ANNEX II.

Selected trade and investment agreements in the region

TRADE AGREEMENTS UNDER ASEAN

ASEAN Preferential Trading Arrangement

The ASEAN Preferential Trading Arrangement[1] was signed in 1977. The Agreement was applied to basic commodities and most-favoured-nation (MFN) rates were reduced. However, many important products were excluded. Tariff rates were proposed on a product-by-product basis. Emphasis has been given to each country's priorities regarding product selection.

In 1987, members signed a Protocol on Improvements on Extension of Tariff Preferences under the ASEAN Preferential Trading Arrangements intended to enhance economic cooperation by making further tariff cuts and reducing the exclusion list. A proper rule was also proposed to phase out tariffs. Rules of origin clauses have also been relaxed in accordance with this Protocol. A Memorandum of Understanding (MOU) on Standstill and Rollback on Non-Tariff Barriers among ASEAN Countries was also signed in 1987. Under this MOU, the Contracting Parties agreed to eliminate GATT-inconsistent non-tariff barriers.[2] In some cases, they agreed not to increase further the current extent of non-tariff barriers. The ASEAN secretariat took responsibility for monitoring this elimination procedure.

ASEAN Free Trade Area

In the late 1980s there were growing uncertainties about the outcome of GATT amid the formation of new regional groups such as APEC (1989), MERCOSUR (1991) and the EU. In response, ASEAN leaders undertook further trade liberalization and more cooperation through the formation of AFTA in 1992.[3]

The AFTA arrangement, through CEPT, envisages the reduction of tariffs to 0-5 per cent within 15 years (later shortened to 10 years). Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam have been allowed more time. The CEPT scheme contains an Inclusion List (IL), a Temporary Exclusion List (TEL), Sensitive List (SL) and General Exception List (GEL). Products in IL are divided into two groups subject to two different schemes of tariff

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[1] ASEAN web site, <*http://www.aseansec.org/1376.htm*>, 19 November 2003.

[2] ASEAN, *Annual Report 1987-1988,* <*http://www.aseansec.org/9664.htm*>, 20 November 2003.

[3] E. Sakakibara and S. Yamakawa, "Regional integration in East Asia: challenges and opportunities – Part I: History and institutions", World Bank Policy Research Working Paper 3078, 2003.

reductions: normal-track products (tariffs to be reduced by 2002/03) and fast-track products (tariffs to have been reduced by 2000). In 2003, the average CEPT tariff rate for IL products was 2.7 per cent (compared with 12.8 per cent in 1993). The tariffs on TEL products would ultimately come down to the CEPT levels but they are temporarily protected. Items in SL are unprocessed agricultural goods, for which tariffs will be reduced to the CEPT level by 2010. GEL consists of products that are permanently excluded from the tariff reduction initiatives. The 2001 package of tariff cuts covered almost 84.7 per cent of the products in IL, 13.4 per cent in TEL, 1.3 per cent in GEL and 0.6 per cent in SL.[4] The modalities of CEPT are based on concessions granted on a reciprocal product-by-product basis, thereby encouraging members to include more products in IL. In the case of the earlier PTA there was no definite time frame, while under AFTA not only the reduction in tariffs but also the non-tariff barriers are subjected to a proper time schedule. The modalities of AFTA are reviewed periodically and countries have signed different protocols to implement the rules.

The Protocol to Amend the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) for the Elimination of Import Duties (2003) has provided a time line for complete elimination of import duties of IL products by 2010 and for Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam by 2015. However, flexibility has been allowed for import duties on some sensitive products which are to be eliminated not later than 1 January 2018.

ASEAN Framework Agreement on the Facilitation of Goods in Transit (1998)

This Agreement is aimed at facilitating the transport of goods in transit and establishing an effective, efficient, integrated and harmonized transit transport system by simplifying and coordinating transport, trade and customs regulations and requirements so as to support the aims of AFTA and further integrate the economies of the region. The principle of this Agreement depends on MFN and national treatment and the consistency, transparency and simplicity of the clauses. This Agreement has two most important characteristics. First is the exemption of taxes and other charges on transit transport except charges for specific services rendered in connection with such transport. Second is the stipulation that containers shall not be subjected to examination at customs offices en route. However, to prevent abuses such as smuggling and fraud, customs authorities of the contracting parties may do so in exceptional cases if irregularities are suspected. Border and frontier facilities are also ensured through this Agreement. Disputes regarding this issue will be tackled under the ASEAN Protocol on Dispute Settlement Mechanism (1996).[5]

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[4] Ibid.

[5] ASEAN web site, <*http://www.aseansec.org/7377.htm*>, 20 November 2003.

TRADE AGREEMENTS IN ECO

ECOTA

The ECO Trade Agreement (ECOTA) was signed by the member countries of ECO in 2003.[6] The basic objectives of this Agreement have been to promote harmonious development through expansion of trade, provide fair conditions of competition for trade among members, increase intraregional trade and thereby expansion of world trade and substantially increase trade-related investment opportunities in member countries.

The Agreement focuses on the gradual phasing out of tariffs and other trade barriers among member countries with more flexibility provided to Afghanistan (allowed 15 years compared with eight years for other members). Members have decided to consider goods traded among themselves as the positive list for tariff reduction (except as notified in the negative list). The Agreement also states that within two years non-tariff barriers and export duties should be abolished. Tariff concessions will be based on proper rules of origin. Trade-distorting support will be deemed incompatible except for agricultural goods. Provisions for the protection of intellectual property rights, anti-dumping measures, safeguard measures, a dispute settlement system and balance-of-payments difficulties are also included in the Agreement.

In addition to this Agreement, other major agreements related to international trade are on the simplification of visa procedures and on the establishment of an ECO trade and development bank and reinsurance company. Individual Governments and the ECO secretariat are working together for the implementation of ECOTA. The Islamic Republic of Iran, Pakistan and Turkey have signed a protocol for mutual liberalization among themselves through tariff reductions before ECOTA comes into force.

Transit trade and transport agreements in ECO

In addition to the agreement on trade, ECO has given much attention to transport and the transit of goods, reaching two major agreements: ECO Transit Trade Agreement (1995) and ECO Transit Transport Framework Agreement (1998).[7] The 1995 Agreement promotes uniform, simplified and harmonized administrative formalities, in particular at border-crossing points. The purpose of this Agreement is to facilitate trade between members when goods transported have to pass through other member countries. The 1998 Agreement is aimed at facilitating the smooth and safe movement of goods and passengers among member countries. The objective is to provide the necessary facilities for transit transport, avoid unnecessary delays and coordinate efforts to avoid customs frauds and tax evasion.

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[6] ECO web site, <*http://www.ecosecretariat.org*>, 19 November 2003.

[7] ECO web site <*http://www.ecosecretariat.org*>, 8 October 2003. For a detailed discussion of transit transport in ECO, refer to chapter IV.

TRADE AGREEMENTS IN THE PACIFIC ISLANDS

Pacific Island Countries Trade Agreement

PICTA was signed in 2001 by Pacific Islands Forum countries. The objective of the Agreement is to strengthen, expand and diversify trade between the partners. It also aims to develop the efficient use of resources of the Pacific subregion, leading eventually to a single market contributing to socio-economic development.

PICTA is the major agreement under the Pacific Agreement on Closer Economic Relations (PACER), the umbrella regional cooperation arrangement. With the signing of PICTA and PACER and future integration strategies with Australia and New Zealand, the Forum's Trade and Investment Division now focuses on preparations for implementing (and monitoring) these agreements, including providing advice on tariff and tax reforms, compliance with the rules of origin clauses and trade facilitation measures. The Forum Secretariat is also working towards the extension and deepening of these agreements. In 2002, the secretariat put emphasis on the preparation of WTO-related issues including accession, technical assistance and information dissemination.

In accordance with the Agreement, developing Forum countries will liberalize towards each other within 8 years up to 2010 and the small island States and least developed countries will do so within 10 years up to 2012. The Agreement also provides for the protection of sensitive industries through a negative list that will be maintained over a longer time period and be eliminated by 2016. For fixed and specific tariffs, members have the option of converting them to advalorem tariffs or reducing them. The rules of origin will be based on 40 per cent value added criteria but also provide for cumulation and derogation. A Rules of Origin Committee will administer the application of the rules. Against the background of their special relationship with the United States, the Compact Countries (Marshall Islands, Federated States of Micronesia and Palau) will be given an additional period of three years to sign the agreement. PICTA entered into force following ratification by six countries in April 2003.

South Pacific Regional Trade and Economic Cooperation Agreement

SPARTECA is a non-reciprocal trade agreement under which the two developed nations of the Pacific Islands Forum, Australia and New Zealand, offer duty-free and unrestricted or concessional access for virtually all products originating from the developing island members of the Forum.[8] SPARTECA was signed by the majority of Forum members at the Forum's Eleventh Meeting in Kiribati on 14 July 1980. It came into effect for most Forum countries as at 1 January 1981.

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[8] Pacific Islands Forum Secretariat web site, *<http://www.forumsec.org.fj/>,* 20 November 2003.

With the accession of new members to the Forum, the current list of signatories of SPARTECA includes Cook Islands, Fiji, Kiribati, the Marshall Islands, the Federated States of Micronesia, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The Agreement includes provisions for general economic, commercial and technical cooperation, safeguard provisions relating to dumped and subsidized goods and suspension of obligations, and provisions for general exceptions and revenue duties. The Agreement also provides for special treatment and assistance to be extended to the Smaller Island Countries, Cook Islands, Kiribati, Nauru, Niue, Samoa, Tonga and Tuvalu. However, to qualify for duty-free and unrestricted or concessional access benefits, goods exported to Australia and New Zealand must meet the rules of origin set out in SPARTECA.

PICTA provides some flexibility to least developed countries and small island countries but there is no specific enforcement authority to monitor the implementation part of the Agreement. Members are advised to solve disputes amicably. However, the final outcome of this Agreement depends much more on the member countries' trade dynamics with Australia and New Zealand. The Forum Secretariat is working towards the harmonization of customs and WTO-related issues. PICTA does not deal with trade relations between Forum developing countries and Australia and New Zealand and hence it does not have any effect on SPARTECA. However, SPARTECA would not prevent developing countries from having FTAs among themselves. Already some efforts have been taken by some of those countries to pursue subregional cooperations, such as the Melanesian Spearhead Group Trade Agreement and the Cotonou Agreement.

Melanesian Spearhead Group Preferential Trade Agreement[9]

The Melanesian Spearhead Group (MSG) Preferential Trade Agreement is a trade treaty governing the four Melanesian States of Papua New Guinea, the Solomon Islands, Vanuatu and Fiji (joined in 1998). The MSG Trade Agreement signed in 1993 is a subregional trade treaty established to foster and accelerate economic development through trade relations and provide a political framework for regular consultations and review on the status of the Agreement, aiming to ensure that trade is conducted in a genuine spirit of the Melanesian Solidarity and is undertaken on a most-favoured-nation basis. The MSG Trade Agreement is GATT consistent and has recently been approved and accorded recognition by the WTO Committee on RTAs. This Agreement covers over 180 Tariff lines of the Harmonised Systems (HS) of Customs Tariff Code. The MSG Trade Agreement is likely to include issues of intellectual property rights and trade-in-services in due course. During the Ninth MSG Trade and Economic Officials meeting in Port Moresby, Papua New Guinea (November 2000), members agreed to the expansion of the MSG Product Schedule tariff headings from four-digit to six-digit HS code, thereby facilitating MSG trade by removing the ambiguity in product identification at customs points of entry.

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[9] The Republic of the Fiji Islands, Ministry of Foreign Affairs and External Trade web site, <*http://www.foreignaffairs.gov.fj/docs/regionaltradearrangements.pdf* >, 17 March 2004 and Vanuatu Investment Promotion Authority web site, <*http://www.investinvanuatu.com/ienviro/os_trade.htm* >, 17 March 2004.

TRADE AGREEMENT IN SAARC

SAARC Preferential Trading Arrangement

SAPTA was signed in 1993 and its basic principles are:

- Overall reciprocity and mutuality of advantages so as to benefit equitably all Contracting States, taking into account their respective levels of economic and industrial development, the pattern of their external trade, and trade and tariff policies and systems;
- Step-by-step negotiation of tariff reform, improved and extended in successive stages through periodic reviews;
- Recognition of the special needs of the least developed Contracting States and agreement on concrete preferential measures in their favour;
- Inclusion of all products, manufactured goods and commodities in their raw, semi-processed and processed forms.

The Agreement aims at reducing tariffs, para-tariffs and non-tariffs. Initially a product-by-product approach was suggested, for tariff reduction, but later an across-the-board reduction and a sectoral reduction were introduced. The Agreement has provisions for least developed countries safeguard measures and the possibility of withdrawal from the Agreement. It has a proper rules of origin clause and provision for a balance-of-payments crisis. It has been suggested that all disputes be resolved amicably through discussions.

Until now concessions have been provided for more than 5,000 products. In the first three rounds of reductions, product-by-product or chapter-wise concessions were provided. From the fourth round, an attempt was made to implement a steep reduction in tariff rates. Also, simultaneously, reductions in non-tariff barriers were suggested. The domestic requirement content for rules of origin has been revised downward. Consensus was reached regarding faster movement towards a South Asian free trade area during the Tenth SAARC Summit in 1998.[10] SAFTA has been signed in Islamabad during the Twelfth Summit in 2004.[11]

INVESTMENT AGREEMENTS

ASEAN Investment Agreement (Promotion and Protection of Investments)[12]

The Agreement among the Governments of Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand for the Promotion and Protection of Investments was signed in 1987:

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[10] SAARC, "Declaration of the Tenth SAARC Summit", Colombo, 31 July 1998, <*http://www.saarc-sec.org*>, 19 November 2003, paras. 22 and 23.

[11] Refer to box III.4.

[12] ASEAN web site, <*http://www.aseansec.org/6464.htm*>, 20 November 2003.

This Agreement defines investment broadly. The term "investment" includes:

(a) Movable and immovable property and any other proper rights such as mortgages, liens and pledges;

(b) Shares, stocks and debentures of companies or interests in the property of such companies;

(c) Claims to money or to any activity performed under contract having a financial value;

(d) Intellectual property rights and goodwill;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Under this Agreement, each Contracting Party shall, in a manner consistent with its national objectives, encourage and create favourable conditions in its territory for investments from the other Contracting Parties. All investments to which this Agreement relates shall be governed by the laws and regulations of the host country, including rules of registration and valuation of such investments. The Agreement also makes detailed provision for the protection of investments and the repatriation of profits and earnings with few exceptions. Any related disputes are to be resolved amicably. For prolonged disputes, arbitration may be sought, taking into consideration regional or international arbitration procedures and institutions. Through a Protocol in 1996, the Contracting Parties supported simplification of approval procedures for investment in the region.

Framework Agreement on the ASEAN Investment Area (1998)

This Agreement is the result of the joint efforts at liberalizing trade and promoting intra-ASEAN trade and investment flows enshrined in the Framework Agreement on Enhancing ASEAN Economic Cooperation, adopted in 1992.[13] Its objectives are to establish a competitive ASEAN investment area with a more liberal and transparent investment environment among member States in order to achieve a sustainable increase in direct investment, by both members and non-members, to strengthen the competitiveness of the region and progressively reduce all barriers to investment so that national treatment can be offered to ASEAN investors by 2010 and to all investors by 2020 and so that all sectors are opened as well. The Agreement emphasizes the role of the business sector in achieving this goal and facilitating the freer flow of capital, skilled workers, professionals and technology among member countries. It ensures a faster process of facilitation, promotion and liberalization and provides safeguard options and emergency measures on difficult balance-of-payments situations. Disputes are to be resolved according to the ASEAN Protocol on Dispute Settlement Mechanism. The Agreement was followed by a Protocol in 2001.[14]

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[13] ASEAN web site, <*http://www.aseansec.org/12374.htm*>, 20 November 2003.

[14] The Protocol to Amend the Framework Agreement on the ASEAN Investment Area deals mainly with direct investments. It excludes portfolio investments and matters relating to investments covered by other ASEAN agreements from the purview of the Agreement. See ASEAN web site, <*http://www.aseansec.org/6467.htm*>, 20 November 2003.