brought many benefits to the people of their countries.⁷⁹ Brunei Darussalam, with its relatively small amount of land and population,⁸⁰ has also achieved relative economic success by exporting vast sums of crude oil, petroleum products, and liquefied natural gas to Japan, the United States, and other ASEAN countries.⁸¹ The economic success of the original ASEAN countries is

way of an Omnibus Investment Code, has established foreign investment and export zones, as well as tax incentives, encouraging foreign companies to establish industrial production units in the Philippines). This phenomenon is taking place at a rapid pace. Telephone Interview with DoDong Esmas, Attorney at Law, Villiaba, Philippines (July 13, 2000). For example, many U.S. companies such as United Parcel Service, Coca-Cola, and Intel have constructed large production units in industrial zones which were former U.S. military bases (i.e., Subic Bay Naval Base and Clark Airfield), thus taking advantage of the Philippine's well educated English speaking workforce. *See id.*

77. *See generally Highlight on Singapore's Homepage*, at http://aseansec.org/economic/summary/sum_sin.htm (last visited May 17, 2000) (stating that the Singaporean government's primary mission is to promote a free and transparent market system conducive for private sector business growth and a burgeoning free trade policy promoting a policy of allowing virtually ALL goods entering the country to be duty free). Singapore is one of the largest financial markets in the world. *Id.* It has a sterling reputation of being a gateway to the Asian region, "attract[ing] many international companies to do business with Singapore and to use Singapore as a base for . . . regional expansion." *Id.*

78. *See generally Highlight on Thailand's Homepage*, at http://www.aseansec.org/economic/summary/sum_tha.htm (last visited May 17, 2000) (stating that since the Asian Economic Crisis, which originated in Thailand, the government has taken progressive measures to strengthen and stabilize its national economic system).

79. William E. James, *Trade and Financial Market Reforms in ASEAN: Putting the Cart Before the Horse?*, 14 ASEAN ECON. BULL. 224 (1998).

80. *Background Notes: Brunei*, *supra* note 29 (explaining that Brunei has a population of only 315,000 people). Because of Brunei's small population and burgeoning economy, "[l]abor shortages [exist] in almost all job categories." *Id.* *See also* source cited *infra* note 81.

81. *See infra* text accompanying Tables 1, 2 (showing Brunei's Gross Domestic Product and Purchasing Power Parity per capita).

81. *Highlight on Brunei Darussalam's Homepage*, at http://www.state.gov/www/background_notes/brunei_0899_bgn.html (last visited May 17, 2000). Brunei is

[a] tiny country with enormous oil and gas reserves—the economy is almost totally supported by exports of crude oil and natural gas—Brunei's financial reserves are reportedly more than \$30 billion. The country's wealth, coupled with its membership in . . . [ASEAN] and APEC, give it influence in the world disproportionate to its size.

....

[It] is the third-largest oil producer in Southeast Asia, averaging about 163,000 barrels a day. It is also the fourth-largest producer of liquefied natural gas in the world.

Background Notes: Brunei, *supra* note 29. Brunei's Gross Domestic Product, being almost solely from oil and gas, is over \$4.9 billion dollars. *Id.* Because of Brunei's small size, the

primarily due to taking major strides towards diversifying their respective economies, and developing open transparent capital markets,⁸² which has created remarkable export growth.⁸³

The same cannot necessarily be said about several of the new ASEAN members. Vietnam, Laos, Myanmar, and Cambodia's economies are slowly opening up and have been developing at a much more rapid pace since joining ASEAN.⁸⁴ But, the new ASEAN economies—when comparing Gross Domestic Product⁸⁵ and Purchasing Power Parity⁸⁶—are still lagging far behind those of the original ASEAN members.⁸⁷ Also, several of the new members suffer innate problems of inept and opaque governance, combined with the image of being a drug producing country, which has had adverse effects on economic stability and potential prosperity.⁸⁸

government actually owns a cattle farm in Australia, which supplies most of the country's beef. *See id.* "At 2,262 square miles, this ranch is larger than Brunei itself." *Id.* *See infra* Table 1 and accompanying text (showing Brunei's Gross Domestic Product). *See also infra* note 85 (explaining Gross Domestic Product—GDP).

82. James, *supra* note 79, at 225.

83. *Id.* at 224. *See generally* THE INTERNATIONALIST, *supra* note 34, at 34-47, 124-28, 239-48.

84. *Id.* *See also* *Economic and Social Survey of Asia and the Pacific, 2000*, at <http://www.unescap.org/drpad/survey2000/tableii1.htm> (last visited June 19, 2000).

85. BLACK'S LAW DICTIONARY 282 (new pocket ed. 1996). Gross Domestic Product (GDP) is analogous with Gross National Product (GNP) which is "[t]he market value of all goods and services produced in a country within a year, used to measure a country's economic development and wealth." *Id.* *See infra* text accompanying Table 1.

86. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1845 (3d ed. 1986). *See infra* text accompanying Table 2.

87. *See infra* text accompanying Tables 1, 2.

88. *See, e.g., Asia: Shunned*, ECONOMIST, Feb. 27, 1999, at 38-39.

[In Myanmar,] [a]bout 1M have fled to border towns [in Thailand] like Mae Sot to avoid economic collapse and repression by a brutal military regime.

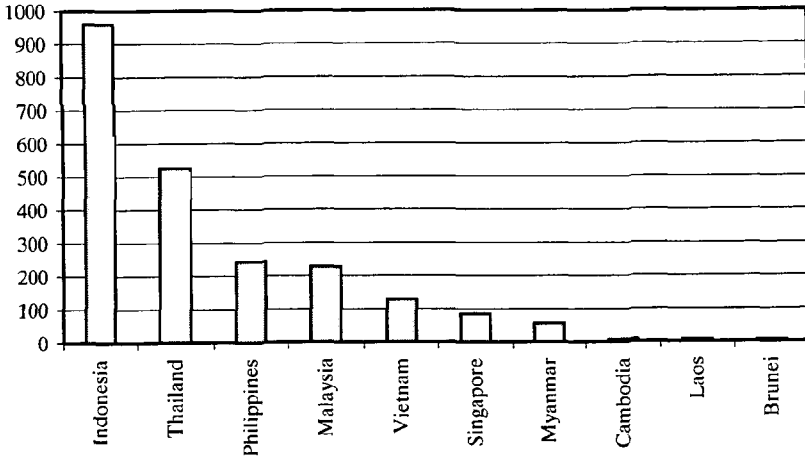
... Slavery seems particularly widespread.

....

... The regime, which has lately been making renewed efforts to gain recognition abroad and to woo foreign investors, has responded angrily, denying that it uses forced labour and giving warning that foreign meddling would "only impede the process of democratisation." This is not a process, however, that has been much in evidence.

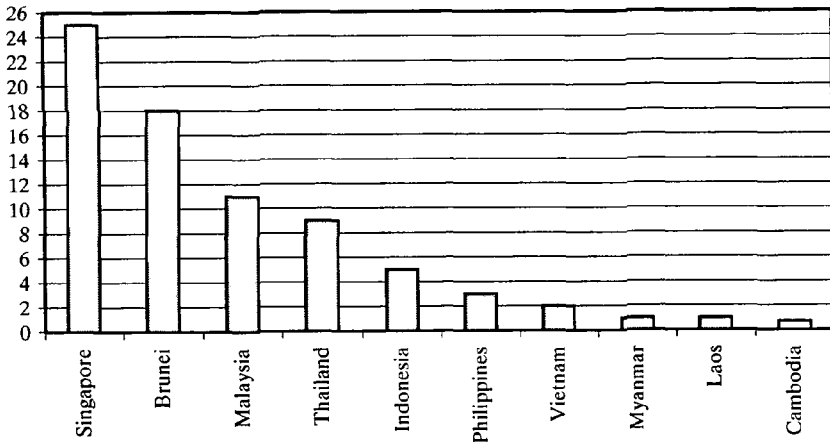
Drugs and Slavery in Myanmar, ECONOMIST, June 24, 2000, at 48. *But see, e.g., On Track*, 32 BUS. ASIA 22 (2000).

Table 1. National Product—Gross Domestic Product of ASEAN Member States



SOURCE: 2 THE INTERNATIONALIST, THE INT'L BUSINESS GUIDE TO THE PACIFIC RIM & SOUTHEAST ASIA 29, 34, 42, 87, 124, 133, 179, 190, 224, 239 (Patrick W. Nee ed., 2d ed. 1999) (rounding to the nearest billionth U.S. Dollar).

Table 2. National Product Per Capita—Purchasing Power Parity of ASEAN Member States



SOURCE: 2 THE INTERNATIONALIST, THE INT'L BUSINESS GUIDE TO THE PACIFIC RIM & SOUTHEAST ASIA 29, 34, 42, 87, 124, 133, 179, 190, 224, 239 (Patrick W. Nee ed., 2d ed. 1999) (rounding to the nearest thousandth U.S. Dollar).

For example, Myanmar's instability and unfavorable international "image" has become a serious concern, thereby hindering ASEAN economic integration and prosperity.⁸⁹ Myanmar is governed by an unelected military junta⁹⁰ (a military form of dictatorship) and has replaced Vietnam (which is one of the last communist regimes in the world with a socialist style economy) "as a primary target for U.S. trade sanctions . . . [where] American firms are forbidden from making new investments."⁹¹ Besides the United States, the European Union is also adamantly opposed to Myanmar's regime because it "seized power in 1988 and staged an election in 1990 but subsequently refused to honor the winner: the National League for Democracy (NLD), led by Aung San Suu Kyi,⁹² who then won the Nobel peace prize in 1991."⁹³ Also, the government is well known throughout the international community for being a supplier of illicit drugs and harboring "notorious drug barons."⁹⁴ This has become a sticky issue for ASEAN; after all, the United States (i.e., NAFTA) and the EU are two very important dialogue trading partners which represent over half of ASEAN's total trade.⁹⁵ While it is not likely that Myanmar will be

89. See, e.g., *Drugs and Slavery in Myanmar*, *supra* note 88 (explaining the horrific economic conditions, including widespread slavery, presently in Myanmar).

90. Michael Vatikiotis, *Awkward Admission*, FAR E. ECON. REV., Dec. 24, 1998, at 17.

91. Drew Rob, *Ten Steps Forward, One Step Back*, WORLD TRADE, Oct. 1998, at 40.

92. Judith A. White, *Leadership Through Compassion and Understanding: An Interview With Aung San Suu Kyi*, 7 J. MGMT. INQUIRY 286, 286-93 (1998). Aung San Suu Kyi is the daughter of the father of independent Burma, Aung San. She was raised in Europe, eventually married a British citizen and gave birth to two children.

In March 1988, Aung San Suu Kyi returned from England to Burma to take care of her mother who had suffered a stroke. [At the same time] demonstrations against the ruling military regime . . . were so large that Aung San Suu Kyi felt she had a duty to get involved. Two former generals approached her about forming a democratic party. . . .

Id. Her party won the election, but because she was married to a foreigner, the military immediately nullified the election results and "arrested, imprisoned, and tortured thousands of members and supporters of the democracy movement." Aung San Suu Kyi was immediately placed under house arrest until 1995. She won the Nobel Peace Prize in 1991 (during her house arrest). Aung San Suu Kyi, to this day, continues to fight for a free and democratic Myanmar. *Id.*

93. *Asia: Shunned*, *supra* note 88.

94. *Id.* (illustrating that the United States, along with several European countries, refused to send convoys to an international heroin conference held in Myanmar). Also, and more importantly, the European Union "refused to allow Myanmar's foreign minister to attend a meeting of ASEAN and EU ministers in Berlin in March." *Id.*

95. *ASEAN Trade with Major Trading Partners*, *supra* note 61 (indicating that for 1998, the United States (excluding other NAFTA members) and the EU made up 52.6% of total ASEAN trade).

expelled, many ASEAN leaders would love to quietly conceal its membership (by minimizing publicity surrounding its membership) until further reforms have occurred.⁹⁶

Cambodia, ASEAN's newest member (which was supported by Vietnam but opposed by several other member states)⁹⁷ has also proven to be problematic for economic growth, stability, and prosperity within the region. Since the departure of Hun Sen⁹⁸ (Cambodia's former merciless dictator), the country has been extremely unstable and in constant disarray with virtually no infrastructure and widespread corruption plaguing the government.⁹⁹ Besides these problems, the international community has abstained from doing business in and trading with Cambodia predominantly because of its role in the illicit drug trade, which includes allegations of high-level narcotics trafficking involving government officials, military, and police.¹⁰⁰ These activities have starved Cambodia's struggling economy and strained relations with other ASEAN members.¹⁰¹

Finally, the "hallowed" principle of non-interference in ASEAN members' internal affairs seems to be in a state of jeopardy.¹⁰² Many of the original members, which are presently in a state of rapid economic expansion, have considered internal intervention in such "problematic" newcomers as Myanmar and Cambodia.¹⁰³ Thailand, which absorbs large numbers of economic refugees from these countries, with the help of the Philippines (which is the most democratic of the ASEAN countries),

96. *Asia: Shunned*, *supra* note 88.

97. Vatikiotis, *supra* note 90 (stating that Singapore, Thailand, and the Philippines strongly opposed Cambodia's entry into ASEAN).

98. Shawn W. Crispen, *Cosmetic Surgery*, 162 *FAR E. ECON. REV.*, Dec. 1998 & Jan. 1999, at 16-18. Hun Sen was a Khmer Rouge guerilla in the 1970s and then

became the premier of the Vietnam-backed regime in Cambodia for much of the 1980's. He then reinvented himself as a "democratic" politician in the early 1990's

. . . The House of Representatives [U.S.A.] voted unanimously on a resolution calling for [him] to be held culpable "for war crimes, crimes against humanity and genocide in Cambodia."

Id. See also Terry McCarthy, *Survival of the Paranoid*, *TIME*, Mar. 22, 1999, at 56-57 (describing Hun Sen's physical and political survival skills).

99. *THE INTERNATIONALIST*, *supra* note 34, at 42-44.

100. *Id.* at 44.

101. See generally, e.g., *South-East Asia's Leaders: Time to Pass a Few Judgements?*, *ECONOMIST*, Oct. 10, 1998, at 22.

102. *Asia: The Game Goes On*, *ECONOMIST*, Aug. 1, 2000, at 35.

103. *Id.* Original ASEAN members would administer a dose of political and economic pressure, with help from the Asian Development Bank, to guide "problematic" member states in the right direction. See *id.*

developed the idea of “flexible engagement,”¹⁰⁴ which is basically a formula for intra-regional relations promoting greater “enhanced interaction” amongst the ASEAN member states.¹⁰⁵ This obscure formula, while attempting to remedy intra-ASEAN economic disparities, will probably be brushed aside and lost in the haste of the AFTA’s rapid integration—thus never being fully realized and tested.¹⁰⁶

B. Cohesiveness of the ASEAN Free Trade Area

ASEAN has historically progressed at a slow pace.¹⁰⁷ Therefore, the Agenda for Greater Economic Integration and the Sixth ASEAN Summit accelerating the implementation of the AFTA were seen as progressive moves.¹⁰⁸ But there are larger and more difficult issues facing implementation of the AFTA, primarily the establishment of a legal regime to handle disputes between ASEAN members.¹⁰⁹ Also, “[w]ith outside nations drawn increasingly into regional trade that gives rise to disputes, many now call for less reliance on local customs and for development of a formal court system to manage an increasing number of disputes.”¹¹⁰ ASEAN must continue to develop a framework to exercise greater legal control over the regional economy.¹¹¹ This requires much more than declared intentions and vague announcements that have been expressed in previous meetings.¹¹² The legal systems of ASEAN countries differ considerably; several of the new members are still in the process of implementing a legal system, while the original members have legal

104. See generally *supra* text accompanying notes 50-56 (discussing the “ASEAN way” of diplomacy). See also *infra* text accompanying notes 116-19 (discussing the mashawarah principle, which is analogous to the “ASEAN way” but pertains to legal, instead of political, concepts). While these forms are not as aggressive as the “ASEAN way” or the mashawarah principle, they do set out to achieve the same goal. See *id.*

105. *Asia: The Game Goes On*, *supra* note 102, at 35.

106. *Id.* See generally Ong, *supra* note 65.

107. Haas, *supra* note 6, at 840.

108. See *supra* text accompanying notes 70-72.

109. Haas, *supra* note 6, at 862. A formal centralized ASEAN arbitration commission (i.e., alternate dispute resolution forum) would be an efficient way to handle disputes and conform to the diverse cultural sensitivities of the members. *Id.* at 863. “For example, in Thailand, conflict avoidance is highly prized, and litigation is customarily viewed as an inappropriate form of local dispute settlement.” *Id.*

110. *Id.* at 863.

111. *Id.* at 865. “In its present form, ASEAN cannot exert any legal control over the regional economy.” *Id.* However, soon “ASEAN may find itself pressed from the outside to incorporate arbitration into its development of a formal regional legal system.” *Id.* at 863.

112. See *supra* Parts II.A-B.

regimes that “rang[e] from common to civil law systems, and to hybrids of both.”¹¹³ For example, Brunei, Malaysia, and Singapore have common law forms of legal systems; the Philippines’ legal system is a hybrid of both civil (developed during the Spanish occupation of the islands) and common law (derived directly from the United States); Indonesia models its legal system after basic constructs of the Dutch; Thailand’s legal system is based on both continental and common law; Vietnam’s legal system is still grounded in communist legal theories and French civil law; Laos, Myanmar, and Cambodia are still struggling to find a legal identity.¹¹⁴ Other impediments to forming a sound uniform legal framework include differences in “colonial backgrounds, language, culture, religion, [and] political systems.”¹¹⁵

Because of these idiosyncrasies, ASEAN is in the process of implementing what is known as the *mushawarah* principle.¹¹⁶ This principle is analogous with the “ASEAN way”¹¹⁷ form of diplomacy. Basically, the *mashawarah* principle will provide a neutral means of implementing “ASEAN members’ national laws into a regional system”¹¹⁸ by cautiously managing precarious legal issues regarding cultural sensitivities and national autonomy of perspective member states.¹¹⁹ Consequently, in November 1996, ASEAN developed a dispute settlement mechanism, modeled after the WTO’s dispute settlement mechanism, which covers all economic agreements.¹²⁰ This represents “the evolution of

113. Haas, *supra* note 6, at 862.

114. *Id.* See also, e.g., THE INTERNATIONALIST, *supra* note 34, at 32, 38, 45, 91, 127, 137, 183, 193, 228, 243.

115. Haas, *supra* note 6, at 863. For example, the people of the Philippines speak both Tagalog (their national language) and English. They were occupied by the Spanish and Americans until declaring independence in 1946 and are overwhelmingly Catholic (considered the most Catholic country outside Italy). See *Background Notes: Philippines*, *supra* note 26. The Vietnamese speak Vietnamese, English, and French. South Vietnam was occupied by the French and Americans until declaring reunification after the Vietnam War in 1976 and is predominantly Buddhist. See *Background Notes: Vietnam*, *supra* note 31. The people of Brunei speak Malay, Chinese, and English. Brunei was an English colony up until 1984 when it declared its independence. It is presently a sultanate and an Islamic state. See *Background Notes: Brunei*, *supra* note 29.

116. Haas, *supra* note 6, at 863.

117. See *supra* text accompanying notes 50-56.

118. Haas, *supra* note 6, at 863.

119. *Id.*

120. *ASEAN Free Trade Area (AFTA): An Update*, *supra* note 72. For more information regarding the WTO’s dispute settlement mechanism, see <http://www.wto.org>.

ASEAN economic cooperation” towards a more uniform and centralized legal system.¹²¹

Other measures have been taken to further establish and strengthen certain AFTA rules before its final implementation, such as “[t]he provision on emergency measures under the CEPT Agreement . . . mak[ing] it consistent with the WTO Agreement on Safeguard Measures [and a] Protocol on Notification Procedures . . . established to provide advance warning of actions or measures that can have an adverse effect on concessions granted under an existing ASEAN agreement.”¹²² Both provisions have been well received (once implemented) by ASEAN members, allowing for more transparency within the system and tightening a “loose structure” that once had many “loopholes”—in the process pacifying many long-time critics.¹²³

To monitor compliance and enforce the terms of the AFTA, ASEAN established a committee called the Council.¹²⁴ “In addition, the heads of state of the ASEAN nations are required to meet every three years.”¹²⁵ This institutional apparatus administering the free trade program (i.e., the Council and meeting of the heads of state) could possibly serve as a center for future institutional developments.¹²⁶ On the Council, all member states have equal representation and cooperate with the ASEAN Secretariat in supervising compliance.¹²⁷ But the Council is a political body that will more than likely not “exhibit institutional autonomy in monitoring the compliance of the member states.”¹²⁸ Also, the Council has no real directive on what role it should play or actions it should take against countries that do not comply with AFTA regulations.¹²⁹ However, these bold new approaches will allow ASEAN to possibly, someday, implement a regional court system and even create its own legal system.¹³⁰

121. *Id.*

122. *Id.*

123. Haas, *supra* note 6, at 840.

124. Harold Dichter, *Legal Implications of an Asia-Pacific Economic Grouping*, 16 U. PA. J. INT'L. BUS. L. 99, 133 (1995).

125. *Id.*

126. *Id.*

127. *Id.* at n.229.

128. *Id.*

129. *Id.*

130. See Dichter, *supra* note 124, at 134. Dichter states:

[t]he dispute resolution procedures of AFTA are not adequate. . . . AFTA members are directed to resolve disputes amicably, and if that fails, to report the dispute to the Council. There is no indication of how the Council is to arbitrate members' disputes. This omission in the coverage

C. *The Competitive Advantage of the AFTA*

The ASEAN region is an area of tremendous diversity regarding race, language, culture, and religion.¹³¹ It presently "has a total population of about 500 million people, a total area of 4.5 million square kilometers, a combined gross domestic product of US \$735 billion, and total trade of US \$720 billion."¹³² The ASEAN nations vary considerably in their levels of economic development.¹³³ In addition, the group is not dominated by any large political-economic power or core of industrialized nations but is composed of relatively independent states with diverse cultures and economies.¹³⁴ This diversity, combined with substantive economic potential, helped the ASEAN member states quickly recover from the Asian Financial Crisis which began in 1997.¹³⁵ Unlike the EU and NAFTA, ASEAN in practice has developed without discriminating against outsiders.¹³⁶ It has never been important for ASEAN to implement strict

of the agreement represents a significant deficiency which, if not corrected, may prevent AFTA from evolving into a more structured and developed legal grouping capable of eliminating regional barriers to free trade.

Id. ASEAN will have to fully assess the complex character of its member states with regard to implementing a regional court system and/or creating its own legal system. *See id.* *See also* Haas, *supra* note 6, at 862 (stating "[a]lthough ASEAN recognizes the value of creating a legal cooperation scheme, especially to enforce its heightened goals of economic integration, many obstacles hinder the process of such legal integration"). There are numerous ideas on legal schemes and how they would work, such as:

[t]he two alternative ways (which need not be mutually exclusive) of achieving this solution would be to either have an ASEAN Court of Justice to resolve such disputes or have some form of uniform rules of engagement or convention for resolving international disputes between private individuals of ASEAN states. There is obviously a severe problem that the laws of the Member States differ from one another in significant ways and it would be very difficult to effectively harmonise rules of litigation amongst the individual ASEAN states.

Ong, *supra* note 65, at 215.

131. *See supra* notes 24-36 and accompanying text. *See generally* THE INTERNATIONALIST, *supra* note 34 (listing the diverse makeup of each ASEAN country).

132. *Executive Summary*, at <http://www.aseansec.org/asc/r9899/ar98991.htm> (last visited May 17, 2000).

133. *See supra* Parts II.A, III.A.

134. *See supra* Parts II.A, III.A-B.

135. *Id.* *See also supra* note 56 and accompanying text. *See generally* discussion *supra* Parts II, III.

136. *Executive Summary*, *supra* note 132. The AFTA will not be a fully implemented trade regime between the original members until the year 2002. *See supra* text accompanying note 71. *See also* Bejesky, Lecture on International Trade, *supra* note 9 (explaining what a free trade area is).

trade guidelines; in fact, earlier trade agreements never “cut” deep enough into important products to have any sort of significant impact on trade patterns.¹³⁷ The commitments within the AFTA are primarily being implemented through a reduction in protections against all trading partners, not just against the AFTA members.¹³⁸ However, free trade is interpreted as a maximum protection on manufactured goods of 5% or less, with less emphasis on agricultural products.¹³⁹ This was the goal set for the original ASEAN members by 2002.¹⁴⁰ Therefore, stricter trade guidelines will strengthen the collective bargaining power of the member states against such powerful trade regimes as the EU and NAFTA.¹⁴¹ In fact, over the past decade, the ASEAN member economies have experienced more rapid growth and a larger amount of intra-regional trade than either the EU or NAFTA.¹⁴² To continue this growth, ASEAN members will have to continue to enhance “economic cooperation” and trade guidelines “to strengthen collective market size.”¹⁴³

The ASEAN Free Trade Area can be seen as an inevitable response to competitive pressures from China and a “worldwide movement towards regional trading arrangements”¹⁴⁴ that have put enormous pressure on the Southeast Asian countries to link-up and form a trade bloc.¹⁴⁵ This move was intended to accelerate ASEAN’s economic growth and significantly enhance its competitive advantage against the rest of the world.¹⁴⁶ By

137. Dichter, *supra* note 124, at 134.

138. *Id.* at 132.

139. Telephone Interview with Robert Bejesky, *supra* note 7. See also Kenevan & Winden, *supra* note 1, at 231.

140. *Executive Summary*, *supra* note 132.

141. Haas, *supra* note 6, at 840.

142. Kong-Yam Tan, *supra* note 61 (explaining that “[i]ntra-ASEAN trade among the five founding members has expanded from 16.3% in 1990 to 17.9% in 1993 and 19.6% in 1996”).

143. *Id.* at 451.

144. *Id.* at 452.

145. See generally, e.g., ANJU GUPTA & MAURICE SCHIFT, *OUTSIDERS AND REGIONAL TRADE ARRANGEMENTS AMONG SMALL COUNTRIES: THE CASE OF REGIONAL MARKETS*, (The World Bank Dev. Research Group, Policy Research Working Paper No. 1847, 1997), available at <http://www.worldbank.org/research/trade/archive.html> (last visited May 19, 2000).

146. Bejesky, Lecture on International Trade, *supra* note 9. Competitive advantages are loosely analogous with what is called a Comparative Advantage. In a nutshell, a Comparative Advantage is when a particular country, while maybe not as efficient as other countries, focuses on what it does best—and invests in what it does best—even though it may still produce a product less efficiently than another country. What then happens is other countries will then shift production to other areas where their expertise and skills will

doing this, ASEAN expects "significant dynamic gains from strengthened international competitiveness, enhanced inflow of [Foreign Direct Investment¹⁴⁷] from other regions, and learning-by-doing effects via trade."¹⁴⁸ There is a "high degree" of symmetrical economic structures amongst the ASEAN countries.¹⁴⁹ Because of this, once the AFTA is fully implemented, leading to increased economic reforms, ASEAN can push toward a much more assiduous export-oriented strategy by way of market force.¹⁵⁰

ASEAN economies, primarily because they are structured for industrial export, are becoming increasingly dependent on trade.¹⁵¹ However, economic structures and natural resource endowments vary considerably within ASEAN¹⁵²—establishing various levels of trade dependencies amid the member states.¹⁵³ For example, Brunei relies heavily on exporting oil and gas,¹⁵⁴ while Singapore depends on substantial trade in computer equipment.¹⁵⁵ Other countries such as Malaysia and the Philippines have assorted industrial export capabilities ranging from electronics and telecommunications to wood products.¹⁵⁶ ASEAN countries also depend on the importation of necessary industrial commodities such as machinery, transport equipment, and motor vehicles from NAFTA and the EU.¹⁵⁷ Therefore, "the accelerated pace of industrialization . . . ha[s] led all ASEAN economies onto a convergent path of increased dependency on trade . . . ranging from labor intensive textile and apparel production to more sophisticated products in the microelectronic and information technology areas."¹⁵⁸ As ASEAN

be of better use maximizing efficiencies in a less competitive environment. *Id.* See generally Anthony J. Venables, *Regional Integration Agreements: A Force for Convergence or Divergence?*, at <http://www.worldbank.org> (last visited May 19, 2000).

147. Bejesky, Lecture on International Trade, *supra* note 9 (explaining that foreign direct investment is when a non-national entity/person invests in a foreign country).

148. Kong-Yam Tan, *supra* note 61, at 452.

149. *Id.* at 457.

150. *Id.* at 457, 460 tbl.4 (showing the impact of the AFTA on the original members' gross domestic product).

151. See *id.* at 461. Table 5 highlights the AFTA's effect on exports of the five original members' economies. *Id.*

152. See Kenevan & Winden, *supra* note 1, at 232 n.52. "Some of the ASEAN countries are not as industrially advanced in their development as others." *Id.*

153. See *id.*

154. See *supra* notes 29, 81 and accompanying text.

155. See THE INTERNATIONALIST, *supra* note 34, at 190-91.

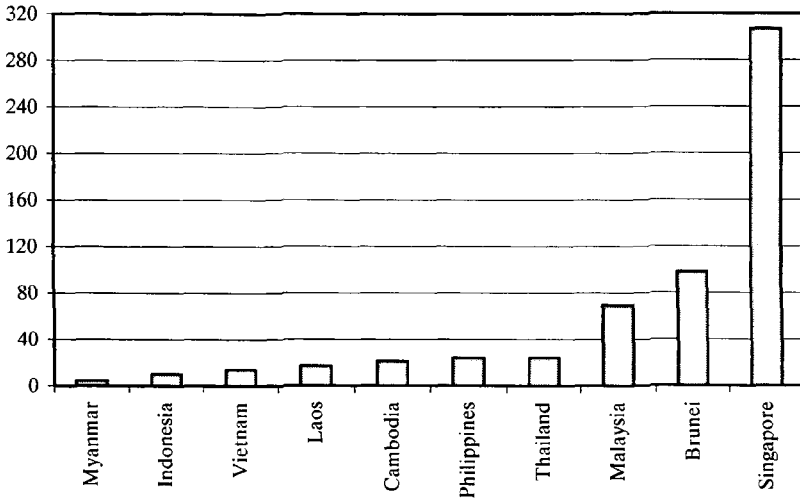
156. See *id.* at 134, 179.

157. See *id.* at 30, 43, 134.

158. Kong-Yam Tan, *supra* note 61, at 461.

countries continue to industrialize (they are all considered developing countries), their economies will continue to transform allowing for more “capital intensive” trade in commodities with their major trading partners.¹⁵⁹

Table 3. Percentage Trade Dependence of ASEAN Countries



SOURCE: 2 THE INTERNATIONALIST, THE INT’L BUSINESS GUIDE TO THE PACIFIC RIM & SOUTHEAST ASIA 29, 30, 34, 43, 87, 88, 125, 134, 179, 180, 190, 191, 225, 240 (Patrick W. Needy, 2d ed. 1999) (rounded to the nearest percentage point). The percentage regarding trade dependencies of ASEAN countries was calculated by adding the total value of import and exports, then dividing that number by the countries’ gross domestic product.

159. See *id.* at 463. See *ASEAN Trade with Major Trading Partners*, *supra* note 61.

Furthermore, ASEAN has emerged as a significant player in both regional and global trade.¹⁶⁰ "As a grouping of small- to medium-sized powers located in the dynamic Asia-Pacific region where the interests of major powers like the U.S., Japan and China intersect, ASEAN has been able to play [an] . . . important role" in international trade.¹⁶¹ With the advent of the AFTA, ASEAN will be better equipped to compete in the global marketplace, thereby nurturing a growing dependence for trade and improving its competitive advantages by way of increasing its global market share.¹⁶²

IV. CONCLUSION

Overall, ASEAN has been driven to multilateral trade liberalization by recognizing that open trade is helpful to economic development, and it is in the best interest of the member countries' global trading interests.¹⁶³ The existence of ASEAN's AFTA agreement will continue to be an important trade expansion tool, affecting transaction costs of trade between member states (by way of agreement) and by increasing confidence in terms of market access and global competition.¹⁶⁴ The ASEAN nations have a high degree of potential for growth when compared to other trade blocs in the world.¹⁶⁵ The trick to opening the doors of the ten Southeast Asian nations (to trade) is not a simple one, given the distinctive variations in sovereign policies, as well as the differing stages of economic recovery since the Asian Economic and Financial Crisis.¹⁶⁶ Despite these problems, the AFTA represents a first step in the evolution of a promising Asian regional grouping. Although there are potential weaknesses or inadequacies in the terms and institutional underpinnings of the agreement, the AFTA still serves as an institutional framework upon which others in Asia might build.¹⁶⁷ Also, by

160. See generally Kong-Yam Tan, *supra* note 61, at 463-64.

161. *Id.*

162. See *supra* Part III.

163. See *supra* Part III.

164. See *id.*

165. See generally Kong-Yam Tan, *supra* note 61, at 463-65. See also *supra* Part II.A.

166. See *supra* Parts II, III. See also *supra* text accompanying note 73.

167. See generally Paul Markillie, *Survey: Southeast Asia: Living Together*, *ECONOMIST*, Feb. 12, 2000, at S14-16 (explaining that a giant trading bloc comprising Southeast Asia, Japan, China and South Korea could be on its way). See generally Anthony L. Smith, *The AFTA-CER Dialogue: A New Zealand Perspective on an Emerging Trade Area Linkage*, 14 *ASEAN ECON. BULL.* 238, 238-52 (1998) (explaining that both Australia and New Zealand

incorporating other large Asia-Pacific economies, the AFTA could achieve an economic viability that would allow it to play a pivotal role in world trade.¹⁶⁸ In conclusion, the AFTA is a manifestation of the desire to create Asian alternatives to the regional trading blocs, which are rapidly developing around the world, and a response to the threat of regionalism posed by the EU and NAFTA.¹⁶⁹ The AFTA will ultimately prove successful, leading to enhanced economic viability and increased global participation.

(compromising the Australia-New Zealand Closer Economic Relations Agreement—CER) are interested in a potential connection between the AFTA and CER).

168. *Id.*

169. *See generally* Myung Hoon Choo, *supra* note 9, at 253-57. *See generally* Dichter, *supra* note 124, at 99-100. *See also supra* Part II.B.

