

CHAPTER 2

Background and Objectives

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BACKGROUND AND OBJECTIVES

The ASEAN Trade in Goods Agreement (ATIGA) is a culmination of almost 2 decades of trade integration efforts amongst the AMS. The process started in 1993 when Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand signed the ASEAN free trade area (AFTA) agreement. Viet Nam joined soon after in 1995, followed by Lao PDR and Myanmar in 1997 and Cambodia in 1999. The AFTA contributed to reducing or eliminating tariff rates in ASEAN trade by introducing the Common Effective Preferential Tariff (CEPT) scheme within ASEAN. Subsequently, to pursue the goal of establishing a single market and production base with free flow of goods, ASEAN Member States (AMS) signed the ASEAN Trade in Goods Agreement (ATIGA) in 2009, which entered into force in 2010.

ATIGA expanded CEPT-AFTA to contain additional comprehensive coverage of commitments related to trade in goods and mechanisms for its implementation as well as institutional arrangements. The commitments for tariff liberalisation have mostly been achieved. Overall, over 98% of the tariff lines have ATIGA tariff rate of 0% in 2018, an increase from 69% in 2009. The original AFTA signatories had eliminated import duties on 99 per cent of tariff lines by 2010. For Cambodia, Lao PDR, Myanmar, and Viet Nam, over 97% of the tariff lines was already at 0% in 2018, a dramatic increase from 45% in 2009. These liberalisation efforts have brought ASEAN closer to its goal of becoming a 'single market and a production base,' which was one of three goals of AFTA as laid out in 1993. These tariff reductions provide an advantage to ASEAN-based firms by creating a margin of preference over applied Most Favoured Nation (MFN) tariff rates on those tariff lines where MFN remains positive.

In addition to tariff liberalisation, ATIGA included commitments to address other sources of trade distortions. The provisions of non-tariff measures (NTM) have been enhanced further through codification of measures, as well as establishment of a mechanism to monitor the committed elimination of non-tariff barriers. The ATIGA include provisions relevant to ensuring transparency and management of NTMs, including the responsibility

to notify NTMs which can potentially affect the ATIGA's operation, the publication of trade-related information through national trade repositories and ASEAN trade repository and establishment of an ASEAN NTM database. ASEAN Ministers also endorsed the Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods, which provide a general framework to improve the transparency and management of NTMs. The recently adopted non-binding guidelines provide for operationalising key ATIGA elements and provisions related to NTMs. These strong commitments on addressing behind-the-border issues makes ATIGA one of the most comprehensive free trade agreements, and their full implementation is likely to greatly enhance intra-ASEAN economic growth through expansion of trade.

The implementation of ATIGA is supported by a strong institutional arrangement. The Coordinating Committee for the Implementation of ATIGA (CCA) was established in accordance with Article 90 (Institutional Arrangements) of the ATIGA. The CCA is tasked with assisting the Senior Economic Officials' Meeting (SEOM) and the ASEAN Free Trade Area (AFTA) Council in the performance of their functions in ensuring the effective implementation of the ATIGA. Amongst the functions of the CCA is to oversee and monitor the implementation of ATIGA, particularly on tariff liberalisation commitments, rules of origin, non-tariff measures, and trade facilitation, including those other activities related to the realisation of free flow of goods in the ASEAN Economic Community (AEC). Aside from providing regular analysis of the impact of ATIGA on AMS, it also provides recommendations on possible improvements on the ATIGA based on the current trends and development in regional and international trade, as well as recommendations to relevant ASEAN Working Bodies on trade-in-goods issues under the negotiations with FTA partners.

The CCA also coordinates and monitors the implementation progress of ATIGA related activities of working groups, committees and/or sub-committees under the CCA, and serve as a forum for consultation on ATIGA-related matters raised by member states or the private sector (through the appropriate National AFTA Unit). With consent from all AMS, the private sector, particularly representatives of ASEAN sectoral industry associations, can participate in CCA meetings to get feedback, disseminate recent developments in the implementation of the ATIGA, and/or discuss any proposals with a view to further facilitate business in the region. The CCA which reports to the AFTA Council through the SEOM, is led by heads of the AMS National AFTA Unit and delegations may include officials from relevant government agencies and meets three times a year. The CCA's Chairmanship and vice-chairmanship are rotated annually amongst the AMS in alphabetical order.

In 2019, the CCA requested the Economic Research Institute for ASEAN and East Asia (ERIA) to conduct a quantitative assessment of the impact of ATIGA on intra-

ASEAN trade. It has been 10 years since ATIGA came into force, so the time was ripe for systematically assessing its impact on intra-ASEAN trade. The rationale behind regional trade agreements (RTA) such as ATIGA is that they contribute to increasing trade amongst member countries or parties by reducing tariff rates for intra-regional trade and increasing the margin of preference vis-à-vis non-regional trade partners. However, it is important to note that tariff elimination does not automatically increase trade. In fact, intra-ASEAN trade has been consistently around 25% of ASEAN trade with the world, indicating that it has not grown any faster than ASEAN's total trade. Domestic firm productivity, market demand conditions, and remaining non-tariff trade cost all influence the pattern of trade following tariff reduction. Trade is more likely to be boosted in products in which regional suppliers have a cost and quality advantage over non-regional suppliers. Furthermore, it is also important to consider the tariff advantages conferred by the RTA vis-à-vis other trade agreements that the members of the RTA may be party to. Likewise, in an era of international production networks, trade within RTA partners may be instrumental for trade with non-RTA members. Thus, a deeper analysis is necessary to truly understand the impact of RTAs such as ATIGA.

The objectives of the ERIA study are as follows:

- To provide quantitative assessment of change in intra-ASEAN trade since ATIGA came into force in 2010, relative to the baseline trade prior to 2010 and compared to AMS trade with non-ASEAN partners. The assessment will also cover utilisation of ATIGA per AMS including details of product coverage.
- To examine how trade in selected sectors have been enhanced by the implementation of ATIGA. The sectors to be analysed include: (1) electronics, (2) automotive, (3) processed agriculture, (4) textiles & apparels, (5) agriculture, (6) healthcare and (7) rubber-based products, (8) wood-based products, and (9) fisheries.
- To assess how ATIGA has contributed to strengthening/creation of regional value chains by examining specific sectors.

To achieve the objectives of ERIA study, we take the following approaches:

- Survey of literature to generate insights regarding the impact of FTAs on regional trade, including trade creation and trade diversion and possible mechanisms through which such effects manifest themselves
- Discuss the role of FTAs in formation of regional supply chains
- Review of the history and context of ATIGA and its key provisions, with an in-depth analysis of the margin of preference offered by ATIGA over MFN tariffs
- Analysis of ATIGA Form D data to understand the utilisation of ATIGA preference in intra-ASEAN trade
- Analysis of trade data to estimate the impact of ATIGA on each AMS' trade

To implement this study, AMS submitted data on the imports under ATIGA Form D and total imports from each AMS partner, as well as applied MFN and ATIGA Tariff rates for the 2009–2018 period at 8-digit ASEAN Harmonized Tariff Nomenclature (AHTN) level. Due to various reasons, not all the requested information could be submitted. Where possible, missing information was supplemented from ASEAN Secretariat's database ASEANStats.

A. History and context of ATIGA

In pursuing the goal of establishing a single market and production base with free flow of goods by 2015 for the ASEAN Economic Community, policymakers in ASEAN felt a need for a more integrated and holistic approach. This called for the integration and inclusion of existing and additional measures relevant to the trade in goods initiative under one umbrella. To achieve this, the ASEAN Economic Ministers agreed in August 2007 to enhance the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Agreement (CEPT–AFTA) into a more comprehensive legal instrument. This led to the signing of the ASEAN Trade in Goods Agreement (ATIGA). The ATIGA was signed on 26 February 2009 and entered into force on 17 May 2010 with a transition period of 180 days to ensure a smooth transition from the CEPT scheme into the ATIGA. After the entry into force of the ATIGA, certain ASEAN agreements relating to trade in goods such as the CEPT Agreement and selected Protocols were superseded.

The ATIGA consolidates and streamlines all the provisions in the CEPT Agreement and other relevant ASEAN agreements, protocols, and AEM/AFTA Council decisions related to trade in goods. While the CEPT Agreement focused on tariffs, the ATIGA contains broader and more specific provisions on ROO, NTMs, trade facilitation, and SPS. Annex 2 of ATIGA provides the full tariff schedule of all member states and spells out the tariff rates to be applied on each product which makes it transparent for the business community.

Before the decision to have a comprehensive agreement to replace the CEPT Agreement was made, the prospect of creating the Consolidated CEPT Agreement was being considered. The proposed Consolidated CEPT Agreement would be a revised/amended version of the CEPT Agreement, which would merely incorporate all the existing provisions related to the implementation of the CEPT–AFTA that were scattered over a number of Agreements/Protocols and decisions of the AFTA Council or the AEM, into one legal document. However, since some provisions in the existing agreements were outdated, contradictory, and vague, they could not constitute a comprehensive agreement for AFTA. As such, ASEAN decided to have a comprehensive agreement consisting of all necessary provisions to address all aspects related to the flow of goods within the region, e.g. Customs, MRAs (Mutual Recognition Arrangements) under Standards and

Conformance, and SPS and trade defense measures (i.e. safeguards, anti-dumping, and countervailing measures) and could accommodate new developments.

As a precursor to ATIGA, the CEPT Scheme had already moved forward the agenda of ASEAN economic integration. The 1992 CEPT Agreement initially provided that the tariffs for intra-ASEAN trades on manufactured products and processed agricultural products shall be reduced to 0%–5% over 15 years from 1 January 1993 to 1 January 2008. Unprocessed agriculture products were excluded from this Agreement. In 1992 when the CEPT Agreement was signed and there were only six ASEAN members. Viet Nam signed the protocol to join the CEPT Scheme in December 1995 and started implementing the CEPT Agreement on 1 January 1996. Lao PDR and Myanmar signed the protocol to join the CEPT Scheme in July 1997. and started implementing the CEPT Agreement on 1 January 1998. Cambodia signed the protocol to join the CEPT Scheme in April 1999 and started implementing the CEPT Agreement on 1 January 2000.

The CEPT Scheme itself was undergoing many changes during this period. In December 1995, the CEPT Agreement was amended to reduce the time frame from 15 years to 10 years, i.e. to 1 January 2003. The 1995 amendment also broadened the coverage of the CEPT Scheme to include not only manufactured and processed agriculture products but also unprocessed agriculture products. The tariff reduction schedules for these unprocessed agriculture products were provided under the Protocol on the Special Arrangement for Sensitive and highly Sensitive Products which was signed in September 1999. With this protocol, unprocessed agriculture products were divided into two groups – a sensitive list (SL) and highly sensitive list (HSL). The end dates for the phasing-in of SL products into the CEPT Scheme are 2010, 2013, 2015, and 2017, respectively for ASEAN-6, Viet Nam, Lao PDR and Myanmar, and Cambodia, respectively, with the ending rate are at 0%–5%. For HSL products, which only exist in Indonesia, Malaysia, and the Philippines, the ending rate was initially 20% and the ending date was by 2010. With regard to rice and sugar, there is a special consideration which allows Indonesia, Malaysia, and the Philippines to request for waivers from the obligations imposed under the CEPT Agreement. By this special consideration which is provided for by the Protocol to Provide Special Consideration for Rice and Sugar, signed in August 2007, the ending rates for rice and sugar are now at 5%–25% and the ending date is 2015.

In November 2000, the e-ASEAN Framework Agreement was signed by which the tariffs and non-tariff barriers on intra-ASEAN trade in ASEAN ICT products were to be eliminated by 1 January 2005 for ASEAN-6 and by 1 January 2010 for CLMV. In September 2002, Economic Ministers, in the Roadmap for the Integration of ASEAN, recommended that 80% of tariff lines would be at 0% by 2007 for ASEAN-6. In January 2003, the CEPT agreement was amended such that import duties of all products except

in the SL and HSL were eliminated 1 January 2010 for ASEAN-6 and by 1 January 2015 with flexibility by 1 January 2018 for CLMV. In November 2004, the ASEAN Framework Agreement for the Priority Integration Sectors (PIS) was signed by which the CEPT rates of the PIS products, other than those in the SL, HSL, GEL, and the negative list of the PIS Products, were to be eliminated by 1 January 2007 and 2012 for ASEAN-6 and CLMV, respectively.

During the implementation of the CEPT Scheme, the MOP offered by the Agreement was actually very small. Until 2005, only 63% of tariff lines of ASEAN-6 had zero CEPT tariffs, while the percentage was only 10% for CLMV. At the same time, other trade liberalisation efforts were ongoing. During this period, the MOPs for the original members of ASEAN have been falling over the years. Analysis at the time showed that MOP was significantly reduced, and often eliminated. More than 90% of tariff lines had a margin of preference of zero (see also Feridhanusetyawan, 2005), and more than 70% of intra-ASEAN trade was conducted at MFN zero. In a comparison of external tariffs of major regional trade agreements, the World Bank (2005) found that only the North American Free Trade Agreement or NAFTA had lower external tariffs than AFTA. Thus, one potential effect of ATIGA's tariff reduction schedule was to increase the margin of preference in intra-ASEAN trade by increasing rate of liberalisation within ASEAN as compared to non-ASEAN partners.

Reforms of the Rules of Origin (ROO) has been one of the key achievements of ATIGA in reducing cost of compliance for businesses. Mattoo et al. (2020: 274) noted that 'Before ATIGA was created, the region's trade rules were set by the ASEAN Free Trade Agreement-Common Effective Preferential Tariff (AFTA-CEPT), which adopted the regional value content (RVC) rule. Over time, however, the change in tariff classification (CTC) approach became dominant due to some practical problems with implementing the RVC approach, due to exchange rate fluctuation and difficulty in complying the origin criteria because of the nature of the final goods and the intermediate inputs. ATIGA introduced further improvements to liberalise and simplify the ROOs and has refined them on a product-by-product basis rather than reforming the overall framework.'

In case of ASEAN under ATIGA, preferential ROO are applied for purposes of claiming preferential tariff treatment. Prior to the adoption of ATIGA, business sectors, through their government representatives in ASEAN's ROO task force and working groups, have instituted certain reforms to help ensure that the ROO are trade-facilitative and easily complied with and its Operational Certification Procedures (OCP) are user-friendly. These changes to the CEPT-AFTA ROO include adopting co-equal and alternative rules of Regional Value Content 40% value added or a change in tariff classification or process rules for key priority product sectors like garments and textiles, iron and steel, etc. On

OCP, streamlining of documentation requirements, such as those related to minimum data requirements for application of Certificate of Origin was implemented. In addition, OCP provisions were amended to provide further clarity in the interpretation of certain provisions to avoid goods being stuck at the ports of importing parties due to differences in understanding of customs authorities. These changes prior to 2010 were incorporated in the ATIGA.

A proliferation of PTAs in East Asia has added complexity to the region's ROO regimes, notably through trade agreements signed with extra-regional partners. The changes in ATIGA were not only pursued because of clamor from the business sector, but also to take into account the developments taking place in the ROO of ASEAN Plus 1 FTAs, where some of the provisions are more 'trade-facilitative' than what is being applied in the ATIGA, such as the application of chemical reaction and process rules in the product specific rules.

Notwithstanding, the reforms made in some of the ASEAN Plus 1 FTAs on ROO and OCP were not automatically adopted by ASEAN as there were concerns from certain AMS. This did not discourage members of the Sub-Committee on ATIGA Rules of Origin (SCAROO), the responsible body on ROO in ASEAN, to formulate changes to the ROO and OCP. At the 27th ASEAN Free Trade Area (AFTA Council) Meeting in August 2013, the AFTA Council endorsed the recommendation to implement the removal of the FOB price in the ATIGA CO Form D in case where Wholly Obtained (WO), Change in Tariff Classification (CTC) or Process Rule is applied. A new Rule 25 in the OCP was added and amended box 9 of the CO Form D. Subsequently, further reforms were made under ATIGA, such as the implementation of the unified ASEAN Wide Self-Certification (AWSC) on 20 September 2020. The AWSC allows exporters who have demonstrated competence and understanding in complying with ATIGA ROO requirements, known as 'certified exporters', to self-certify the origin status for their goods to be eligible and claim for ATIGA tariff preferences. The AWSC unified the two pilot projects on self-certification earlier implemented by AMS. In early 2020, AMS also implemented the 'live' operation of the ASEAN Single Window on ATIGA e-Form D, that allows the transmission and exchange of ATIGA e-Form D to claim preference instead of the paper-based CO Form D.

ASEAN's success in promoting economic integration amongst its members stands out when compared to other regional blocs mostly comprising of developing and middle-income countries (and thus excluding the EU and NAFTA). The Southern Common Market, also known as Mercosur, is an economic and political group made up of Argentina, Paraguay, Uruguay, and Venezuela (currently suspended). In place since 1991 (as long as AFTA has been around), in 2019 their combined GDP amounted to about US\$3.4 trillion

with total trade of US\$574 billion and a population of 295 million people. While it was considered to be a successful integration effort amongst its members in the first decade after its establishment, its progress has been stagnant over the past 2 decades due to economic problems of its members and failure to coordinate their trade policies towards countries outside Mercosur (Campos, 2016).

Another one is the Economic Community of West African States (ECOWAS). Comprising 15 west African countries and established in 1975, ECOWAS is the biggest trading bloc on the African continent with a combined GDP of US\$689 billion in 2019, total trade of US\$216 billion, and a population of 386 million people. The fact that the agreement has been in place for almost 5 decades allows pundits to study the effectiveness of the agreement periodically. After the first 2 decades of its existence, ECOWAS was deemed by some to have been unsuccessful in promoting regional integration due to incoherent national policy stances amongst its members and similar comparative advantages between its members (Iqbal and Khan, 1998; Hanink and Owusu, 1998). On the contrary, von Uexkull, (2012) found that ECOWAS has had a positive effect on West African countries' trade diversification and the provision of good jobs for people in manufacturing sectors.