

# **ASEAN—A REGIONAL TRADE PACT MODEL FOR STATES IN THE GLOBAL SOUTH**

**RONNIE R. GIPSON JR.\***

---

\* Ronnie R. Gipson Jr., Assistant Professor—University of Memphis Cecil C. Humphreys School of Law. Thanks to Professor Stephen Barela at the University of Geneva Global Studies Institute and Professor John Acevedo at the University of Alabama School of Law, and participants in the Southern California junior faculty scholarship workshop at the Chapman University Fowler School of Law for their early critiques. A special thanks to my research assistants, Jennifer Echevoyen, Mohammad Tabel, Emily Yang, and Arianna Peregretti.

I. INTRODUCTION .....	393
II. ....	394
<i>A. Understanding Free Trade</i> .....	394
1. <i>Mercantilism</i> .....	394
2. <i>Free Trade &amp; Comparative Advantage</i> .....	396
3. <i>Regional Trade Pacts</i> .....	397
<i>B. The Rise of Nationalism Threatens Free Trade</i> .....	399
<i>C. The European Union</i> .....	400
III.....	402
<i>A. ASEAN</i> .....	402
1. <i>Composition &amp; Structure</i> .....	402
2. <i>Dispute Settlement</i> .....	404
3. <i>Historical Development</i> .....	405
4. <i>ASEAN is a Highly Effective Regional Trade Pact</i> .....	408
a) <i>Singapore</i> .....	409
b) <i>Thailand</i> .....	411
c) <i>Malaysia</i> .....	414
d) <i>Indonesia</i> .....	416
e) <i>The Philippines</i> .....	419
5. <i>The ASEAN Playbook as a Model for Success</i> .....	422
6. <i>States Categorized as the Global South are Well Positioned to Capitalize on the ASEAN Model</i> .....	425
IV. CONCLUSION .....	428

## I. INTRODUCTION

This article posits that the states in the Global South would benefit from the formation and implementation of the regional trade pact model by replicating the approach of the Association of Southeast Asian Nations (“ASEAN”). ASEAN utilizes the regional trade pact model to achieve an optimal balance between the pursuit of free trade principles in international trade policy juxtaposed against the perceived erosion of state sovereignty. As a result, free trade is sustainable as an anchor component of trade policy in the future, just in a modified form. An underlying premise that must be advanced to understand how free trade can thrive in today’s complicated global trading arena is that the benefits of free trade are best realized through the use of a Regional Trade Pact.<sup>1</sup>

Part I of this article sets the stage for the substantive discussion by expounding on the concept of free trade; a brief look at how nationalism threatens this economic principle; and the functioning of regional trade pacts. Part II of this article demonstrates how, in the short span of four decades, ASEAN has successfully implemented an overhaul of the member states’ domestic economies to include free trade principles. The end result of the long-term overhaul process is a stronger corps of states that enjoy economic success in the global trading arena because of (i) the maximization of domestic comparative advantage; and (ii) by leveraging bargaining power of the collective regional trade pact against states with significantly more trading muscle and resources.

This article then connects the different themes to demonstrate that free trade in the international arena is sustainable and that it thrives when the optimal balance between promotion of trade and interference with domestic decision making is achieved. Finally, the article advances the notion that states within the Global South, that are regionally connected, would be well served by adopting the ASEAN model of a regional trade pact in order to improve their economies and trading positions within the global trading arena.

---

<sup>1</sup> For the purposes of this article a Regional Trade Pact is defined as a collection of geographically centered states that have (i) entered into a formal agreement to ease trade restrictions among themselves; and (ii) agreed to pursue external trade opportunities with states outside the region as one collective body.

## II.

A. *Understanding Free Trade*

Free trade is one form of several economic theories that can guide a state's trade policy. Trade policy refers to a state's regulations and agreements that control imports and exports to foreign countries.<sup>2</sup> Broadly, there are two basic approaches that trade policy can follow—mercantilism or free trade. Mercantilism operates under the presumption and the belief that certain domestic industries, specifically labor and national culture, will be harmed by foreign competition.<sup>3</sup> Free trade, by contrast suggests that the international exchange of goods and services benefits all states that participate in the trade of goods and services through realized efficiencies in the instrumentalities of production.<sup>4</sup>

1. *Mercantilism*

Mercantilism represents the first systematic approach towards the development of a trade policy gaining widespread acceptance in the seventeenth and eighteenth centuries.<sup>5</sup> A key objective of mercantilism is to emphasize a “favorable balance of trade” among states who trade with each other.<sup>6</sup> A favorable trade balance is achieved when the value of domestic goods exported exceeds the value of foreign goods that are imported.<sup>7</sup> Mercantilists view exports favorably and imports unfavorably.<sup>8</sup> The net result for the trade conducted is a trade surplus for one country and a trade deficit for the other country.

For instance, under the mercantilists' view, exports of raw materials for use by foreign manufacturers are harmful because they deprive domestic manufacturers of raw materials thus diminishing domestic production and

<sup>2</sup> *Trade Policy*, BALANCE, <https://www.thebalance.com/trade-policy-4073939> (last visited Mar. 18, 2020).

<sup>3</sup> Cf. Douglas A. Irwin, *A Brief History of International Trade Policy*, LIBR. ECONS. & LIBERTY (Nov. 26, 2001), <https://www.econlib.org/library/Columns/Irwintrade.html>. Mercantilism functions by promoting trade policies that block foreign competition out of a fear of the loss of domestic jobs and denigration of the domestic culture from foreign influence. See Laura LaHaye, *Mercantilism*, LIBR. ECONS. & LIBERTY, [econlib.org/library/Enc/Mercantilism.html](https://www.econlib.org/library/Enc/Mercantilism.html) (last visited Mar. 25, 2021).

<sup>4</sup> Irwin, *supra* note 3, at 8.

<sup>5</sup> See Irwin *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

exports.<sup>9</sup> On the other hand, mercantilists view the import of raw materials for use by domestic manufacturers as beneficial to the domestic economy because the import of those raw materials enables domestic manufacturers to produce quality, cost-efficient goods.<sup>10</sup> Therefore, mercantilists argue that government policy should support these beliefs. As a result, governments influenced by mercantilists institute taxes, or tariffs, on trade to manipulate the relationship between exporting and importing countries in an effort to achieve a favorable trade balance.<sup>11</sup>

However, in the greater context that considers all the global players involved in trade, a favorable trade balance turns out to be an illusory and unreachable goal. The flaw with pursuing a mercantilist approach to trade is that not every country can have a trade surplus, even though each country participates in trade with the goal of achieving a trade surplus.<sup>12</sup> It is impossible for every country to achieve a trade surplus when trading with other nations because of the disparity in economic resources inherent in each country.<sup>13</sup>

Noted economist Adam Smith was an ardent opponent of mercantilism. Smith argued that countries should extract the most productivity from the resources on hand in order for society to achieve a higher standard of living.<sup>14</sup> Smith was especially critical of trade policy tools such as export subsidies and import restrictions (tariffs).<sup>15</sup> Smith espoused the idea that trade restrictions in any form were not presented for the good of the country or in support of nationalistic ideals, but instead were implemented for the protection of special interest groups.<sup>16</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See generally Csongor István Nagy, *World Trade, Imperial Fantasies and Protectionism: Can You Really Have Your Cake and Eat it Too?*, 26 *IND. J. GLOB. LEGAL STUD.* 87, 91 (2019). Mr. Nagy's article challenges traditional presentation of trade surplus and trade deficit as fomenting the assumption that trade is a zero sum game with only winners and losers. Instead, Mr. Nagy's article offers a unique approach to evaluating trade viewed as consumer surplus and incremental social surplus.

<sup>14</sup> Irwin, *supra* note 3 (citing ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* bk. 4, at ch. 2 (1776)).

<sup>15</sup> *Id.* at 4, 8. Export subsidies are payments by the government to domestic firms that enable them to reduce the price of goods sold to foreign consumers thus enabling them to compete in the foreign marketplace based on price. *Id.* at 4. Tariffs are taxes imposed on imported goods which are designed to prevent foreign competitors from competing in the domestic marketplace based solely on price.

<sup>16</sup> *Id.* at 6. Special interest groups consists of labor unions and single commodity or resource driven lobbying and protection organizations who utilize political action committees to lobby legislative representatives to adopt measures that serve to protect their members' interests at the expense of the

## 2. *Free Trade & Comparative Advantage*

Free trade is an economic doctrine that sits juxtaposed against mercantilism. Free trade and mercantilism sit at opposite ends of the trade theory spectrum operating with the following truisms. First, no nation-state has the natural resources to be self-sufficient.<sup>17</sup> Therefore, a state that implements a trade policy that excises this truism from its policy proclamations is destined to encounter long-term trade challenges. Free trade calls for the removal of government restrictions to trade commonly referred to as the process of “trade liberalization.”<sup>18</sup> Increased trade leads to increased competition that results in a better quality of goods; therefore, the consumer benefits.<sup>19</sup> Moreover, with increased trade, consumers have a greater variety of goods to select from because they gain access to products from different countries, which also leads to lower prices. When faced with higher quality and lower cost goods, efficiency of production by domestic manufacturers increases because market forces dictate the speedy removal of manufacturing inefficiencies. Otherwise, domestic manufacturers would not be able to compete over the long term in the marketplace.<sup>20</sup> Next, free trade leads to specialization where certain domestic manufacturing processes retreat in importance due to the introduction of more efficient foreign competitors into the domestic marketplace.<sup>21</sup> Specialization hinges on recognition and utilization of a state’s comparative advantage.

In the first quarter of the nineteenth century, the theory of comparative advantage emerged.<sup>22</sup> Comparative advantage as a doctrine provides that a country should only produce goods where plentiful resources and technological knowhow combine to make the production process efficient.<sup>23</sup> The production process maximizes the use of plentiful resources and manpower knowledge.

Consider, the following example with two fictitious states, Ibo and Lilk.

---

greater society and economic growth.

17 For example, an island nation may have the climate, marine life, and vegetation to produce foodstuffs for its people. However, that same nation-state will lack the natural resources to manufacture cellphones or necessary infrastructure to support capital projects. To meet those needs, the nation-state must import resources such as steel, circuitry and plastics.

18 William J. Mateikis, *The Fair Track to Expanded Free Trade: Making TAA Benefits More Accessible to American Workers*, 30 HOUS. J. INT’L. L. 1, 7 (2007).

19 Nagy, *supra* note 13 at 91–92.

20 *See id.* at 95.

21 *See id.* at 100.

22 Irwin, *supra* note 3 (citing DAVID RICARDO, ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION, at ch. 7 (1817)).

23 ANDREA MANESCHI, COMPARATIVE ADVANTAGE IN INTERNATIONAL TRADE: A HISTORICAL PERSPECTIVE (1998).

Both states produce two products: running shorts and cell phones. Ibo has the natural resources and manpower to efficiently produce running shorts. Meanwhile, to produce cell phones, Ibo must import a lot of raw components and foreign technical knowledge. Ibo has a lower opportunity cost in the production of running shorts (natural resources are abundant within its territory) and specialization (the state's labor force is technically skilled at producing this good). Ibo's focus on producing running shorts utilizes beneficial resources and talents supplied domestically which in kind leads to higher output levels. Applying free trade principles, Ibo has a comparative advantage in the production of running shorts. Therefore, Ibo should adjust its trade policy to support the efficient production of running shorts and possibly trade this item for cell phones.

In contrast to Ibo, the nation-state of Lilk is resource-rich in aluminum, a key component necessary for cell phone manufacturing. Based on territorial size, education of the population, and abundant natural resources, Lilk is better positioned to efficiently produce cell phones rather than running shorts. Consequently, Lilk has a comparative advantage in the production of cell phones. The hypothetical situation presented shows that it is costly and inefficient for both Lilk and Ibo to dedicate their finite trade resources to the production of running shorts and cellphones respectively. Instead, each state should take advantage of their comparative advantage in domestically produced products that can be efficiently made with domestic resources. The net effect is a stronger economy for both states that is more cost-effective and prosperous over the long term.

### 3. *Regional Trade Pacts*

How can a regional trade pact strengthen or perpetuate free trade? The regional trade pact formation agreement, as a goal, seeks to establish common rules of governance on trade for a geographically centered group of states. In return, the members of the alliance gain access to other members' domestic markets. Operating under the influence of centuries of mercantilist dogma, states do not like providing access to their domestic markets to foreign competitors. Access presents the risk of thinning out the marketplace by eliminating the less competitive domestic players with more efficient foreign competitors.<sup>24</sup> In contrast, the end result of free trade for the consumer is a lower cost of goods of higher quality due to increased

---

<sup>24</sup> See Shara L. Aranoff, *Regional Trade Organizations: Strengthening or Weakening Global Trade?*, 88 PROC. ANN. MEETING (AM. SOC'Y INT'L L.) 309, 321 (1994).

competition in the marketplace. As regional trading organizations have gained influence, they have facilitated the insertion of local or regional economies into the globalized world markets versus propping up inefficient local markets solely for domestic consumption.<sup>25</sup> The regional trade pact embarks on a campaign of trade liberalization through reduced tariffs and restrictions among the constituent territories in support of inserting local economies into the global marketplace as competent, economical competitors.<sup>26</sup>

Regional trade pacts achieve the right balance between free trade and protectionist policies. The optimal balance is obtained through a decentralization of decision making for the group while fostering the principles of free trade among the member states. ASEAN is the prototypical example of success for the regional trade pact model. The utilization of free trade principles to form the regional trade pact and eliminate barriers to trade is referred to in this article as the “ASEAN approach” because the methodology of the process fosters free trade principles while preemptively squashing nationalist opposition.

ASEAN functions based on member consent rather than punitive mechanisms that seek to force the ten member states to cede an excessive amount of sovereignty to a centralized intergovernmental organization.<sup>27</sup> One of the criticisms advanced by opponents of free trade is that the member states of a regional trade pact must give up an excessive amount of national sovereignty as it pertains to domestic agenda decision making.<sup>28</sup> In contrast, ASEAN achieves similar free trade objectives intended by the founders of the European Union without an excessive surrender of sovereignty, utilizing multilateral agreements and a decentralized organization. As a result, ASEAN as a regional trade pact, continues to thrive in an international arena that is frequently bogged down with states resorting to mercantilist, insular trade policies in lieu of free trade measures.

---

25 Regional trading pacts that have gained influence in recent years include the following: North American Free Trade Agreement (NAFTA) established in 1992; the European Union (EU) established in 1993; and the Central American-Dominican Republic Free Trade Pact established in 2004.

26 Aranoff, *supra* note 24, at 315–16.

27 Ass’n of Southeast Asian Nations [ASEAN] Charter art. 2, ¶ 2 [hereinafter ASEAN Charter].

28 Simon Nixon, Comment, *The Global Rules-Based System Is in Crisis. Britain Must Fight to Defend It*, TIMES LONDON, Oct. 11, 2018, at 37. The argument against utilizing regional trade pacts was at the forefront of arguments pushed by the opposition to Britain’s continued membership in the European Union.

*B. The Rise of Nationalism Threatens Free Trade*

There are many utilitarian definitions of nationalism. Merriam Webster defines nationalism as “loyalty and devotion to a nation[;] especially a sense of national consciousness exalting one nation above all others and placing primary emphasis on promotion of its culture and interests as opposed to those of other nations or supranational groups.”<sup>29</sup> The dictionary definition of “nationalism” falls far short of conveying the multitude of ramifications for a nation that allows nationalism to influence its trade policies. The better way to conceptualize nationalism is the act of viewing trade policy decisions through the lens that favors one’s own nation.

Nationalism has risen and fallen over time and is not a new concept. Its origins emanate from the Peace of Westphalia of 1648.<sup>30</sup> Throughout the course of history nationalism has organically fomented the idea of national sovereignty. The effect of this growth has been that pro-nationalism states have resisted efforts by other states to attempt to influence the former state’s domestic affairs. States with influential nationalist sectors take positions denigrating free trade principles when the implementation of free trade policies result in a reduction in domestic jobs or a shift of production of goods to a more cost-efficient foreign state.<sup>31</sup> When the implementation of free trade schemes extract authority and decision making power from the state and transfer it to an external locus, such as an intergovernmental organization’s headquarters, the state with strong nationalist sectors bemoans the shift and attacks the idea of free trade portraying it as a threat to the state’s sovereignty.

---

<sup>29</sup> *Nationalism*, MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1995).

<sup>30</sup> Lauren Fielder, *Is Nationalism the Most Serious Challenge to Human Rights? Warnings from BREXIT and Lessons from History*, 53 TEX. INT’L LAW J. 212, 214 (Spring 2018).

<sup>31</sup> Leon Teeboom, *Negative Effects of Free Trade*, HOUS. CHRON. (Feb. 12, 2019), [smallbusiness.chron.com/negative-effects-trade-5221.html](http://smallbusiness.chron.com/negative-effects-trade-5221.html).

### C. *The European Union*

The European Union was formed after the end of World War II and consisted of six countries.<sup>32</sup> The ideological aspiration at the time was that nations who come together to support each other in trade become interdependent and are less likely to resort to armed conflict to resolve differences.<sup>33</sup> From its humble beginnings in 1951 as a coalition of six member states, the European Union grew to a zenith of membership comprising twenty-eight states<sup>34</sup> and status as a world renowned intergovernmental organization (“IGO”).<sup>35</sup> The European Union model as an IGO perpetuated a transfer of varying amounts of domestic, decision-making authority from the member states to a centralized European Union administration.<sup>36</sup> As time has gone on, the member states have ceded more and more domestic sovereignty to the European Union on a variety of issues.<sup>37</sup> This cession of sovereignty triggered deep feelings of resentment in the populations of some of the member states. Over time, the resentment turned into animosity focused towards the European Union Parliament in Brussels. This animosity towards Brussels transformed into anti-European Union political movements in some member states fueled by both nationalism and populism.<sup>38</sup>

The European Union and other regional trade pacts that mimic the EU model have been the subject of attacks in the arena of trade policy.<sup>39</sup> The battle cry of the opponents has been that the member states of some regional

32 *The History of the European Union*, EUR. UNION, [https://europa.eu/european-union/about-eu/history\\_en#:~:text=1945%20%2D%201959,-A%20peaceful%20Europe&text=As%20of%201950%2C%20the%20European,Italy%2C%20Luxembourg%20and%20the%20Netherlands](https://europa.eu/european-union/about-eu/history_en#:~:text=1945%20%2D%201959,-A%20peaceful%20Europe&text=As%20of%201950%2C%20the%20European,Italy%2C%20Luxembourg%20and%20the%20Netherlands) (last visited Oct. 13, 2020).

33 *Id.*

34 EUR. UNION, EUROPEAN UNION: WHAT IT IS AND WHAT IT DOES, at 7 (2018), <https://op.europa.eu/en/publication-detail/-/publication/715cfcc8-fa70-11e7-b8f5-01aa75ed71a1/language-en>.

35 In 2019, the United Kingdom terminated its membership in the European Union reducing the number of members to twenty-seven. *Brexit*, EUR. COUNCIL (Oct. 20, 2020), <https://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/>.

36 EUROPEAN UNION: WHAT IT IS AND WHAT IT DOES, *supra* note 34.

37 Eurosceptics in France point to the European Union’s legislation on immigration as forcing France to adopt the European stance on immigration issues instead of allowing France to dictate its own policies. See Xhulia Likaj, Lena Rieble & Laura Theuer, *Euroscepticism in France: An Analysis of Actors and Causes* (Inst. for Int’l Pol. Econ. Berlin, Working Paper No. 132, 2020).

38 For instance, one example of a political movement to examine is Italy’s stance toward the European Union. In 2002, Italy was very pro-European Union. In a short span of 16 years, Italy did an about face. Italy’s government is the result of a political movement based on populism that openly flaunts the stated goals of the European Union on immigration and budgetary policy. Stefano Montefiori, *Italians Used to Fervently Pro-Eu. What Went Wrong?*, GUARDIAN (Jan. 9, 2019, 1:00 PM), <https://www.theguardian.com/commentisfree/2019/jan/09/italians-pro-eu-italy-european-project>.

39 Nixon, *supra* note 28, at 37.

trade pacts have ceded too much of their sovereignty.<sup>40</sup> Opponents contend that the transfer of binding decision making authority over domestic affairs to a centralized organ by members in a regional trade pact jeopardizes the viability of the group itself to function and achieve the trade policy objectives that will benefit its constituent members. The domestic constituents of the individual member states view the centralized organ as an institution that is out of touch and not sensitive to local concerns, culture, and the welfare of the individual member states' citizenry.

These criticisms were manifested through the United Kingdom's extrication from the European Union, pejoratively referred to as Brexit.<sup>41</sup> The impetus for Brexit consisted of a collection of different, complicated motivations. One of the interests advanced by supporters of Brexit was the idea that for decades Brussels<sup>42</sup> passed regulations binding the United Kingdom's domestic policies that negatively impacted the country's interests and welfare. For example, one of the motivations voiced by Brexit supporters was that the free movement of people among the member states of the European Union served to deprive United Kingdom citizens of domestic jobs while simultaneously driving up the cost of social services rendered to newly arrived people from abroad.<sup>43</sup>

---

40 See, e.g., Aranoff, *supra* note 24, at 318 (exemplifying critiques advanced by proponents).

41 The full scope of the reasons for Brexit are numerous and beyond the scope of this article. The allusion to the discontent with the decision making is referenced here for illustrative purposes and by no means was the only motivating factor for the United Kingdom's departure from the European Union.

42 Brussels is the political headquarters of the European Union where the different governing arms are permanently housed and operated.

43 Sacha O. Becker, Thimo Fetzer & Dennis Novy, *Who Voted for Brexit? A Comprehensive District-Level Analysis*, 32 *ECON. POL'Y* 601 (2017).

## III.

It is with these critiques of the EU in mind that the effectiveness of ASEAN as a regional trade pact is best understood. Regional trade pacts have a proven record of success that strengthens the notion that free trade is sustainable and can thrive in today's complicated global trading arena. The methodology for success is to utilize free trade principles to form and organize the regional trade pact. This process serves to maximize the beneficial use of resources such as skilled labor, knowledge, and raw materials endemic to a particular region. Once the members of the regional trade pact successfully eliminate barriers to trade among themselves, then the trading bloc can leverage its strengths to trade globally with maximum efficiency. ASEAN serves as a solid example of a regional trade pact that successfully implements the tenets of free trade.

## A. ASEAN

## 1. Composition &amp; Structure

ASEAN is comprised of ten member states and is technically an intergovernmental organization.<sup>44</sup> However, unlike the European Union, ASEAN functions with little indicia of a traditional intergovernmental organization such as centralized management organs and binding regulations for its members.<sup>45</sup> The ASEAN charter does not obligate members to comply with centrally issued regulations. Instead, ASEAN members are encouraged to work to meet ASEAN's stated goals and to facilitate the resolution of challenges through consensus in order to reach the ideals set forth in the charter.<sup>46</sup>

Article I of the ASEAN Charter identifies the pursuit of free trade as a

<sup>44</sup> The ten members of ASEAN consist of the following states: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. *Association of Southeast Asian Nations*, NUCLEAR THREAT INITIATIVE (Mar. 26, 2019), <https://www.nti.org/learn/treaties-and-regimes/association-southeast-asian-nations-asean/>.

<sup>45</sup> ASEAN contains a Summit comprised of the heads of member states. There exists a Coordinating Council consisting of the foreign ministers of the member states. *ASEAN Coordinating Council*, ASS'N SE. ASIAN NATIONS (Sept. 2020), <https://asean.org/asean/asean-structure/asean-coordinating-council/>. There exists a Community Counsel consisting of national representation from each member state, a Committee of Permanent Representatives appointed by each member state, and National secretariats appointed by each member state. *See ASEAN Structure*, ASS'N SE. ASIAN NATIONS, <https://asean.org/asean/asean-structure/> (last visited Mar. 25, 2021). The structure of each position is meant to embody the principle of equality between the member states. Unlike the European Union, ASEAN does not have a legislative body.

<sup>46</sup> ASEAN Charter, *supra* note 27, art. 1, ¶ 2(15).

goal for the regional trade pact with the following language:

To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour, and freer flow of capital.<sup>47</sup>

The perceived erosion of sovereignty in a regional trade pact can grind economic progress to a halt. The following example set forth by Horacio A. Grigera Naón aptly covers the scope of the threat to the longevity and success of a regional trade pact pursuing free trade principles in the international arena:

A good example of supranationalism is the Andean Pact, which was created within the framework of LAFTA [Latin American Free Trade Association Treaty]. Through the Andean Pact agreements, supranational organs were created, including the Commission of the Cartagena Agreement. This supranational organ, which has the power to issue resolutions that are automatically binding on member states as soon as they are published in the *Bulletin of the Andean Pact*, created a web of stringent regulations limiting the autonomy of member countries in fashioning their economic policies. Since the Andean Pact was inspired by protectionist and import substitution ideas, when the economic situation changed in the world and the Andean Pact countries needed to become more open free trade economies, this was a very difficult obstacle to overcome, and it could only be overcome by returning to participating Andean Pact countries a substantial portion of the sovereign powers they had ceded. This is a case in which supranationalism was not very functional.<sup>48</sup>

ASEAN dealt with the erosion of sovereignty issue proactively in its charter by promoting, as a core value, the non-interference in the internal affairs of ASEAN member states by other ASEAN members.<sup>49</sup> In contrast with the European Union, the amounts and levels of state sovereignty ceded to become a member state in ASEAN is very low.<sup>50</sup> The member states agree

---

47 ASEAN Charter, *supra* note 27, art. 1, ¶ 5.

48 Aranoff, *supra* note 24, at 318.

49 ASEAN Charter, *supra* note 27, art. 2, ¶ 2(e)–(f).

50 For example, the European Union enacted laws to regulate banking and issue product standards.

to be bound by the founding charter, which has very few rules. Instead the charter contains ideals.<sup>51</sup> The word “rule” appears infrequently in the charter compared to the word “recommendations” and similarly natured words.<sup>52</sup> The impact of the difference in the approaches between ASEAN and the European Union is plainly evident when examining the dispute resolution process. ASEAN elected to place the member states’ sovereignty above dispute resolution imposed by the regional trade pact.<sup>53</sup>

## 2. *Dispute Settlement*

When ASEAN member states have an issue, they “may” agree to participate in the alternative dispute resolution method of good offices, conciliation, or mediation.<sup>54</sup> Binding forms of dispute settlement are not compulsory processes forced upon the ASEAN members. Parties “may” request that the chairman of ASEAN or the Secretary-General act as the mediator.<sup>55</sup> If a dispute remains unsettled, the members “shall” be referred to the ASEAN Summit for a decision.<sup>56</sup> Once the Summit makes a decision regarding the dispute, then the Secretary-General monitors compliance and submits a follow-up report to the Summit.<sup>57</sup> There is no mechanism by which a noncompliant member state can receive an enforceable decision from the Summit.<sup>58</sup> The overall effect, or punishment, is a diminution in honor among the other member states. While this notion of a loss of honor may seem ineffective to western cultures, in eastern cultures a loss of honor and respect carries great weight and impacts current and future dealings among the ASEAN members.<sup>59</sup>

---

In contrast, the ASEAN approach eschews the integration of the member states in this way. ASEAN members are left to enact banking regulations and product standards at the local level to support free trade principles without seeking a uniform approach. Derrick Wyatt, *How the EU Works: The EU’s Powers*, FULL FACT (Apr. 14, 2016), <https://fullfact.org/europe/eus-powers/>.

<sup>51</sup> ASEAN Charter, *supra* note 27, pmb1., art. 1.

<sup>52</sup> *See id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* art. 23, ¶ 1.

<sup>55</sup> *Id.* art. 23, ¶ 2.

<sup>56</sup> *Id.* art. 26.

<sup>57</sup> *Id.* art. 27, ¶ 1.

<sup>58</sup> Per Article 28 of the ASEAN Charter, if any two member states are also members of another organization, then those members can use the other organization’s dispute settlement mechanisms. Member states can freely participate in and engage in other organizations. ASEAN does not hold as a tenet the free movement of people throughout the region as compared to the European Union. *See* ASEAN Charter, *supra* note 27, art. 1, ¶ 5 & art. 28.

<sup>59</sup> *See* 4 BUILDING ASEAN COMMUNITY: POLITICAL–SECURITY AND SOCIO-CULTURAL REFLECTIONS 29 (Aileen Baviera & Larry Maramis eds., 2017) (discussing the import of cultural understanding in ASEAN’s success).

### 3. *Historical Development*

ASEAN's membership consists of a collection of states with great diversity defined in large part by colonialism. Brunei, Malaysia, Myanmar, and Singapore were all former colonies of the British Empire.<sup>60</sup> Cambodia, Laos, and Vietnam were colonies of France.<sup>61</sup> Indonesia was a Dutch colony and the Philippines was subject to Spanish and American rule.<sup>62</sup> Thailand is the only ASEAN member that was never formally colonized. Coupled with membership in ASEAN, Thailand, Singapore, and Malaysia engineered a transition from plan economies to market economies each realizing significant growth rates and sharp reductions in poverty.<sup>63</sup>

ASEAN developed in phases over time resulting in a highly successful regional trade pact in present day that leverages its production efficiencies to attain favorable trade deals in multilateral agreements with other states.<sup>64</sup> To understand how the phased evolution of the organization triggered such efficient economies, it is necessary to review ASEAN's development. ASEAN was established on August 8, 1967, with the Bangkok Declaration.<sup>65</sup> ASEAN started with trade liberalization measures such as: (i) product-by-product tariff reduction negotiations among its members; (ii) combined with package deal arrangements for large industrial projects; and (iii) financial incentives and cooperation.<sup>66</sup> The initial programs and attempts at forming a collective were minimally successful. The tariff cuts were too small to have any discernable impact on trade and the

---

60 THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY 358 (Mordechai E. Kreinin & Michael G. Plummer eds., 2012).

61 Valérie Niquet, *The Legacy of France's Colonial Past in Asia and its Consequences for Contemporary International Relations and Conflict Resolution*, JAPAN INST. INT'L AFFS. (2018), <https://www.frstrategie.org/sites/default/files/documents/publications/autres/2018/2018-niquet-jiia-france-colonial-past-in-asia.pdf>.

62 See Dana R. Herrera, *The Philippines: An Overview of the Colonial Era*, 20 SE. ASIA HUMANITIES & SOC. SCI. CURRICULA 14 (2015), <https://www.asianstudies.org/wp-content/uploads/the-philippines-an-overview-of-the-colonial-era.pdf>.

63 Clifford J. Shultz & Anthony Pecotich, *Marketing and Development in the Transition Economies of Southeast Asia: Policy Explication, Assessment, and Implications*, 16 J. PUB. POL'Y & MKTG. 55, 56 (1997).

64 Less than eight years after formation, Japan took notice of the potential inherent in ASEAN as a Regional Trade Pact when it was the first foreign nation to initiate discussions and declarations of support for the organization. Sueo Sudo, *Japan-ASEAN Relations: New Dimensions in Japanese Foreign Policy*, 28 ASIAN SURV. 509, 510 (1988).

65 Ass'n of Southeast Asian Nations [ASEAN], *The ASEAN Declaration (Bangkok Declaration)* (Aug. 8, 1967), <https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/> [hereinafter *Bangkok Declaration*].

66 THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60, at 360.

implementation of other programs were half-hearted at best.<sup>67</sup>

The second phase of ASEAN's development commenced in 1975 with five members who formally entered into the Bali Summit agreement.<sup>68</sup> The aim of the Bali Summit was to promote specialization in complementary products and to facilitate the pooling of resources.<sup>69</sup> These measures were the first concrete steps that the original members took towards implementing free trade principles into the IGO. By agreeing to improve their trade processes through specialization, the members in effect agreed to abandon other ventures that were inefficient. The favoring of efficient industries by allocating resources to those resource rich industries is a core principle of the doctrine of free trade and serves to create and enhance each country's comparative advantage.<sup>70</sup> Likewise, the pooling of resources was a step which enabled the members to make the maximum use of the available resources in order to provide the most cost-efficient product for the marketplace—which is a hallmark of the free trade process.

Notably, up until the 1980s, Indonesia and the Philippines were largely closed to the international economy until they embarked on an historic reorientation from a plan economy to a market economy prior to national reorientation.<sup>71</sup> These two states each had high barriers to international trade and investment. Since the 1980s, both states worked to become increasingly open, especially to foreign direct investment. Notwithstanding the structured and measured steps taken to reform and overhaul the different economies of the states in ASEAN, each ASEAN member retains highly protected sectors that are often dominated by state-owned enterprises. For instance, Indonesia pursued a policy of very high tariffs for automotive parts, sometimes reaching as high as 200%.<sup>72</sup> The purpose of this tariff was to protect its own domestic automotive industry.

The third phase of ASEAN development commenced in 1992 at a leaders' summit where the Agreement for the ASEAN Free Trade Area was announced.<sup>73</sup> Here the members emphasized a willingness to engage in

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 361. The five founding members were Indonesia, Malaysia, the Philippines, Singapore and Thailand. See *History: The Founding of ASEAN*, ASS'N SE. ASIAN NATIONS, <https://asean.org/asean/about-asean/history/> (last visited Mar. 25, 2021).

<sup>69</sup> THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60, at 361.

<sup>70</sup> See Irwin, *supra* note 3.

<sup>71</sup> See Daniel Joseph Ringuet & Elsa Estrada, *Understanding the Philippines' Economy and Politics Since the Return of Democracy in 1986*, 25 CONTEMP. SE. ASIA 233, 238 (2003).

<sup>72</sup> Paul Civello, *The TRIMs Agreement: A Failed Attempt at Investment Liberalization*, 8 MINN. J. GLOB. TRADE 97, 122 (1999).

<sup>73</sup> Agreement on The Common Effective Preferential Tariff (CEPT) Scheme for The ASEAN Free Trade Area, Jan. 28, 1992, [https://asean.org/?static\\_post=agreement-on-the-common-effective-preferential-tariff-cept-scheme-for-the-asean-free-trade-area-singapore-28-january-1992](https://asean.org/?static_post=agreement-on-the-common-effective-preferential-tariff-cept-scheme-for-the-asean-free-trade-area-singapore-28-january-1992).

stronger economic cooperation with affirmative action. The Agreement for the ASEAN Free Trade Area envisioned that all goods traded among ASEAN members was to be included in the Free Trade Area, and thus subject to tariff reductions. All goods traded among the members were included within the ASEAN Free Trade Area prompting significant tariff reductions, unless explicitly excluded.<sup>74</sup> In this phase of development, ASEAN acknowledged the trade pact's intention to take affirmative steps to increase the gross domestic product ("GDP") among ASEAN's members in order to position itself as a competitive market alternative to China.<sup>75</sup>

In the latter stage of the third phase of development circa 1995, ASEAN members invited Myanmar to join the Regional Trade Pact.<sup>76</sup> At this stage of the process, members focused their efforts on adding the liberalization of services in the following five sectors:

- Financial Services;
- Transport;
- Telecommunications;
- Tourism; and
- Professional business services.<sup>77</sup>

It is noteworthy that ASEAN adopted formal instruments to promote foreign direct investments among its member states. The proliferation and official encouragement of foreign direct investment is another example of the member states embracing a tenet of free trade to strengthen their individual economies and the collective position of trade for all the member states.

During the subsequent fourth phase of ASEAN development, member states focused their attention on strengthening financial and economic growth while dealing with a quickly changing global and regional trade environment in Asia. By 2009, tariffs were eliminated for 64% of the products traded among the member states on the ASEAN Free Trade Area's Inclusion List.<sup>78</sup> Based on the changes initiated in 1993, other products, not included on the Inclusion List, saw tariffs fall from 12.8% to 1.5%.<sup>79</sup>

---

<sup>74</sup> ASEAN implemented a Negative Trade List, which identified goods that remained subject to tariffs. Meanwhile, the negative list identified certain products that did not receive reductions in tariffs even though those products were within formerly agreed to categories of products covered by the ASEAN Free Trade Agreement.

<sup>75</sup> THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60, at 362.

<sup>76</sup> Seth Mydans, *Southeast Asia Bloc Admits Burmese and Two Others*, N.Y. TIMES (June 1, 1997), <https://www.nytimes.com/1997/06/01/world/southeast-asia-bloc-admits-burmese-and-two-others.html>.

<sup>77</sup> THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60, at 372.

<sup>78</sup> *Id.* at 376.

<sup>79</sup> *Id.* at 364.

During this same time period, the world saw ASEAN's purchasing power outpace other regional associations by 25-to-1.<sup>80</sup> An equally impressive accomplishment was the dramatic fall in poverty rates for ASEAN member states overall.<sup>81</sup>

#### 4. *ASEAN is a Highly Effective Regional Trade Pact*

This section examines the economic performance of the founding members of ASEAN and provides a snapshot of the founding member country's economic performance through its membership in ASEAN along with descriptions of domestic initiatives undertaken and the accompanying growth achieved. The examination reveals that ASEAN is a highly effective regional trade pact.<sup>82</sup>

There exists no one accepted method for measuring the effectiveness of ASEAN initiatives and programs on a member country's economy pre-ASEAN membership and post-ASEAN membership. Instead, this article looks to economist Rajah Rasiah, who published an article in 2014 that considered multiple models used by other leading economists to assess the impact of economic integration on ASEAN members as a whole.<sup>83</sup> The creation of an economic model to assess the impact of ASEAN's effectiveness as a regional trade pact is beyond the scope of this work, but the notion is relevant and worth considering and is undertaken here solely by measuring the growth in GDP for illustrative simplicity.

---

80 *Id.* at 365–66.

81 *Id.* at 367. While poverty throughout ASEAN fell rapidly during this phase, Cambodia and Laos continued to be regarded as least developed states.

82 See generally *The ASEAN Free Trade Area (AFTA)*, ASS'N SE. ASIAN NATIONS, <https://asean.org/asean-economic-community/asean-free-trade-area-ASEAN-FTA-council/> (last visited Mar. 23, 2020).

83 Rajah Rasiah, *Economic Implications of ASEAN Integration for Malaysia's Labour Market* (Int'l Lab. Org., Working Paper, 2014), [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_323002.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_323002.pdf).

a) *Singapore*

Singapore was one of the original five founding members of ASEAN.<sup>84</sup> The path for Singapore to become an influential player in the global trade arena began with its role as an entrepôt.<sup>85</sup> Singapore was a British colony until 1963—as a colony, Britain utilized Singapore as a trading port to ship goods throughout Asia.<sup>86</sup> As early as the 1930s, Singapore had developed into a renowned exporter and distributor of products to the region.<sup>87</sup>

With the support of Europe, Singapore amassed goods ports, transport facilities, and trade financing; however, manufacturing was limited.<sup>88</sup> In August 1963, Singapore seceded from the British crown.<sup>89</sup> After a brief geopolitical alignment flirtation with Malaysia, Singapore became an independent country on August 9, 1965.<sup>90</sup> In the mid-1960s, much of Singapore's population of three million was unemployed.<sup>91</sup> Due to significant population growth in the 1950s, Singapore experienced some industrialization in the 1970s.<sup>92</sup> But Singapore, an archipelago nestled in between Malaysia and Indonesia, lacked the abundance of natural resources to become a major industrial nation.<sup>93</sup> The geographical position of Singapore required that its government leaders devise novel approaches to fostering economic development and growth. Therefore, to build a burgeoning economy, the leaders embarked on a carefully considered plan of globalization which included founding ASEAN as a charter member. Over the long term, Singapore's investment of resources into physical ports, wharves, transport facilities, and financing laid the foundation for Singapore to realize the positive impact potential that global trade can have on a burgeoning economy.

---

84 *History: The Founding of ASEAN*, ASS'N SE. ASIAN NATIONS, <https://asean.org/asean/about-asean/history/> (last visited Mar. 25, 2021). ASEAN was formed in Bangkok on August 8, 1967. *Id.*

85 GAVIN PEEBLES & PETER WILSON, *ECONOMIC GROWTH AND DEVELOPMENT IN SINGAPORE: PAST AND FUTURE* 26 (2002).

86 Barbara Leicht Lepoer, *Singapore: A Country Study* 124 (Barbara Leitch LePoer ed., 2d ed. 1991).

87 PEEBLES & WILSON, *supra* note 86, at 26.

88 *Id.*

89 Ping Zhou, *The History of Singapore's Economic Development*, THOUGHTCO. (July 10, 2019), [thoughtco.com/singapores-economic-development-1434565](http://thoughtco.com/singapores-economic-development-1434565).

90 *Id.*

91 *Id.*

92 Khuong M. Vu, *Sources of Singapore's Economic Growth, 1965–2008: Trends, Patterns, and Policy Implications*, 28 ASEAN ECON. BULL. 315, 316 (2011).

93 Zhou, *supra* note 90.

Singapore courted foreign investors to develop manufacturing firms.<sup>94</sup> As the amount of foreign investment climbed, Singapore focused its resources on training its people for manufacturing and service-related jobs.<sup>95</sup> Prior to forming ASEAN, Singapore had a GDP per capita of \$320.<sup>96</sup> By early 2020, Singapore achieved a GDP per capita of \$60,000.<sup>97</sup> ASEAN made significant strides in increasing trade for its members with the rest of the world. In the aggregate, extra-regional trade is much larger than intra-regional trade for ASEAN members with one exception—Singapore.<sup>98</sup> For Singapore, intra-regional trade averages fluctuate between 15% and 30% of total ASEAN trade; the remainder of trade comes from exports outside of ASEAN.<sup>99</sup> Accordingly, in all respects, Singapore dominates intra-ASEAN trade flows. ASEAN markets constitute more than one-fourth of total exports for Singapore.<sup>100</sup>

Throughout the process of trade liberalization in ASEAN, there is a tendency to refrain from letting ASEAN goals dictate domestic policies of its members. An example of this implied tenet is evident when scrutinizing Singapore's approach to extra-regional trade. Singapore actively utilizes Preferential Trading Agreements especially in areas where ASEAN is slow to move forward.<sup>101</sup> For instance, Singapore successfully used Preferential Trade Agreements to extract concessions from partner countries such as India to obtain landing rights for Singapore Airlines.<sup>102</sup> However, Preferential Trading Agreements spark controversy.<sup>103</sup> Most Preferential Trading Agreements are extra-regional in nature because they are designed to restore market access with traditional trading partners who were not invited to join the regional trade pact.<sup>104</sup>

---

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 Hal Hill & Jayant Menon, *ASEAN Economic Integration: Features, Fulfillments, Failures and the Future* 13–15 (Asian Dev. Bank, Working Paper No. 69, 2010), <https://www.adb.org/sites/default/files/publication/28551/wp69-hill-menon-asean-economic-integration.pdf>.

99 THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60, at 370.

100 *Trade Values*, ASS'N SE. ASIAN NATIONS (Oct. 3, 2012), [https://asean.org/?static\\_post=trade-values](https://asean.org/?static_post=trade-values). Malaysia also accounts for another one-fourth of trade exports to ASEAN members. *Id.* These figures are from 1993–1994.

101 Preferential Trade Agreements are trade agreements designed to promote regional free trade and to give preferential treatment to developing countries.

102 THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60, at 377.

103 *Id.* Some scholars contend that preferential trade agreements when used as a trade resource for economies in transition serve as a distraction from the more important task of general trade reform into a pure market economy.

104 *Id.* at 378.

The astronomical increase in GDP over the last sixty years marks Singapore as one of the strongest economies in the world.<sup>105</sup> Singapore has risen to become undoubtedly one of the world leaders in global commerce due in large part to (i) adoption and pursuit of its long-term globalization plan; and (ii) its cultivation of ASEAN as a powerful regional trade pact as an integral part of that globalization plan.

*b) Thailand*

Thailand was another founding member of ASEAN.<sup>106</sup> When Thailand joined ASEAN, it was largely an agricultural country.<sup>107</sup> Thailand, although surrounded by countries who were controlled by either the French or the British, was never formally colonized by the Europeans. Prior to joining ASEAN, Thailand's economy consisted of largely agricultural interests resulting in more than 70% of the population deriving their earnings from agriculture.<sup>108</sup> The Thai government engaged in extensive investment in infrastructure and embarked on a plan of government intervention setting the prices on key agricultural products from 1960 to 1985.<sup>109</sup> This policy was meant to encourage growing of certain crops to encourage Thai self-sustainability, especially for food consumption by its population.<sup>110</sup>

Through three different phased plans, spanning from 1961 to 1976, Thailand invested its resources to improve general infrastructure benefitting agriculture and industry as part of a greater systemic plan to promote industrialization.<sup>111</sup> Thailand encouraged foreign investment into domestic industries.<sup>112</sup> With these measures, Thailand achieved a transformation in its economy from a largely agricultural one to a more industrialized inclusive economy. Data show that Thailand realized a larger growth in GDP for both the Industry and Services sectors of its economy compared to Agriculture from 1958 to 1984.<sup>113</sup> Overall, Thailand realized an increase in GDP of approximately 5.8% from 1958 to 1984 due in large part to a shift

---

<sup>105</sup> Zhou, *supra* note 90.

<sup>106</sup> *History: The Founding of ASEAN*, *supra* note 85.

<sup>107</sup> AMMAR SIAMWALLA & SUTHAD SETBOONSARNG, TRADE, EXCHANGE RATE, AND AGRICULTURAL PRICING POLICIES IN THAILAND, at iii (1989).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* The Thai government imposed restrictions on the export of sugar cane, rice, maize, and natural rubber. *Id.* Between 1981 and 1985, the government effectively lifted all of its restrictions and embraced free trade for these products. *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 11.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 10. Table 1.4 contains the relevant figures.

in its approach toward diversifying its economy in harmony with the tenets of ASEAN's charter.<sup>114</sup>

Strengthened dedication by Thailand to the ASEAN ideals occurred after the implementation of the Agreement for the ASEAN Free Trade Area, which was signed in 1992.<sup>115</sup> With the ratification of the Agreement for the ASEAN Free Trade Area, Thailand committed to engaging in closer economic cooperation in trade, services, and financial investments with other ASEAN members in order to increase regional competitiveness in the global market.<sup>116</sup> Thailand succeeded to the chairmanship of ASEAN in 2008.<sup>117</sup> As Chair, Thailand oversaw the implementation of the ASEAN Charter in 2008 which transformed the loose association of member countries subsisting in a Free Trade Area into a soft rule-based regional trade pact.

Consequently, in 2008, Thailand was well-poised to progress—economically endowed with a strong middle-class demand for goods, a large industrial base, and strong supply chains. Thailand capitalized on these traits to take advantage of its greater connectivity to the other regional economies by changing its trade orientation and moving toward the emerging economies in ASEAN.<sup>118</sup> Integral to its economy, Thailand now: (i) supplies intermediate inputs and raw materials to the other regional economies throughout Southeast Asia so that those countries can produce final goods for the global economy; and (ii) produces goods domestically for sale in the global economy.<sup>119</sup>

A snapshot of Thailand's economy in 2013 shows significant positive results from its participation in ASEAN. For instance, Thailand saw an increase of nearly \$260 billion in its GDP measured from 2000 to 2013.<sup>120</sup> Sticking with the same time period, Thailand enjoyed a growth in GDP per capita of \$1,968 in 2000 to \$5,778 in 2013.<sup>121</sup> Thailand's performance intra-regionally is equally impressive. Thailand's trade with its four neighboring

114 *Id.*

115 *Southeast Asia: A Free Trade Area*, ASS'N SE. ASIAN NATIONS, at 1 (2002), <https://www.asean.org/storage/images/archive/pdf/AFTA.pdf>.

116 *Thailand and ASEAN*, ROYAL THAI EMBASSY, <https://thaiembdc.org/thailand-and-asean/> (last visited Mar. 26, 2021).

117 *ASEAN Chair*, ASS'N SE. ASIAN NATIONS, <https://asean.org/asean/asean-chair/> (last visited Mar. 26, 2021).

118 Suthiphand Chirathivat & Kornkarun Cheewatrakoolpong, *Thailand's Economic Integration with Neighboring Countries and Possible Connectivity with South Asia* 4 (Asian Dev. Bank Inst., Working Paper No. 520, 2015).

119 *Id.*

120 *Id.* at 5.

121 *Id.*

countries<sup>122</sup> grew by substantial amounts. For example, the total trade between Thailand and its four neighboring countries in 2003 was worth \$285 billion.<sup>123</sup> In 2012, trade with those same four neighboring countries climbed to \$910.5 billion.<sup>124</sup> For a country with a population of 69 million and a geographic land mass of only 197,256 square miles, that amount of economic growth is impressive.<sup>125</sup> The growth and economic prosperity sent ripples throughout Thai culture.

According to the World Bank, in the past four decades, Thailand has made remarkable progress in social and economic development.<sup>126</sup> Specifically, poverty declined at a rapid pace from 65.2% in 1988 to 9.85% in 2018.<sup>127</sup> Also, the World Bank found that “[g]ains along multiple dimensions of welfare have been impressive: more children are now getting more years of education and virtually everyone is now covered by health insurance, while other forms of social security have expanded.”<sup>128</sup> In retrospect, Thailand’s membership and willingness to maximize the tenets of ASEAN have paid huge dividends for the country. Thailand successfully integrated ASEAN principles into its greater plan of globalization to take on a leadership role in the economies of Southeast Asia. Thailand is better off now based on a multitude of metrics than it was prior to embarking on a sustained long-term plan to liberalize trade as a member of ASEAN.

---

122 The four neighboring countries are Cambodia, Laos, Malaysia, and Myanmar (all ASEAN member states).

123 See Chirathivat & Cheewatrakoolpong, *supra* note 119.

124 *Id.*

125 *Thailand Population*, WORLDOMETER, <https://www.worldometers.info/world-population/thailand-population/> (last updated Feb. 27, 2021). Thailand’s geographic land mass is smaller than that of Texas, and Thailand’s population is roughly equal to the population of California and Texas combined. Compare *id.* (Thailand’s land mass and population), with *Size of States*, STATE SYMBOLS USA, <https://statesymbolsusa.org/symbol-official-item/national-us/uncategorized/states-size> (last visited Mar. 26, 2021) (Texas’s land mass), and *Quick Facts: California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/CA> (July 1, 2019) (California’s population), and *Quick Facts: Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/TX> (Texas’s population) (last visited Mar. 26, 2021).

126 *The World Bank in Thailand*, WORLD BANK (Sept. 2020), <https://www.worldbank.org/en/country/thailand/overview>.

127 *Id.*

128 Avishek Datta, Rajendra P. Shrestha, Hayat Ullah, Li He & Yuji Niino, *Study Report on Wetland Agriculture and Water Management in the Mekong Region*, FOOD & AGRIC. ORG. UNITED NATIONS, at 11 (2020), <https://www.worldbank.org/en/country/thailand/publication/thailand-systematic-country-diagnostic-getting-back-on-track-and-reviving-growth> (citing a 2019 World Bank report).

c) *Malaysia*

Malaysia was a former colony of Britain when it gained its independence in 1957.<sup>129</sup> Malaysia's economy upon gaining independence was mostly based on agriculture, mining, and commodities.<sup>130</sup> Post-colonial Malaysian society was stratified into three distinct groups focused on agriculture, commerce, and professional vocations. Central planning by the government was a key to the economic development of Malaysia. Post-independence, Malaysia's government instituted a long-term plan to become an industrialized economy by 2020.<sup>131</sup> The government enacted legislation that (i) encouraged the growth and proliferation of an entrepreneurial class; as well as (ii) strengthened the manufacturing sector of the country.<sup>132</sup> A review of sectors of Malaysian trade shows that Malaysia benefitted from economic integration.

In large part due to the government's deep involvement in the economy through subsidies and stimulus packages, GDP grew from \$1.92 billion to \$3.86 billion in the 1960s.<sup>133</sup> Malaysia enjoyed a larger growth in GDP in the 1970s. Malaysia's GDP was \$3.86 billion in 1970 and grew to \$24.49 billion by 1980.<sup>134</sup> GDP growth normalized in the 1980s, returning to a level of approximately 6.16% growth in the 1980s.<sup>135</sup> With the realization that embracing the tenets of ASEAN could bolster the government's long-term goal of becoming a fully industrialized country by 2020, Malaysia focused its efforts on improving exports to foreign countries. As a result, Malaysia realized GDP growth from \$44.02 billion to \$93.79 billion in the 1990s.<sup>136</sup>

Due in large part to foreign direct investment, Malaysia enjoyed a manufacturing expansion from the early 1970s until 2000.<sup>137</sup> However, a failure to focus on upgrading technological processes from low to high

129 THE OXFORD HANDBOOK OF INTERNATIONAL COMMERCIAL POLICY, *supra* note 60.

130 See *The World Bank in Malaysia*, WORLD BANK (Apr. 2020), <https://www.worldbank.org/en/country/malaysia/overview>; Rasiah, *supra* note 84.

131 Rasiah, *supra* note 84, at 1.

132 See Jomo K.S., *The New Economic Policy and Interethnic Relations in Malaysia* (United Nations Rsch. Inst. for Soc. Dev., Working Paper No. 7, 2004), [http://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/A20E9AD6E5BA919780256B6D0057896B?OpenDocument](http://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/A20E9AD6E5BA919780256B6D0057896B?OpenDocument).

133 *Malaysia GDP 1960–2021*, MACROTRENDS, <https://www.macrotrends.net/countries/MYS/malaysia/gdp-gross-domestic-product>. (last visited Jan. 5, 2021).

134 *Id.*

135 *Id.*

136 *Id.*

137 *Id.*

value added activities caused Malaysia's manufacturing sector to lose ground to other regional competitors.<sup>138</sup> Post-1971, the manufacturing sector realized double-digit annual growth allowing it to overtake agriculture as the leading contributor to Malaysia's GDP by 1988.<sup>139</sup> The contraction in the manufacturing sector after 2000, coincided with an expansion of the services industry in Malaysia (transport, communication, finance, and public administration).<sup>140</sup> Although the services sector expanded, the expansion did not generate enough revenue for Malaysia to offset the decline in the manufacturing sector's contributions to GDP.

The Malaysian economy can be segmented into twelve categories consisting of the following: food & beverage; textile & garments; wood; chemicals; petroleum & coal; rubber & plastics; non-metallic minerals; basic metals; machinery (including electrical); transport equipment; professional & scientific equipment; and others.<sup>141</sup> The data reflecting the trade balance of Malaysia with other countries shows that in 1979, for seven of the twelve categories identified, Malaysia had a negative trade balance with other countries.<sup>142</sup> More importantly, as will be seen, Malaysia capitalized on the power of ASEAN as a collective body to leverage its membership and foment growth. Malaysia is a middle-income economy with prospects to become a high-income economy by 2024.<sup>143</sup> Yet, by 2008 and again in 2012, that negative trade balance had been reduced from seven categories to only three.<sup>144</sup>

These figures support a positive assessment of the impact ASEAN membership and its alignment with Malaysia's central government planning had as a resource to achieve greater economic integration. Overall, after actively participating in ASEAN programs beginning with the ASEAN Free Trade Agreement, Malaysia's export flow increased proportionately with GDP along with a significant rise in trade with other ASEAN members.<sup>145</sup> As a result, Malaysia realized two significant benefits. First, Malaysia enjoys a thriving integrated economy poised for sustainable growth. Second, Malaysia wields influential power regionally and globally in the

---

138 Rasiyah, *supra* note 84, at 12–14.

139 *Id.* at 10.

140 *Id.* at 11.

141 *Id.* at 15.

142 *Id.*

143 *The World Bank in Malaysia*, *supra* note 131.

144 Rasiyah, *supra* note 84, at 15.

145 Patcharee Preepremmote, Sumalee Santipolvut & Thitima Puttitanun, *Economic Integration in the ASEAN and Its Effects on Empirical Economic Growth*, 13 J. APPLIED ECON. SCIS. 922, 925 (2018).

marketplace as a thriving member of the ASEAN collective.

*d) Indonesia*

Indonesia is the world's largest archipelago with a population of more than two hundred seventy million.<sup>146</sup> The country has abundant natural resources in timber, fish, minerals, petroleum and biodiversity.<sup>147</sup> The resources make the mining, petroleum, services, and agricultural industries significant components to Indonesia's economy. For example, in 2006, agriculture accounted for 13% of Indonesia's GDP and employed more than 44% of the country's workforce.<sup>148</sup>

Indonesia was one of the original founding members of ASEAN in 1967.<sup>149</sup> The ASEAN of today is markedly different than the concept advanced by the founding members in 1967. Politically, Indonesia followed a socialist government agenda from the late 1960s up until 1999.<sup>150</sup> At that time, Indonesia transitioned to a decentralized government delegating significant authority to regional decision makers.<sup>151</sup> Although Indonesia was a member of ASEAN during this time, one of the consequences of the move to decentralize power resulted in the pursuit of mercantilist trade measures designed to protect domestic industries. Indonesia's adoption of the mercantilist approach in trade policies wreaked havoc in one sector of its economy—rice.

After the Asian financial crisis, Indonesia imposed a ban on rice imports to protect the domestic industry.<sup>152</sup> As a result, Indonesian consumers experienced a 30% rise in domestic rice prices.<sup>153</sup> This lone trade policy represented a return to mercantilist policies in response to nationalist fears that domestic industries would be hurt by opening up the Indonesian economy to trade. The impact of the rise in rice prices was far reaching. Rice is a staple to the diet of the Indonesian people. The 30% rise in rice prices consumed a larger percentage of the poorest of Indonesia's income just to maintain the same level of rice consumption. The plight of the

<sup>146</sup> See Trade Policy Review Body, *Trade Policy Review: Report by the Secretariat Indonesia*, WTO Doc. WT/TPR/S/184, at x (May 23, 2007); The World Bank, *Population, Total – Indonesia*, WORLD BANK (2019), <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=ID>.

<sup>147</sup> *Trade Policy Review: Report by the Secretariat Indonesia*, *supra* note 147.

<sup>148</sup> *Id.*

<sup>149</sup> Melissa Peach, *Eye of the Tiger: Examining Tensions in Indonesia's Trade Regime*, 22 CURRENTS: INT'L TRADE L.J. 38, 47 (2013).

<sup>150</sup> *Id.* at 39, 41.

<sup>151</sup> *Trade Policy Review: Report by the Secretariat Indonesia*, *supra* note 147, at viii.

<sup>152</sup> *Id.* at vii.

<sup>153</sup> *Id.*

poorest people in Indonesia was worsened by a trade policy that was meant to protect and grow the rice industry. The trade policy, which was meant to protect and grow the rice industry, actually increased the percentage of those living in poverty.<sup>154</sup> The ban on the import of foreign rice occurred in 2006 amidst the government's greater push to liberalize the economy.<sup>155</sup> The ban was just one example of the negative impact of the politicization of trade. Even though Indonesia set a national policy to pursue free trade, there still existed factions able to muster powerful resistance to those measures that served to slow down progress.

Not until the 2000s did Indonesia start to pursue a coherent and comprehensive reform program aimed at achieving free trade with external partners.<sup>156</sup> For example, in 2006, the Indonesian government instituted a program aimed at improving the investment climate, the financial sector, and infrastructure.<sup>157</sup> Indonesia pursued a triple track strategy to improve international trade consisting of multilateral trade agreements under the World Trade Organization guidelines, regional trade agreements emanating from its membership in ASEAN, and individual bilateral trade agreements with developed countries such as Japan.<sup>158</sup> Indonesia's trade with World Trade Organization member countries resulted in Most Favored Nation status<sup>159</sup> for tariffs imposed in the range of 9.2% for industrial products and 11.4% for agricultural imports.<sup>160</sup> In contrast, Indonesia's trade with ASEAN member states resulted in phenomenally lower tariffs dipping to 2.7% thereby promoting intra-ASEAN trade over trade with non-ASEAN member states.<sup>161</sup>

In the second phase of reforms, Indonesia targeted its financial sector. Not surprisingly, the 1997-98 Asian financial crisis spurred the country to undertake major changes in its monetary policy.<sup>162</sup> In large part, the changes were motivated by Indonesia's desire to receive bailout funds from the

---

154 *Id.*

155 *Id.*

156 *See id.* at viii.

157 *Id.*

158 *Id.*

159 Most Favored Nation status means that the countries engaging in trade do so on terms that do not discriminate and impose tariffs or other restrictions against each other as a way to inhibit the resulting trade. *See Principles of the Trading System*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm) (last visited Mar. 26, 2021).

160 *Trade Policy Review: Report by the Secretariat Indonesia*, *supra* note 147, at ix.

161 *Id.*

162 Peach, *supra* note 150, at 47.

International Monetary Fund to deal with the financial crisis.<sup>163</sup> The reforms served to strengthen the macroeconomic framework and liberalize international trade. The export of services and goods contributed greatly to the country's economic growth.<sup>164</sup> Indonesia set an internal goal of rising to the status of a developed country by 2025.<sup>165</sup> Additionally, the country instituted the Masterplan for Acceleration and Expansion of Indonesia Economic Development ("MP3EI").<sup>166</sup>

The MP3EI was designed to create buy-in from all internal stakeholders in the development of the economy pursuant to free trade principles.<sup>167</sup> It provided tangible and measurable priorities. For instance, one of the measures passed in 2007 was Investment Law No. 25.<sup>168</sup> With this law, Indonesia granted comparable protective status and equal treatment to all capital investments whether foreign or domestic in origin.<sup>169</sup> The law allowed for unimpeded repatriation of capital, or profits, from investments abroad.<sup>170</sup> Another measure put in place to support the pursuit of free trade was Presidential Decree No. 27/2009. With this decree, the national bank utilized its power to streamline business permit issuances for foreign investors.<sup>171</sup> The decree served to eliminate bureaucratic obstacles. As a result, Indonesia enjoyed an unparalleled rise in foreign direct investment ("FDI").<sup>172</sup> Both of these domestic laws serve as excellent examples of an ASEAN member state implementing measures to support the tenets agreed to with its ASEAN membership. By 2012, Indonesia made significant changes to its FDI laws to make it easier to attract foreign investment. The justification for relaxing FDI laws was to attract investment in domestic production for modernization and domestic industry growth. The result of the foreign investment was the strengthening of domestic industries and infrastructure that in turn promoted the country's free trade efforts.<sup>173</sup> By 2013, Indonesia was no longer giving the goal of free trade and ASEAN

---

<sup>163</sup> *Id.*

<sup>164</sup> Trade Policy Review Body, *Trade Policy Review Report by Indonesia*, WTO Doc. WT/TPR/G/278, at 3 (Mar 6, 2013).

<sup>165</sup> *Id.* at 4.

<sup>166</sup> REPUBLIC OF INDON., MASTERPLAN: ACCELERATION AND EXPANSION OF INDONESIA ECONOMIC DEVELOPMENT 2011–2025 (2011).

<sup>167</sup> *Trade Policy Review Report by Indonesia*, *supra* note 165, at 4.

<sup>168</sup> *See generally* Concerning Investment, Law No. 25 (2007) 67 OFFICIAL GAZETTE (Supp. No. 4724) (Indon.).

<sup>169</sup> Concerning Capital Investment, Law No. 25 (2007) 67 OFFICIAL GAZETTE (Supp. No. 4724) (Indon.).

<sup>170</sup> *Trade Policy Review Report by Indonesia*, *supra* note 165, at 8.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *See id.* at 7.

membership lip service. Instead, Indonesia was fully committed to free trade principles as a way to attack the shortcomings in its economy and improve its financial health. From 2007 to 2013, Indonesia enjoyed an annual GDP growth rate of 6.1% to 6.2%.<sup>174</sup>

Indonesia's pathway to trade liberalization has not been a straight shot. The journey was marred by opposition and a very slow start all the while proceeding as a founding member of ASEAN. Notwithstanding the challenges, Indonesia made significant strides towards liberalization of its trade regime as the two exemplar laws referenced above show. Indonesia's direct involvement in the ASEAN regional trade pact contributed greatly to the country's trade liberalization program and the growth of its economy.<sup>175</sup> Indonesia's long-term economic growth plan to 2025 provides guidance to other countries looking to follow in the footsteps of Indonesia and achieve trade liberalization and relaxation of barriers to foreign direct investment.<sup>176</sup>

*e) The Philippines*

The Philippines was also one of the founding members of ASEAN.<sup>177</sup> Since the inception of ASEAN, this particular ASEAN member state endured a sea of political change by transitioning from an authoritarian government to a democracy.<sup>178</sup> The resulting consequences of those political changes impacted the Philippine economy as a whole in a multitude of ways, because the transition in political leadership was accompanied by a shift to embrace the tenets of free trade mechanisms. With the return of democracy, there was a concerted effort to improve the differing sectors of the economy by successive regimes with notable success.

In 1992, Fidel Ramos succeeded Corazon Aquino as President of the Philippines.<sup>179</sup> President Ramos instituted widespread liberalization that triggered a rise in exports of 29% in 1995.<sup>180</sup> Ramos's larger plan of

---

<sup>174</sup> *Id.*

<sup>175</sup> Peach, *supra* note 150, at 41.

<sup>176</sup> *Id.*

<sup>177</sup> *About ASEAN*, ASS'N SE. ASIAN NATIONS, <https://asean.org/asean/about-asean/> (last visited Feb. 2, 2020).

<sup>178</sup> The Philippines was ruled by Ferdinand Marcos from 1965 to 1986 under an authoritarian regime. In 1986, Corazon Aquino defeated Marcos in an election which spawned a revolution backed by the military. Successive democratic governments worked tirelessly to restore political and economic stability. Ringuet & Estrada, *supra* note 72.

<sup>179</sup> *Fidel Valdez Ramos*, Glob. LEADERSHIP FOUND., <https://www.g-l-f.org/who-we-are/glf-members-listed-by-region/fidel-valdez-ramos/> (last visited Mar. 26, 2021).

<sup>180</sup> Ringuet & Estrada, *supra* note 72, at 237.

liberalization included shedding years of protectionist economic policies in accordance with the economic policies advanced and pursued by ASEAN. For instance, President Ramos drastically reduced import duties to below 25% while abolishing trade restrictions.<sup>181</sup> Interestingly, President Ramos's plan of liberalization while targeting economic growth simultaneously reduced graft and corruption.<sup>182</sup>

As President, Ramos oversaw growth in GDP from 0.5% in 1991 to 7% in 1996.<sup>183</sup> In 2003, tariffs were lowered to 5%.<sup>184</sup> Foreign banks were enticed and encouraged to do business in the Philippines as early as 1948.<sup>185</sup> Under President Ramos the support for foreign direct investment was strengthened with economic reforms; industries were deregulated; and a whole host of state-run enterprises were converted to private ownership. The Philippines also created Special Economic Zones to support economic development by attracting both international and local investors.<sup>186</sup>

The upending of the laggard economic structure worked, and the Philippines enjoyed a growth in domestic employment from 229,650 to 716,990.<sup>187</sup> Furthermore, from 1985 to 1997, the Philippines enjoyed a reduction in the incidence of poverty from 44.2% to 31.8%.<sup>188</sup> Additionally, during the same timeframe, the value of manufactured goods and exported products increased from \$2.7 billion to \$19.4 billion.<sup>189</sup> The transition from an authoritarian government to a democratic government coupled with economic liberalization resulted in record setting foreign direct investment by the Japanese, the Americans, and the Dutch, which accounted for 61% of the total investment dollars in the Philippines at the end of 1997.<sup>190</sup>

During Ramos's presidency, the Philippine Congress enacted seventy-nine economic reforms as part of the President's agenda.<sup>191</sup> The economic reforms included such measures as the removal of growth-restricting policies, the decentralization of authority, and hoarding of resources.<sup>192</sup> In addition, there was a focus on removing the protectionist trade barriers and

---

181 *Id.* at 238.

182 By identifying the rates for import duties and eliminating trade restrictions, the opportunity for lower-level administrators to engage in graft, corruption and bribes was significantly reduced.

183 Ringuet & Estrada, *supra* note 72, at 237.

184 *Id.* at 238.

185 *Id.*

186 *Id.* at 239.

187 *Id.*

188 *Id.* at 234.

189 *Id.* at 239.

190 *Id.*

191 *Id.* at 241.

192 *Id.* at 242.

liberalizing the telecommunications industry.<sup>193</sup> Once Marcos was removed from power and a democratic form of government installed, foreign direct investment was identified as integral to long-term sustainable growth for the Philippines and measures were put in place to promote those investments.<sup>194</sup>

Foreign direct investment was lauded as integral to economic growth for three reasons.<sup>195</sup> First, it was necessary to extract the Philippine economy from a roller coaster, up-and-down cycle.<sup>196</sup> Second, foreign direct investments spurred the increase in export of domestically manufactured goods.<sup>197</sup> Third, foreign direct investment served to raise the productivity of local industries with increased capital, improvements in technology and more efficient domestic industries.<sup>198</sup> The economic reforms consisted of more than just the attraction and utilization of foreign direct investment. After moving to a democratic form of government, the Philippines acceded to the World Trade Organization, the International Monetary Fund, and the General Agreement on Tariffs and Trade.<sup>199</sup> This move served to legitimize the Philippine economic dealings and gave investors long-term confidence.

The Philippines, unlike any other founding ASEAN member state, underwent political upheaval accompanied by trade liberalization. The adoption of ASEAN tenets and objectives resulted in marked improvements in the Philippine economy. The incidence of poverty declined.<sup>200</sup> The export of domestically manufactured goods rose.<sup>201</sup> Foreign direct investment increased to the betterment of the Philippine domestic industrial machine with better technology, more efficient operation and a significant reduction in the unemployment level in certain industries.<sup>202</sup>

The difference in GDP growth rates when comparing the authoritarian protectionist trade policies versus the democratic free-trade policies is telling. Under Marcos's regime, the Philippines experienced a devastating recession coupled with a 7.3% contraction in GDP toward the end of his

---

193 *Id.*

194 *Id.*

195 *Id.*

196 *Id.*

197 *Id.*

198 *Id.*

199 *Id.* at 244.

200 *Id.* at 234 (for 1985–1997).

201 *Id.* at 239 (for 1994–2001).

202 *See id.*

reign.<sup>203</sup> The average GDP growth under President Marcos was 3.8%.<sup>204</sup> In comparison, subsequent to Marcos's removal from office, the Philippines enjoyed a 4.5% GDP growth in the 1990s and a 6.3% GDP growth in the 2000s.<sup>205</sup> The pivot to ASEAN endorsed free trade principles and resources worked. The Philippines is now arguably the best example to look to in order to gauge the effectiveness of the implementation of the ASEAN free-trade tenets on a country's economy.

##### 5. *The ASEAN Playbook as a Model for Success*

Examination of the progress made by the original founding members of ASEAN indicates there are similarities in policies among the members that resulted in successful implementation of free trade principles. The lessons when combined result in a playbook that can be followed by a group of like-minded nations intent on improving their economies and their bargaining position in the global trade arena. First, ASEAN members embarked on a long-term globalization plan. The long-term plan included a concerted and deliberate effort of investing in infrastructure for their already existent dominant industries. This investment in dominant industries represents the execution of realizing a comparative advantage by focusing on plentiful domestic resources whether they exist in farming, industrialization, manufacturing, or fishery.

Second, the ASEAN members courted foreign investors to aid in the development of domestic industries. ASEAN members successfully used foreign direct investments to spur economic growth by funding the export of domestic goods. One of the hard lessons learned in this arena was that states that funneled foreign direct investment money to only one segment of the economy suffered from slower economic growth. ASEAN states following this narrow application of foreign funds were more susceptible to economic recessions than those states that chose to develop multiple segments of the economy like manufacturing along with agriculture. ASEAN member states also successfully utilized foreign direct investment money to train their existing workforce while also recognizing and building new contributors to the economy such as the service industry.

Third, ASEAN members made a commitment to free trade principles

---

203 Edson Joseph Guido & Che de los Reyes, *The Best of Times? Data Debunk Marcos's Economic 'Golden Years'*, ABS-CBN NEWS (Sept. 21, 2017, 8:10 AM), <https://news.abs-cbn.com/business/09/21/17/the-best-of-times-data-debunk-marcos-economic-golden-years>.

204 *Id.*

205 *Id.*

through an initial overarching agreement followed by free trade agreements to address specifics.<sup>206</sup> ASEAN's initial agreement (the Bangkok Declaration) was executed in 1967.<sup>207</sup> The ASEAN Charter was executed in 2007 along with subsequent Free Trade Agreements governing trade among the members themselves. The subsequent trade agreements encompass the details on the execution of the free trade principles in specific industries that includes all the regional trade pact's members. For instance, ASEAN members capitalized on intra-regional trade after signing the ASEAN Free Trade Agreement. Following this path reduced import duties for goods from other ASEAN members to below 5%.<sup>208</sup>

ASEAN founders perceptively understood that the creation of the regional trade pact would accomplish two goals. One, the realization of the benefits had to start with the enactment of free trade principles with intra-pact trade. Two, once the intra-regional trade obstacles were removed, the members would then have more influence and bargaining power in the global market than they would as individual states. This fact is evident in the number of large markets that routinely seek to do business with ASEAN such as Japan, India, and China. The resulting trade negotiations occur between parties with similar bargaining power rather than the dominant purchaser dictating terms to the isolated mercantilist inefficient nation. ASEAN members enjoy influence and bargaining power in large part due to the years of continued sustainable growth directly related to the commitment to infuse free trade principles into their long-term planning and policies.

Fourth, ASEAN members took a hard look at their internal bureaucracies and committed to making them friendlier to foreign money. ASEAN successfully attracted foreign direct investment by loosening restrictions that allowed for the unimpeded repatriation of profits from foreign investments. Foreign investors are not going to commit large sums of money if they are unlikely to be able to recoup those funds and take them out of the investment country. Another tactic utilized to encourage foreign direct investment was the removal of internal barriers to foreign companies obtaining regulatory permission for business permits domestically. While it seems rather simple, the invitation to invest must be met with an internal

---

206 ASEAN Charter, *supra* note 27; see Agreement on The Common Effective Preferential Tariff (CEPT) Scheme for The ASEAN Free Trade Area, *supra* note 74.

207 Bangkok Declaration, *supra* note 65.

208 ASEAN Free Trade Area (AFTA Council), ASS'N SE. ASIAN NATIONS, <https://asean.org/asean-economic-community/asean-free-trade-area-afta-council/> (last visited Mar. 26, 2021).

process of forming and operating business that is seamless. If the invitation is made, but the execution is poorly managed, then the money will dry up very, very quickly.

Finally, states that endeavor to construct a similar regional trade pact with the goal of globalizing the members' trade must understand that long-term planning is required. While ASEAN was founded in 1967, inspection of the economic record for each member country shows that putting free trade principles into practice required decades for the full benefits of such actions to accrue and be realized by the populace. Nonetheless, the payoff is worth the effort. The ASEAN member states highlighted all boast multiple years of sustainable economic growth along with other unexpected benefits. For instance, most ASEAN members saw greater percentages of their population covered by healthcare. Member states, that used foreign direct investment to train their workforce for new industries saw a measurable increase in the literacy rate. Member states also benefitted with significant reductions in poverty.

To recap, taking the following steps creates the ideal atmosphere for the success of a newly formed regional trade pact. First, the members must engage in a long-term globalization plan. Second, the members must actively seek foreign investors to aid the development of domestic industries. Third, a necessary component part to maximization of foreign investments is making sure that the internal barriers to foreign investors are diminished. Fourth, the members should meet, agree, and then execute a formal agreement signifying their commitment to free trade principles. Finally, the states should communicate with their citizens and educate them on the long-term planning required to reap the benefits of implementing free trade principles via the regional trade pact model.

6. *States Categorized as the Global South are Well Positioned to Capitalize on the ASEAN Model*

ASEAN and the success enjoyed by member states serve as a model for states in the Global South. The states in the Global South<sup>209</sup> can replicate the ASEAN approach with modifications for geography and cultural sensitivities to achieve greater success and influence in the arena of international trade than they currently enjoy.

In the previous sections, this article examined the structure and benefits of free trade in the international arena. The article examined the structure of ASEAN along with the performance of the founding ASEAN member states after implementation of the different tenets of free trade. Then, the article explained the significance of the growth and progress each ASEAN founding member experienced as a constituent of the successful ASEAN regional trade pact. Collectively, these points serve as the basis for advancing the premise that developing and least developed states<sup>210</sup> can utilize the ASEAN model to form their own regional trade pacts in order to strengthen their bargaining power and improve their competitiveness in the global trading arena with developed states.

Multilateral treaties that are agreed to by states through IGOs such as the World Trade Organization impose restrictions that limit the economic progress of the Global South.<sup>211</sup> In the negotiation of multilateral treaties, those instruments highly favor the Global North because they do not provide the latitude for the Global South to progress along the same pathway that the states in the Global North utilized.<sup>212</sup> For example, the United States and Europe enjoyed exponential economic growth in the early 1800s in large part due to the industrial revolution. The industrial revolution, while a time of great technological progress, also contributed significant levels of pollution to the worldwide climate. In present day with the use of multilateral treaties executed through membership in the World Trade

---

209 According to the World Bank, the Global South consists of low- and middle-income states located in Asia, Africa, Latin America and the Caribbean. WORLD BANK, GLOBAL DEVELOPMENT HORIZONS 2011 – MULTIPOLARITY: THE NEW GLOBAL ECONOMY (2011), <http://documents.worldbank.org/curated/en/597691468150580088/Global-development-horizons-2011-Multipolarity-the-new-global-economy>.

210 Developed states in the international arena are often referred to as the Global North, while developing and least developed states are referred to as the Global South.

211 Antonia Eliason, *Development and Regional Trade Agreements: Entrenching Structural Inequities*, 46 GA. J. INT'L & COMPAR. L. 635, 637 (2018).

212 *Id.* at 644.

Organization, those instruments seek to limit economic progression of states in the Global South by prohibiting industrial growth that serves to further damage the climate.<sup>213</sup> Environmental protections serve as only one example of many where the states in the Global South see their economic progress stifled by prohibitions that they agreed to when acceding to instruments designed to level the playing field in international trade.

Opponents of free trade point to the economic growth indicators of developing countries and lament their lack of progress when free trade principles are unequally applied to their economies. Mercantilists argue that a large number of developing countries have high numbers of unskilled workers that work mostly in agricultural jobs.<sup>214</sup> Therefore, when foreign investment dollars and competing agricultural industries are allowed into those developing countries' domestic markets, the result is a loss of domestic jobs in the agricultural sector with consequential higher unemployment and a lower wage for those who can find work. To a certain extent, the criticism is well founded. The proposal advanced here that a developing country stands a better chance of controlling the consistency of its domestic market is strengthened when examining one of the ASEAN member state's experience in this area—the Philippines. Yet, by embracing the tenets of free trade, the country improved its infrastructure, reduced corruption and graft, and over the long term, it made its economy more competitive.<sup>215</sup> An accompanying benefit to these gains was an increase in the literacy rate for the population<sup>216</sup> and a marked decline in national poverty and unemployment.<sup>217</sup> Where a developing country seeks only to receive foreign investment money or seeks to open up its domestic market to foreign competition without first identifying and positioning its resources to capitalize on its comparative advantage, then history shows the venture is destined to produce lackluster results. The shift in the economic development must proceed with a free trade multi-pronged attack.

Some international trade law scholars astutely argue that one of the methods for reducing the inequity in the bargaining power between the

213 *World Trade Organization, Climate Change and the Potential Relevance of WTO Rules*, WORLD TRADE ORG., [https://www.wto.org/english/tratop\\_e/envir\\_e/climate\\_measures\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/climate_measures_e.htm) (last visited Mar. 26, 2021).

214 *Trade & The Global South*, CITIZENS TRADE CAMPAIGN, <https://www.citizenstrade.org/ctc/trade-issues/trade-the-global-south/>, (last visited Aug. 20, 2020).

215 See Ringuet & Estrada, *supra* note 72, at 236, 239.

216 Len Cristobal, *Literacy in the Philippines: The Stories Behind the Numbers*, INT'L LITERACY ASSOC. (Aug. 6, 2015), <https://www.literacyworldwide.org/blog/literacy-now/2015/08/06/literacy-in-the-philippines-the-stories-behind-the-numbers>.

217 INT'L LAB. ORG., *THE IMPACT OF TRADE ON EMPLOYMENT IN THE PHILIPPINES*, at 11 (2019), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_742567.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_742567.pdf).

Global North and the Global South is to insert special and differential treatment terms that allow developing countries to sign on to multilateral treaties but delay opting into restrictive growth provisions until the developing country is ready.<sup>218</sup> The proposal to use “opting in” provisions is a novel and ingenious resolution. However, the measure does not go far enough. The “opting in” provision is only a short-term remedy. The proposal for the states in the Global South to adopt their own ASEAN like regional trade pact agreement is the long-term remedy.

The “opting in” solution and the adoption of the regional trade pact model are complementary and not polar opposites. With the pursuit of a regional trade pact, in the first phase of implementation, small groups of geographically co-located states can engage in comparative advantage policies that strengthen their internal ties and trade. Then, in the next phase of the nascent regional trade pact’s development, the group can collectively engage in the pursuit of robust external free trade. There is no reason to conclude that a new regional trade pact that is solidly formed and functioning would not be able to achieve the same types of economic successes enjoyed by ASEAN.

Success breeds success. One of the long-term goals of a regional trade pact formed by states designated within the Global South category is to engage in trade with states in the Global North on an equal footing. One of the undeniable truisms that arose from the development of ASEAN, is that the big economic players now want to trade with the ASEAN block, but now must do so as equitable trading partners. Gone are the days where the likes of the United States and China can dangle the prospect of trade to an ASEAN member state on unfavorable terms. In contrast, there is a continued and concerted effort from states in the Global North to form regional trade agreements with ASEAN so that they can obtain access to the ASEAN members’ markets.<sup>219</sup>

---

218 See Eliason, *supra* note 212, at 638.

219 Jagannath Panda, Opinion, *India and Japan Should Seize Chance to Form Close Alliance*, NIKKEI ASIA (May 14, 2020, 2:00 PM), <https://asia.nikkei.com/Opinion/India-and-Japan-should-seize-chance-to-form-close-alliance>. As aptly explained in this article, India and Japan seek a closer alliance with ASEAN members for both trade and geopolitical reasons as a means of reducing China’s influence in the region.

#### IV. CONCLUSION

ASEAN's success and growing influence in the global trading arena is not an accident. As a consortium of states, ASEAN methodically implemented free trade principles in their long-term trade policies. As a result, the individual members have enjoyed steady growth in their respective GDPs over the last four decades. A consequential benefit to this economic growth and stability is a measurable decline in the poverty level and an increase in the population's literacy rate. ASEAN also achieved an optimal balance between centralized decision making and the erosion of state sovereignty by deemphasizing the centralized decision-making aspect of the regional trade pact. ASEAN's use of the consensus approach to the execution of collective ideals and goals resulted in a highly effective IGO that now trades on an equal footing with developed nations such as China, India, Japan, and the United States. In fact, those states now engage in concerted efforts to woo ASEAN to gain access to their trading markets.

The methodology employed by ASEAN in phases represents a viable option for states in the Global South as a playbook to stabilize their economies and improve their trading positions with the Global North. In forming their own regional trade pact modeled after ASEAN, the states in the Global South have the means of achieving their own defined success by embarking on a long-term globalization plan that improves infrastructure for existent promising domestic industries. Next, in forming a regional trade pact, states in the Global South must apply the lessons learned about courting foreign investments by using the money to fund the export of domestic goods and services, while creating an atmosphere where it is easy for foreign investors to do business by eliminating graft, corruption, and bureaucratic inefficiencies. Next, in the formation of the regional trade pact with other member states from the Global South, the putative regional trade pact requires an overarching agreement that contains the principles of free trade as well as shared cultural goals that are important to the entirety of the group. Any subsequent free trade agreements will encompass the details on the execution of the free trade principles in specific industries.

The examination of ASEAN as a regional trade pact shows that the model will work for a group of five to ten states in the Global South that can align based on their geography and availability of resources. Where those resources are complementary with other member states and a comparative advantage can be realized, then those states hold the promise of success as a regional trade pact modeled on ASEAN. The mercantilist approach to trade for states in the Global South leads to the pursuit of the elusive favorable trade balance. For many developing states, a favorable trade

balance is an unreachable goal and one that hampers their limited economies from undergoing needed changes and growth. Success in the twenty-first century and beyond requires the states in the Global South to adjust their approach and embrace free trade principles through a regional trade pact, which is an achievable goal. It is time for states in the Global South to follow ASEAN's lead.