ASEAN PREFERENTIAL TRADING ARRANGEMENTS

To achieve the over-all objectives of economic cooperation as broadly stated in the Bangkok Declaration of 1967, it was considered imperative not only to identify opportunities for cooperation but also to develop a set of techniques and policy instruments which would enable the ASEAN countries to take collective action within a comprehensive, coherent, and agreed upon framework. In this context, an important area having a significant bearing on economic cooperation was the acceleration of intra regional trade through reducing barriers to trade. As the UN Team noted:

In the past, the opportunities for profitable trade in manufactures between ASEAN countries had been few... [and] the volume of the trade in manufactures has been very small—indeed between some ASEAN countries almost non-existent. There have been several cumulative reasons for this. Because manufacture was based on small national markets, costs were high. Because costs were high, production was not competitive in other ASEAN markets with goods produced in foreign countries at a low cost for mass markets, and thus, sales were small. Because sales were small, the shipping and transport facilities to other ASEAN markets were inadequate and irregular. Because trade did not develop, particular ASEAN countries or regions within countries remained backward and impoverished and consumed few manufactured goods. And because trade was limited and often confined to a few primary products, countries depended greatly on the terms of trade for primary products.
and tended to slip into balance-of-payments difficulties when the terms of trade were adverse. This vicious circle needs to be broken.

To break this vicious circle of small markets, high costs, high protection and inadequate trade facilities, prima facie, the best way to proceed appeared to be a complete liberalization of all trade i.e., the establishment of a Free Trade Area (FTA). But the UN Team did not consider an immediate establishment of FTA in the ASEAN countries as politically acceptable mainly because of the following reasons:

(a) The distribution of economic activities that might emerge from the process might not be acceptable to governments. The reason for this is that since such a process might lead to the polarization of industrial growth in certain countries and a very uneven distribution of the benefits of cooperation.

(b) Even if it is expected that the benefits of cooperation will be evenly distributed, the probable distribution of particular activities between the various countries may not be acceptable to the governments and people. A possible outcome of complete liberalisation of trade might, for example, be a polarization of large-scale

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and modern science based industrial development in certain countries, balanced by a concentration of agricultural and other primary production in other countries. Such a pattern of development would not be found acceptable by some of the ASEAN members;

(c) The interdependence between the economies of different member countries, particularly for basic and critical key commodities, might increase to a much greater extent than would be regarded as acceptable, at least in the early years of critical and economic cooperation; and

(d) A process of complete trade liberalisation might not in itself, and in isolation, be sufficiently effective in culs, particularly in those enterprises, of fewer crises are fewer and of inadequate

s political trade potential and suitable trade. However, it declare as a long term
objective, their intention to create an ASEAN-FTA. It would involve the removal, by that date, of all tariffs and quantitative restrictions between ASEAN countries. Such a declaration of progressing towards the establishment of an ASEAN-FTA might preferably be embodied in an international treaty or agreement.

Under PTA, each ASEAN government were to submit "its national list of selected products for which it would like other partners to grant it concessions, and also, its list of commodities for which, in exchange for these concessions, it would be prepared to make concessions to the other countries. These national lists would differ from country to country". However, the Report suggested that among products for which such trade liberalization might initially be negotiated should be the products imported by some ASEAN countries from extra-ASEAN sources but manufactured by ASEAN members, possibly including certain types of textiles, clothing and footwear, certain chemicals and pharmaceuticals, and other types of preserved and packed food stuffs.

The preceding analysis of economic structures of the ASEAN and prescriptions for ASEAN countries by the UN Team clearly brings forth that to achieve economic development, By a date sufficiently far ahead to give ample time for adjustments. It suggested the year 1990. Ibid., p. 54.

Ibid., p. 55.

Ibid., p. 251.
liberalization of trade within the ASEAN region is a necessary pre-requisite. The rational and strategy behind it, it may be noted, is to reduce internal tariffs so that ASEAN countries can achieve the economies of the enormous regional markets.

Thus, following the Report, and after the intention to hold the first ASEAN Summit was announced, there was a great deal of discussion within ASEAN circles, including as to whether ASEAN should work towards a FTA or a Common Market. Obviously, there was no consensus within ASEAN on the selection of the means for implementing trade liberalization. The Philippines was the most favourably disposed towards the establishment of FTA. Therefore, it responded most enthusiastically and officially proposed that ASEAN should work towards FTA by means of uniform percentage reduction in tariffs and all intra-regional trade. Singapore, which had hitherto been rather skeptical about intra-regional cooperation, responded encouragingly to the Philippines proposal. Therefore, at the meeting of ASEAN Senior Economic and Planning Officials held in Jakarta in November 1975, both these countries advocated for the establishment of FTA and proposed a 10 per cent across-the-board tariff cut for all members, to be followed by successive reductions leading to the complete elimination of

tariffs within 10-15 years. But Indonesia, the largest and the most populous of the ASEAN countries, found the idea quite unacceptable. Therefore, it came out unequivocally against the FTA proposal on the ground that Indonesia, being the least economically developed with the least advanced manufacturing sector among the ASEAN countries, would be placed in a very disadvantageous position in FTA system; and might "lose its domestic markets to more efficient producers, specially Singapore and the Philippines, and destroy its infant industries".

As a result of Indonesian objection, later supported by Malaysia, the idea was dropped from the discussion agenda in the interest of ASEAN's solidarity. Eventually, a compromise was reached at, and Indonesian proposal for a commodity-by-commodity approach in arriving at an intra-ASEAN tariff cut was accepted. Thus, the move appeared to be

7 Phitaya Smutrakalin and Phisit Setthawong, ASEAN Free Trade Area: Thailand's Position (Bangkok, 1976), p. 15. Also see, FEER, November 21, 1975, p. 51.
10 Although Singapore was persuaded to drop the idea of across-the-board approach at ASEAN level, it concluded a bilateral tariff agreement for across the board tariff cut of 10 per cent on 1750 products outside the framework of ASEAN Concord. Later on, Thailand also joined the agreement See, FEER, February 18, 1977, pp. 28 and 33. However, such a 'sub-regional' arrangement was vehemently opposed by Indonesia and Malaysia, which once again persuaded Singapore to rescind the agreement. Brian Wawn, The Economies of ASEAN Countries: Indonesia, Malaysia, Philippines, Singapore, and Thailand (London, 1982), p. 172.
still towards intra-ASEAN trade liberalization, but on commodity-to-commodity basis.

The Agreement on ASEAN Preferential Trading Arrangements (ASEAN-PTA) was finally reached at after a series of discussions at the ASEAN Committee on Trade and Tourism (ASEAN-COTT) at the Third Meeting of ASEAN Economic Ministers at Manila in January 1977, and formally signed by the ASEAN Foreign Ministers on February 24, 1977. ASEAN-PTA, it may be noted, is not a rigid or time-bound approach, aiming at any targeted level of trade liberalization. On the contrary, it is a step-by-step, flexible, and open-ended approach. The specific instruments identified in the ASEAN-PTA included, among others, were: long-term quantity contracts; purchase finance support and preferential interest rates; preference in procurement by government entities; extension of tariff preferences; and liberalization of tariff measures on preferential basis.

Of these, the most widely used is the extension of tariff preferences.


13 Article 3 of the Agreement. Malaysia, n. 11, p. 42.

Tariff preferences were agreed to be applied, in initial stages, to basic commodities, particularly rice and crude oil; products of ASEAN industrial projects; products for the expansion of intra-ASEAN trade, and other products of interest to the member nations.

However, an important contentious issue that dominated deliberations in the process of reaching an agreement on ASEAN-PTA was the 'rules of origin' clause i.e., what should be the required percentage of value added in a member country for a traded product (not wholly produced or obtained in a member country) to qualify for preferences? The reason for this controversy, appeared to be the uneven levels of economic development of member nations, especially Indonesia which was perceptibly lagging behind in economic development vis-a-vis the other ASEAN members. Therefore, while the four ASEAN members called for 50 per cent value added requirement (a usually adopted 'rules of origin' in most regional PTA arrangements), Indonesia insisted that, to protect its infant industrial infra-structure, the value added requirement for rules of origin should be at least 60 per cent. However, after protracted negotiations, a compromise was hammered out, and safeguards regarding the rules of origin were incorporated in the final agreement. 

Described as an integral part of ASEAN-PTA, the 'rules of origin' clause is a significant feature of the agreement. The text of the agreement outlines the conditions under which products traded under the PTA would be eligible for tariff preferences. The rules of origin are designed to ensure that products entering the market are significantly transformed in the member countries, thereby promoting local production and economic development.

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15 Article 4 of the Agreement. Malaysia, n. 11, p. 43. Also Asian Recorder, April 15-21, 1976, p. 13119.
16 Article 15 of the Agreement. Malaysia, n. 11, p. 46.
At the Third Meeting of ASEAN Economic Ministers in origin' provided that only the products which have at least 50 per cent ASEAN content would be eligible for PTA and in the case of exports to Indonesia, the ASEAN content must not be less than 60 per cent.

The salient features of ASEAN-PTA signed by the ASEAN Foreign Ministers on February 24, 1977, were:

(a) long term quantity contracts of 3 to 5 years for selected products under specific agreement negotiated among the ASEAN governments or their nominated agencies;

(b) purchase finance support at preferential interest rates to be applied either to exports to or exports from ASEAN countries on selected products of ASEAN domestic origin;

(c) preferences in procurement by government entities whereby the ASEAN countries would accord each other, a preferential margin of 2.5 per cent, not exceeding US $ 40,000;

(d) extension of tariff preferences on a product-by-product basis, taking into account the existing level of tariffs in the respective ASEAN member countries. Where tariff preferences have been negotiated on a bilateral basis, the

See, Rule 3(a) and (b) of Annex. 1, Rules of Origin For the ASEAN Preferential Trading Arrangements, "Agreement on ASEAN Preferential Trading Arrangements", Ibid., p. 49.
concessions so negotiated should be extended to all ASEAN countries on an ASEAN-most-favoured nation basis; and

(e) liberalization of non-tariff measures on a preferential basis, and other measures.

In other words, there are two methods of achieving trade liberalization aim. One is voluntary offer system. Under this system, it is for each country to volunteer, to cut the tariff rate for the other ASEAN partners by 10 to 20 per cent for the items that the country deems fit. The cut is ASEAN wide. The other method is a request system for a tariff cut or what we call matrix system. This system, in essence, follows General Agreement of Tariffs and Trade (GATT) style negotiations i.e., cut is reached at on the matrix list of products through bilateral requests and negotiations but these agreements are multilaterized and become ASEAN wide. Each member must cut the tariff rate for 100 items for each quarter of a year by a combination of the two systems.

At the Third Meeting of ASEAN Economic Ministers in Manila on February 24, 1977, it was also decided that a round of tariff cut negotiations would be held quarterly, and each member country agreed to increase its tariff cut quota from the originally planned 100 to 150 items (either

18 See, Article 4,5,6,7(2) and 8(1) (2) Ibid., pp. 43-44.
through voluntary offer or through request system). This means that for each quarter, the items that are subject to intra-ASEAN cut will be increased from 500 (100x5) to 750 (150x5), or the total will be increased from 2,000 items a year (100 x 5 x 4) to 3,000 items a year (150x5x4).

Following the signing of the agreement, the ASEAN member countries at the Fourth Meeting of the Economic Ministers on June 27-29, 1977 at Singapore agreed on 71 items to be covered by tariff preferences on which tariffs were to be reduced by 10 to 30 per cent with effect from January 1, 1978. Out of these, 15 items were offered by Indonesia and 14 each by other four ASEAN members.

Subsequently, to further enhance intra-regional trade, at the Fifth Meeting of Economic Ministers in September 1977, it was agreed upon that at every round of negotiations at quarterly intervals, each ASEAN country would make trade preference offers on a minimum of 50 items so that at least 1000 (50x5x4) products would be added to the list annually.

Similarly, at the Sixth Economic Ministers Meeting, held in June 1978 at Jakarta, an agreement on a second list of 775 items was reached at, bringing the number of items covered under ASEAN-PTA to 826. To further deepen the ASEAN-PTA another list of 500 items was agreed upon at the Seventh Economic Ministers Meeting in December 1978, raising the number of items under ASEAN-PTA to 1326. Likewise,

20 Asian Recorder, April 15-20, 1976, p. 131
maintaining the momentum, another list of 1001 products was approved at the Eighth Meeting of Economic Ministers held at Manila in September 1979, bringing the ASEAN-PTA items to 22 2327. AT the Ninth Meeting of Economic Ministers at Singapore in 1980, ASEAN-PTA list swell to 4,325 items. Significantly, the Economic Ministers also agreed to complement Product-by-product approach by across-the-board tariff reductions on items below a certain import value, with provision for exclusion list. 23

Thus, following these agreements aiming at the acceleration of ASEAN-PTA, there was a phenomenal increase in the number of items in the ASEAN-PTA list. By 1982, it touched the 9,000 mark , and by the end of 1987, about 13,000 products were traded within the region on a preferential trade basis. 25

The Third ASEAN Summit: Some Concrete Steps to improve ASEAN-PTA

However, despite a series of agreements to increase the number of items in ASEAN-PTA at different meetings of ASEAN


23 From an initial level of US $ 50,000, this ceiling has been successively raised, and at present, stands at US $ 10 million with provision of a new exclusion list. ASEAN Secretariat, n. 14, p. 14.


Economic Ministers, it had failed to bring about any perceptible increase in intra-ASEAN trade till the beginning of 1987. The value of items transacted under ASEAN-PTA constituted only 2 per cent of total intra-ASEAN trade. At a hindsight, however, it appears that the ASEAN-PTA not only had some theoretical as well as practical constraints but also, many of the trade concessions covered under PTA were, by and large, cosmetic. Therefore, it was but natural that there was witnessed a great deal of anxiety and dissatisfaction at different ASEAN forums on lackadaisical pace of ASEAN-PTA. For example, the issue of ASEAN trade cooperation received a great deal of attention at the Eighteenth ASEAN Economic Ministers Meeting in Manila, in August 1986. Realising the slow progress in the growth of intra-ASEAN trade, the ASEAN Economic Ministers, emphasized that the COTT should strive to improve upon the implementation of the PTA in the form of expediting the reduction of items in the Exclusion List as well as review and improve the 'rules of origin' under ASEAN-PTA. Subsequently, at its special meetings held in November 1986, December 1986 and April 1987, the COTT agreed that one of the long-term objectives of ASEAN trade cooperation was to establish some form of FTA within specific time-frame. But given the obstacles in the establishment of FTA, it

26 These shall be dealt with, in detail, in the later part of this Chapter.

recommended to the ASEAN, certain interim measures which included among others, deepening the Margins of Preferences (MOPs); reduction of items in the exclusion list within five years; and undertake standstill and roll-back measures on non-tariff barriers among the member countries.

Thus, it appears that it was against this compelling scenario of an imperative to increase intra-ASEAN trade that the Third ASEAN Summit held at Manila on 14-15 December 1987, examined, reviewed, and supplemented some of these suggestions; and signed "Protocol on Improvement on Extension of Tariff Preferences under the ASEAN Preferential Trading Arrangements" and "Memorandum of Understanding on Standstill and Rollback on Non-Tariff Barriers Among ASEAN countries". In the preface to the Protocol, the Heads of Government recognised that there was a need to enhance intra-ASEAN trade cooperation by the turn of the present century. To achieve this, they agreed to adopt the following specific measures to improve the PTA over the next five years (w.e.f. January 1, 1988):

30 See, for the text of "Memorandum of Understanding on Standstill and Rollback on Non-Tariff Barriers Among ASEAN Countries". Ibid., pp. 71-73.
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Note: Singapore has been omitted because its items in the exclusion list are negligible.
- - indicates not available
x = No. of traded items = No. of existing items in PTA + No. of items in the exclusion list.
y = in US $ million.

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<td>-</td>
<td>-</td>
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<td>1,854</td>
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Note: Data on Brunei not available.

- Number of items to be deepened to achieve 50 per cent MOPs in 1992.
- Number of items to be deepened to achieve 50 per cent MOPs in 1993.
- Number of items to be deepened to achieve 50 per cent MOPs in 1994.

Source: Compiled from Ibid., Annex II, pp. 69-70
(a) reduction in the exclusion list of individual member countries to not more than 10 per cent of the number of traded items and to not more than 50 per cent of the value of intra-ASEAN trade, while striving for the greater harmonization of the exclusion lists;

(b) phasing in new items from the exclusion lists into the PTA, and granting them a maximum MOPs of 25 per cent (See, Table - I);

(c) deepening of 50 per cent MOP on existing items on the basis of either an across-the-board concession of 5 percentage points yearly or product-by-product concessions totaling 50 per cent at the end, or a combination of both (See, Table - II);

(d) reducing the ASEAN content requirement in the rules of origin from 50 per cent to 35 per cent on a case-by-case basis for a period of 5 years. With respect to Indonesia, the ASEAN content requirement will be reduced from 60 per cent to 42 per cent.

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31 "Exclusion list" means a list containing products that are excluded from the extension of tariff preferences under PTA.

32 "New items" refer to products with exclusion list which are phased into the PTA and are to be accorded margins of tariff preferences.

33 "Existing items" mean products which are currently accorded margins of tariff preferences under the PTA.

34 See, Articles 2-6, and 10. ASEAN Secretariat, n. 29, pp. 63-64.
Under a "Memorandum of Understanding" (to be applicable for a period of five years) the Heads of Government agreed to implement: (a) "Standstill Commitment", which enjoined upon the member countries not to introduce new or additional non-tariff measures which would impede intra-ASEAN trade; and (b) "Rollback Commitment", which called upon the member nations to phase out or eliminate non-tariff measures which retard intra-ASEAN trade.

Following the Manila Summit, and in order to give practical shape to the agreement on further broadening and deepening of ASEAN-PTA, COTT held two meetings in Singapore in February 1988 and Manila in June 1988. It noted that while some member countries had already implemented their 1988 programmes involving the reduction of the exclusion lists and deepening of MOPs on April 1, 1988, the others would be following the suit. However, PTA concessions would be implemented retrospectively from April 1, 1988.

Further, to implement standstill of Non-Tariff Barriers (NTBs) affecting ASEAN products of interest to and being traded in ASEAN, COTT drew up the procedures for the implementation of ASEAN Memorandum of Understanding on Stand Still and Rollback of NTBs. As a result, on the

35 "Non-tariff measures" refer to governmental measures or policies other than duties which affect trade.

36 For details see, ASEAN Secretariat, n. 29, pp. 71-75.

completion of the 1988 programme on the improvement of
ASEAN-PTA, a total of 1679 items from exclusion lists were
introduced into the PTA with a minimum MOPs of 25 per cent.
This brought the total number of items traded under ASEAN-
PTA to 14,662. In 1989, a total of 335 items were phased
out into PTA with a minimum MOPs of 25 per cent bringing the
total PTA items to 14,801. On the deepening of MOPs for
existing items, a total of 2,848 items came to enjoy further
deepening of MOPs. As far as the present status of the
'Protocol on Improvement and Extension of Tariff Preferences' under PTA is concerned, the 1989 and 1990
programmes have been implemented by all member countries.
Under these programmes, a total number of items traded under
ASEAN-PTA has gone up 15,295 as 500 new items have been
introduced and accorded a minimum MOPs of 25 per cent.
Besides, 3,544 existing items have been accorded further
deepening of the MOPs. With regard to the Exclusion Lists,
member countries have identified the hitherto unclassified
items and these items would soon be phased out into the
ASEAN-PTA. Also, on the request of ASEAN-CCI to further
reduce the ASEAN content requirement, member countries have
agreed on the final list of chemical products eligible for a
reduction of the ASEAN content requirement from 50 per cent

38 ASEAN Secretariat, ASEAN Newsletter, n. 29, (September-

39 ASEAN Secretariat, ASEAN Newsletter, n. 36, (November-

40 ASEAN Secretariat, Annual Report of the ASEAN Standing
Committee 1990-91 (Jakarta, n.d.), pp. 7 and 66.
to 35 per cent. As far as the progress in the implementation of the MOU on Standstill and Rollback of NTBs, member countries have been holding bilateral negotiations under the Trade Preferential Negotiating Group (TPNG). Although TPNG has not yet achieved concrete results in his direction, individual member countries have been undertaking unilateral actions to further liberalize their trade barriers. This practice has resulted in the removal of a number of NTBs. Finally, a healthy development towards the implementation of improved PTA seems to be that the member countries now fully recognize that PTA, upon the completion of current five year programme, would need to be improved, and have recently agreed that it should be extended to 1999. Some of the measures in the next PTA programmes are likely to include; the deepening of the MOPs of the existing PTA items to 75 per cent; according MOPs of 50 per cent to a new items; and reducing further the number of items in the Exclusion List to 5 per cent of total intra-ASEAN trade etc.

The above account of the efforts and concern of the ASEAN members to broaden and deepen ASEAN-PTA clearly reveals that ASEAN-PTA is viewed as the core instrument of intra-regional trade liberalization, which would, in turn,

41 Ibid., p. 66.
decrease ASEAN's pathetic dependence on the developed world. But what has been the impact of ASEAN-PTA on intra-ASEAN trade. Has it really achieved the desired results? To put the question in a capsule form, would ASEAN-PTA be able to successfully reduce ASEAN's dependence upon the developed world and catapult the region further up the regional integration ladder?

The share of intra-ASEAN trade has registered a slight increase in the recent past and as in July 1991, the volume of intra-regional trade constituted 20 per cent of ASEAN's total trade. But progress under ASEAN-PTA to expand intra-ASEAN trade appears to be modest. Probably, it is because of such a lacklustre progress of ASEAN-PTA that it has come to be looked down upon as a "bureaucratic device", although periodically new items are added to the list and the cumulative effect may appear to be impressive.


44 Straits Times, (Singapore). According to the Straits Times, although about 15,000 items were traded under ASEAN-PTA, intra-regional trade under ASEAN-PTA amounted to less than 1 per cent of total ASEAN trade.

45 It may, however, be noted that even the percentage increase in the number of items traded under ASEAN-PTA has been declining over the years. For example, the number of items under PTA increased from 71 to 9000 during 1978-1982 (12676 per cent increase), from 9000 to 13,000 during 1982-1987 (showing 44.4 per cent increase), and during 1987-1990 (after the signing of 'Protocol on Improvement on Extension on Tariff Preferences under ASEAN-PTA' in 1987) from 13,000 to 15,295 (registering 17.65 per cent increase).
There are, in fact, many structural micro-problems which seem to explain the relative stagnancy of ASEAN-PTA.

First, ASEAN-PTA schemes in negotiations on trade preferences largely follow a gradual step-by-step and item-by-item approach as a means of accelerating intra-ASEAN trade which is an extremely slow and cumbersome way of bringing down the intra-regional trade barriers. The produce-by-product approach, it may be noted, often results in rounds and rounds of protracted negotiations among government officials, bargaining over most of the items, and leads to numerous difficulties encountered in administering the agreed items subjected to varying tariff cuts. Further, item-by-item approach also seems to have an inherent flaw as it allows the member nations not to offer items to be included under ASEAN-PTA on the plea that they may cause domestic problems. While this 'safety-valve' may help in protecting inefficient domestic industries, it surely impedes intra-ASEAN trade.

Second, it has been pointed out by some scholars that

46 Two approaches are usually adopted in negotiations on trade preferences. One of these is on the basis of negotiating trade preferences on "product to product", while the other is "across-the-border cuts". The latter approach is more viable but ASEAN, because of resistance on the part of some members, largely follows the former.

47 Swee-Hock, n. 19, p. 344.

48 Wawn, n. 10, p. 171.
Brussels Tariff Nomenclature (BTN) and seven digit level for commodities that actually enter into world trade. And it has now been realized that the first few batches of items included in ASEAN-PTA either involved articles with low trade content or were so minutely refined down to the seven digits that they carried little practical value in terms of restructuring the trade towards the region. As a consequence, even at present, most of the items included in the ASEAN-PTA are of little importance and possess little trade potential. In view of this, it seems least surprising that ASEAN-PTA has done little to liberalize intra-regional trade.

Third, an important factor which appears to militate against the acceleration of intra-ASEAN trade is the lack of complementarity in the ASEAN economies, i.e., ASEAN countries produce strikingly similar primary commodities vis-à-vis oil, tin, rubber, lumber, iron-ore, non-ferrous metals, which require very little intra-regional trade. Even in the case of manufactured goods, ASEAN countries manufacture similar products; thus, requiring little intra-ASEAN


51 ASEAN Secretariat, n. 25, p. 16.
Therefore, it seems that despite the fact that ASEAN countries do recognise the pressing need to expand intra-regional trade, and have also spelled out measures to achieve it, the very competitive nature of their economies holds little promise for the future of ASEAN-PTA.

Fourth, a formidable 'structural' obstacle in the way of successful implementation of ASEAN-PTA appears to be an 'escape clause' which goes under the ruberic 'Exclusion Lists' in ASEAN-PTA. This clause allows the member countries to manipulate the ASEAN-PTA to protect what may be perceived by them as harming their national interests. Taking advantage of this rule, ASEAN governments have tended to protect their private sector by declaring a broad range of items as sensitive, and thus, making them eligible for inclusion in their exclusion lists. "Clearly" as Devan cogently observes, "the exclusion list, meant to allow flexibility to contracting states in regulating the imports of specific products, has been over-used. Within the PTA specifications, there is no definition of what would constitutes a 'sensitive item'." Thus, given the fact


that it is for the each member country to decide in each case as to whether an item falling under a tariff comes under the 'sensitive' category or not, the existence of 'exclusion lists' it may be argued, makes a mockery of ASEAN PTA, and has, in the past, nullified the impact of ASEAN-PTA. Although following the Manila Summit of 1987, a time-bound programme has been agreed upon to phase out items from the exclusion lists into the ASEAN-PTA (See, Table - I), it seems imperative to persuade the ASEAN members to extend this programme further to reduce the extent of exclusion lists. Therefore, it appears that in future, the real effectiveness of ASEAN-PTA would largely depend upon whether or not members are willing to "volunteer to liberalize their respective national exclusion lists".

Fifth, an important structural micro-inadequacy which has been plaguing the ASEAN-PTA, seems to be an open-ended interpretation of the rules of origin clause. The earlier rule which constituted an integral part of the agreement on ASEAN-PTA, signed in Manila on February 24, 1977, provided that preferential treatment was to be given to products worked and processed in ASEAN countries provided the total value of materials (parts or produce originating from non-ASEAN countries or of undetermined origin) used did not exceed 50 per cent of the F.O.B. value of the products (40 per cent in case of Indonesia) produced or obtained, and the

final process of manufacturing was performed within the territory of exporting ASEAN members. Although after the Third ASEAN summit in Manila in December 1987, the ASEAN content requirement in the rules of origin has been reduced from 50 per cent to 35 per cent (from 60 per cent to 42 per cent in case of Indonesia) on a case-by-case basis for a period of five years, the clause, it may be noted, not only continues to be open to different interpretations, it also appears to act as a bureaucratic constraint for ASEAN businessmen. Further, the rules of origin clause, it may be argued, can be just and effective only if the member nations have roughly equal levels of tariff protection. But given the varying levels of tariff protection among ASEAN countries, this rule seems to have an in-built disadvantage for a member (for example, the Philippines) which has high level of tariff protection vis-a-vis the other members (for example, Singapore). The reason is that such a member has to incur greater administrative costs than a low-tariff

56 For details see, Chapter III (Article 15), and Rule 3(a) and (b) of Annex.1 of the "Agreement on ASEAN Preferential Trading Arrangements", Malaysia, n. 11, pp. 42 and 49.

57 For details see, ASEAN Secretariat, n. 29, p. 64.

58 It may be noted that the raison-d'-etre of the ASEAN rules of origin lies in the fact that many manufacturers in ASEAN countries use inputs for their produce from non-ASEAN countries in large quantities. Therefore, it seems unfair to classify such products (of largely non-ASEAN content) as domestic products and include them into ASEAN-PTA. The ASEAN-PTA, after all, has been instituted to accelerate intra-regional trade; and certainly not to provide back-door access to non-ASEAN inputs. Devan, n. 54, p. 201.
country. Therefore, the rules of origin clause appears to unduly burden the members which have high-tariff level. The problem becomes still more complicated because the customs officials, taking advantage of the rules of origin, arbitrarily assess the ad valorem tax on imported goods at a level higher than the amount stated on the invoice. Also, it appears that clarification procedure required for the product to be eligible for inclusion in the ASEAN-PTA causes unnecessary and avoidable delays in transactions, and is often frustrating for the traders.

Sixth, ASEAN-PTA has failed to accelerate intra-ASEAN trade because of the existence of NTBs which negates the effects of whatever tariff cuts that have been agreed upon by member nations. ASEAN members, as earlier pointed out, have made extensive use of NTBs to insulate their inefficient domestic industries and seem "reluctant to expose them to more intensive competition". Clearly such an extensive and indiscriminate use of NTBs reflects "the protective role of tariffs" and seems to rather reinforce the belief that they have been taken recourse to, "to ease


60 The problem arises because to be eligible for ASEAN-PTA, every product requires a certificate of origin to be issued by a government authority designated by the exporting member nation. See, Rule 7 of Annex. I, Malaysia, n. 11, p. 50.

balance of payments pressures". The most frequently encountered NTBs, it may be noted, which have played trade-retarding role in ASEAN - PTA are: customs procedures, specially customs clearance which raise the cost of exporting because of the delays they cause clearing goods; valuation; and customs classifications.

Seven, ASEAN-PTA has failed to cut much ice in the direction of intra-regional trade stimulation because the member nations have strong traditional and seemingly irreversible ties with the countries outside the region, which cannot be altered overnight. That is why, at present, trade of all ASEAN members is largely directed towards the countries outside the region, particularly, the EC, the US and Japan. The strong extra-regional trade orientations of all ASEAN countries, and the resultant meagre intra-regional trade it may be noted, seems to clearly reflect that in the ASEAN region, "regional trade policies are widely independent from each other and thus, can be defined as a national and not a supra-national job".

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62 Aurora Sanchez, n. 52, p. 6.
64 ASEAN Secretariat, n. 25, p. 16. Also Palmer and Reckford, n. 53, p. 93.
Finally, besides structural defects and practical economic constraints, it seems difficult to escape the point that the lack of will on the part of ASEAN members to place their long-term regional interests over short-term national interests has also been, to a large extent, responsible for the sluggish pace of ASEAN-PTA. As one writer had put it in the year the ASEAN-PTA was launched but his observation seems relevant even today:

ASEAN is not quite ready for extensive multilateral preferential arrangements, which will lead to significant trade liberalisation, is shown by the fact that each member country has a long list of items for which tariff reductions are sought from partners and a short list of items for which tariff reductions are offered to partners in return.

In this context, given the almost insurmountable inadequacies inherent in the ASEAN-PTA, a question may be asked, i.e., why has after all the ASEAN preferred this largely product-by-product based PTA - a slow and cumbersome method of trade liberalization? The answer seems to lie basically in the existence of competitive economic structures of ASEAN countries as well as their uneven levels of economic development. Viewed thus, the adoption of gradual and product-by-product approach by ASEAN as a core instrument of intra-regional trade liberalisation, it may be argued, seems both deliberate and logical.

Options before ASEAN: Free Trade Area? or Customs Union? or Improvement in ASEAN-PTA?

The above scrutiny of ASEAN-PTA clearly brings forth that it has failed to stimulate intra-regional trade. Indeed, due to some structural defects as well as practical problems, the impact of ASEAN-PTA on intra-ASEAN trade has been almost negligible. Therefore, a question that naturally assumes importance in this context is: what are the options before ASEAN?

On alternative to the ASEAN-PTA that has often been mooted and discussed, is the establishment of ASEAN Free Trade Area (AFTA) which would permit goods to move freely among ASEAN countries, without being subjected to tariff and non-tariff protection. In other words, under AFTA, intra-ASEAN tariffs would be reduced to zero. AFTA, if agreed upon, would be much more effective instrument of trade liberalisation and appears to have many advantages. It, for example, would help to bring the region's hidden economic potential to surface; encourage market linkages; bring about a more efficient allocation of resources within the region; and enhance the flow of foreign investment in the region. However, given the different levels of economic

development of ASEAN countries, it seems that AFTA, as an instrument of stimulating intra-ASEAN trade, does not provide a workable alternative at the moment.

However, in this context, it seems relevant to briefly mention some of the suggestions made at a colloquium on "ASEAN Economic Cooperation: The Tasks Ahead", organised by the ASEAN Economic Research Unit (AERU) of the Institute of South-East Asian Studies (ISEAS), at Singapore in

For example, Indonesia, till recently, had been consistently opposing the establishment of AFTA on the ground that it, being the economically most backward of ASEAN countries, AFTA would not only strain its economy by liberalizing domestic consumption but would also destroy its infant industries by exposing them to competition from other countries. Tom Jackson, "The "Game" of ASEAN Trade Preferences: Alternatives for the Future Trade Liberalization", ASEAN Economic Bulletin, vol. 3, n. 2, (November 1986), p. 256.

It may be noted that at the Fourth ASEAN Summit held in Singapore in January 1992, the ASEAN members have reached an agreement to establish AFTA within a period of fifteen years, beginning from January 1992. Ministry of Foreign Affairs, Malaysia, Foreign Affairs Malaysia, vol. 25, n. 1, (January 1992), p. 39. However, the establishment of AFTA, does not appear really feasible. While it is not clear (as the minutes of the Summit are not readily accessible) as to under what circumstances and on which conditions Indonesia has agreed to the goal of AFTA, given the uneven levels of economic development of ASEAN countries, it is, indeed, difficult to imagine as to how it would be implemented. Of course, its implementation seems possible if all the member countries are able to attain a roughly similar level of economic development by the stipulated date. But it is something which can be realized only in a remote future and not in fifteen years. Therefore, given the present wide diversity of economic structures in ASEAN countries, there seems much reason to argue that ASEAN countries would continue to rely on PTA with certain modifications as the core instrument for achieving trade liberalization.
February, 1987. While noting that given the present wide diversity of trade regimes among ASEAN countries, none of the ideal models provided by economic theory would immediately be applicable, the Report, therefore, called for a specific institutional arrangement to be designed for ASEAN. In this context, it recommended the establishment of ASEAN trade area (which links AFTA with customs union) as a more sensible and realization goal for ASEAN. The major components of this proposal include:

(i) establishment of a customs union comprising Indonesia, Malaysia, the Philippines and Thailand. Within this area, all internal tariffs and non-tariff barriers would gradually be reduced to zero;

(ii) negotiation by these countries for the common external tariff of this customs union at a level at or below Malaysia's present tariff level;

(iii) establishment of a free trade area, linking the customs union with Singapore and Brunei, but restricted to goods of ASEAN origin, defined as in the existing ASEAN-PTA.

(iv) agreement on a ten year time table for achieving these objectives, prescribing annual tariff adjustments and


71 It may be noted, even at the cost of repetition, that in a customs union, the member-nations not only eliminate tariffs among themselves (as in FTA) but also have common level of external tariff.
reduction of non-tariff barriers until the final levels of internal and external tariffs have been reached; and

(v) negotiation and agreement on a review mechanism for slowing down or speeding up the adjustment process in accordance with current developments.

These suggestions, if adopted and implemented, would, no doubt, stimulate intra-ASEAN trade, help create economies of scale and reduce ASEAN countries' dependence on the developed countries. However, it seems that these suggestions are a bit forward-looking, if not too radical, and if the past is any guide to future action, it may safely be conjectured that given the uneven levels of economic development, competitive economies, lack of industrial complementation, and divergent perceptions of short and long-term benefits of member nations, ASEAN, at present, does not seem favourably disposed towards either customs union or ASEAN trade area linking FTA with customs union. Moreover, the prescription for the division of ASEAN into two sub-regional groupings (one comprising FTA and the other customs union) does not appear too conducive for the health of the Association. Therefore, while some of these ideals should be kept in mind as the future strategy of regional cooperation, some concrete suggestions may be made to improve upon the existing ASEAN-PTA to make it more effective and viable. These are:

72 Report of a Colloquium, n. 70, p. 121.
(i) First, allow free movement of ASEAN-sourced raw-materials and manpower within the region. This would result in improving the competitiveness of each member's industries at global level. Such a policy, it seems, may, for the time being, lead to unemployment of workers engaged in agriculture. Therefore, to absorb and re-employ displaced workers in the industries, this policy should be implemented in a gradual and phased manner.

(ii) Second, establish an ASEAN export-import bank as a joint venture of all member countries designed to promote extra-ASEAN trade of capital goods and their exports to non-ASEAN countries.

(iii) Third, all ASEAN firms, may be encouraged to use ASEAN currencies while trading with one another. The use of ASEAN currencies, instead of the US dollars, in intra-regional trade would not only help ease balance of payments situation (since some members at present face a foreign exchange shortage), it may also generate increased intra-ASEAN trade.

(iv) Fourth, re-evaluate the exclusion list criterion. Efforts should be made to persuade the member nations that the exclusion list rule not only plagues the attempts to increase intra-ASEAN trade, it also unduly protects

73 Villegas, n. 50, p. 125.
74 FEER, March, 8, 1984, pp. 78-79.
75 Villegas, n. 50, p. 125.
inefficient and high-cost industries. The reason is that if the rule of exclusion list is persistently taken resources to (as has, indeed, been done in the past), production cost would rise and retard the ability of protected industries to compete efficiently with those of the other member nations. Although, it is quite heartening to note that at the Third Summit at Manila in December 1987, ASEAN countries have agreed to reduce the exclusion list to not more than 10 per cent of the total number of traded items in the ASEAN region and not more than 50 per cent of the total value of intra-ASEAN trade, efforts should be made, as earlier suggested, to further reduce the exclusion list to say, 2 or 3 per cent. Further, ASEAN must define the precise meaning of a 'sensitive item' which is eligible to be included in the exclusion list. At present, there are no such definitions.

(v) Last, re-evaluate and simplify the rules of origin clause because the rules are expensive to monitor and impose unfair burden on high tariff countries. As noted earlier, it is the responsibility of the ASEAN governments to certify ASEAN origin and ASEAN content requirements. The exercise of certification becomes all the more difficult to undertake especially with the products coming from an entrepot facility like Singapore. So much so, in some cases, the cost incurred in certification may outweigh the benefits accrued from tariff reductions. To overcome this situation, it may ---------------

76 Devan, n. 54, p. 205.

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be suggested that a composite ASEAN body, say, ASEAN Commission should be set up to shoulder the responsibility of certifying ASEAN origins and content requirements. Such a commission should be financed by an ASEAN budget with each member country contributing to the budget, proportionately to the volume of its intra-regional trade.

However, efforts are already being made to both broaden as well as to deepen ASEAN-PTA, and to make it more effective and meaningful so as to bring about a more substantial and perceptible increase in the overall intra-ASEAN trade.

To remove micro structural defects and to further improve upon ASEAN-PTA, and to strengthen intra-ASEAN trade, ASEAN has most recently commissioned a number of studies. These include: Study on ASEAN Economic Cooperation for the 1990's; Study of the Exclusion Lists to Enhance The level of PTA in Intra-ASEAN Trade; and Annual ASEAN Macroeconomic Outlook etc. It is likely that some of the recommendations made by these studies shall be adopted and implemented by ASEAN.

77 Ibid.
78 Broaden refers to the increase in the range of ASEAN made commodities covered under PTA. Deepen refers to increase in the rate of intra-ASEAN tariff preferences.