

# DISTINGUISHING FICTION FROM REALITY: THE ASEAN FREE TRADE AREA AND IMPLICATIONS FOR THE GLOBAL AUTO INDUSTRY

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## I. INTRODUCTION

The Association of South East Asian Nations (“ASEAN”) is a collection of ten countries with a combined population of over 500 million.<sup>1</sup> Combined gross domestic product (“GDP”) of all ASEAN countries exceeds \$737 billion.<sup>2</sup> ASEAN countries are important trading partners with the United States. In 2004, fifteen countries accounted for more than seventy-five percent of all foreign trade with the United States.<sup>3</sup> Within these fifteen countries, two are from ASEAN—Malaysia, ranked tenth, and Singapore, ranked fifteenth.<sup>4</sup> The countries are diverse, ranging from a country that witnessed per capita GDP growth from \$427 a year in 1960 to \$25,352 in 2004 (Singapore)<sup>5</sup> to the world’s most populous Muslim country (Indonesia).<sup>6</sup> GDP growth in the region averaged 5.4 percent in 2005, and is expected to reach 5.8 percent in 2006.<sup>7</sup> Political systems run the gamut from military dictatorship (Myanmar)<sup>8</sup> to “soft authoritarianism”<sup>9</sup>

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<sup>1</sup> ASEAN Secretariat, *Overview Association of Southeast Asian Nations*, “Establishment and Membership,” <http://www.aseansec.org/64.htm> (accessed Feb. 24, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Census Bureau, Foreign Trade Division, *Top Trading Partners—Total Trade, Exports, Imports, Year-to-Date December 2004*, <http://www.census.gov/foreign-trade/statistics/highlights/top/top0412.html> (last modified Feb. 10, 2005).

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

<sup>5</sup> Singapore Dept. of Statistics, *Per Capita GDP at Current Market Prices*, <http://www.singstat.gov.sg/keystats/hist/gdp.html> (last updated Feb. 16, 2006).

<sup>6</sup> See President Susilo Bambang Yudhoyono, Speech, *Revisiting our Foreign Policy* (Indonesian Council on World Affairs, May 19, 2005), in *The Jakarta Post* 7 (May 25, 2005) (available in LEXIS, News library; *The Jakarta Post* file). Indonesia’s population, at over 241 million, is behind only the United States, India, and China. CIA World Factbook, *Rank Order—Population*, <http://www.cia.gov/cia/publications/factbook/rankorder/2119rank.html> (last updated Jan. 10, 2006).

<sup>7</sup> Krissana Parnsoonthorn, *Europeans Urged to Keep ASEAN On Map: Thanong Confident in Economic Reforms*, *Bangkok Post* (Sept. 23, 2005) (available in LEXIS, News library; Global News Wire file).

<sup>8</sup> The United States State Department describes the Burmese government as ruling with a “pervasive security apparatus” and with an “extremely poor” human rights record. U.S. Dept. of State, Bureau of Democracy, Human Rights, and Labor, *Burma Country Reports on Human Rights Practices—Burma—2004*, <http://www.state.gov/g/drl/rls/hrrpt/2004/41637.htm> (accessed Mar. 14, 2006).

(Singapore and Malaysia) to liberal democracy (Thailand).<sup>10</sup> Economically, the picture is equally scattered. While virtually all member countries claim to embrace capitalism (Laos remains officially communist even in its economic system),<sup>11</sup> member state economies range from the highly capitalistic with a tradition of governmental non-interference and transparency (Singapore)<sup>12</sup> to a highly controlled, high import quota and tariff and non-tradable currency regime (Myanmar).<sup>13</sup> ASEAN countries, while geographically close to each other, seem to share little in common with each other. In spite of this, ASEAN sought to undertake economic integration in 1976,<sup>14</sup> and the results have been mixed.<sup>15</sup>

This Article explores the ASEAN Free Trade Agreement (“AFTA”) and its implications for the regional and global auto industry. Section I of this article provides a brief history of ASEAN and its attempts to integrate regionally. It outlines the reasons for regional economic integration, and traces the current literature in this area. Section II provides an overview of the current auto industry in each of the major auto-producing countries in ASEAN: Thailand, Philippines, Indonesia, Vietnam, and Malaysia. It will also explain Malaysia’s protected auto industry and Malaysia’s attempts to delay implementation of AFTA, and its neighboring countries’ reactions. Section III will describe the very first exchange of completely built-up vehicles (“CBU”) within ASEAN under the precursor to AFTA, the ASEAN Industrial Cooperation Scheme (“AICO”), and its implications for the future of ASEAN. Section IV will expand on the concept of economic integration by describing current efforts by the auto industry to integrate, thus reducing its costs, increasing quality, and increasing consumer choices. Finally, Section V of this Article will draw some conclusions about the lessons learned from the auto industry’s experience with AFTA, and will suggest that further economic integration will provide ASEAN with a credible and stable path to future growth even as the ascendant China continues to draw foreign direct investment from the region.

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<sup>9</sup> Randall Peerenboom, *Show Me the Money: The Dominance of Wealth in Determining Rights Performance in Asia*, 15 *Duke J. Comp. & Intl. L.* 75, 76 (2004).

<sup>10</sup> D.C. Kennedy, *In Search of a Balance Between Police Power and Privacy in the Cybercrime Treaty*, 9 *Rich. J.L. & Tech.* 1 (Fall 2002).

<sup>11</sup> U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Laos*, <http://www.state.gov/r/pa/ei/bgn/2770.htm> (accessed Mar. 14, 2006).

<sup>12</sup> Singapore’s corruption-free government and friendly investment policies have resulted in growth rates that averaged eight percent between 1960 and 1999. U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Singapore*, <http://www.state.gov/r/pa/ei/bgn/2798.htm> (accessed Mar. 14, 2006) [hereinafter *Background Note: Singapore*].

<sup>13</sup> Myanmar (also known as Burma) has suffered from economic mismanagement that has caused a downward economic spiral for most Burmese citizens. U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Burma*, <http://www.state.gov/r/pa/ei/bgn/35910.htm> (accessed Mar. 14, 2006) [hereinafter *Background Note: Burma*].

<sup>14</sup> Deborah A. Haas, Student Author, *Out of Others’ Shadows: ASEAN Moves Toward Greater Regional Cooperation in the Face of the EC and NAFTA*, 9 *Am. U.J. Intl. L. & Policy* 809, 813 (Spring 1994).

<sup>15</sup> See generally George O. White, III, Student Author, *From Snowplows to Siopao—Trying to Compete in a Global Marketplace: The ASEAN Free Trade Area*, 8 *Tulsa J. Comp. & Intl. L.* 177 (2000). See also Haas, *supra* n. 14, at 810 (noting that ASEAN “lack[s] a strong record in economic achievement”).

## II. ASEAN AND ATTEMPTS AT REGIONAL ECONOMIC INTEGRATION

### A. *Post-War Southeast Asia: ASEAN Forms*

In order to understand AFTA, one must examine the historical context which gave rise to ASEAN. Prior to the Second World War, most Southeast Asian nations were colonies of European powers.<sup>16</sup> Japan's war effort had driven up its appetite for raw materials, and Southeast Asia provided a key source for those materials.<sup>17</sup> On December 7, 1941, in addition to bombing Pearl Harbor, the Japanese also launched military operations against Malaysia (then Malaya), the Philippines, and Hong Kong.<sup>18</sup> On January 2, 1942, Japanese troops captured Manila.<sup>19</sup> Kuala Lumpur fell on January 11, and Singapore followed on February 15.<sup>20</sup> Burma and portions of the Netherlands East Indies quickly followed suit.<sup>21</sup>

Just as quickly as the Japanese established occupation in Southeast Asia, Japan began losing ground once the United States joined the war.<sup>22</sup> After the atomic bombing of Hiroshima and the Japanese surrender in 1945, many countries in Southeast Asia sought independence from their former colonial masters. Indonesia, for example, declared independence from the Netherlands in 1945, and settled hostilities with the Dutch in 1949.<sup>23</sup> Burma was granted independence from Great Britain in 1948.<sup>24</sup> The Philippines gained its independence from the United States in 1946, a process that started in 1935 but was interrupted by Japanese occupation.<sup>25</sup> Malaysia won independence from Great Britain in 1957.<sup>26</sup> Singapore joined the British Borneo states of Sarawak and Sabah to form the Federation of Malaya in 1963.<sup>27</sup> Indonesia objected to this move and severed trade with Malaysia.<sup>28</sup> After some friction and negotiations with the central government in Kuala

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<sup>16</sup> Nicholas Tarling, *The Establishment of the Colonial Regimes*, in *The Cambridge History of Southeast Asia, Volume Two: The Nineteenth and Twentieth Centuries* 5, 5-72 (Nicholas Tarling ed., Cambridge U. Press 1992).

<sup>17</sup> A.J. Stockwell, *Southeast Asia in War and Peace: The End of European Colonial Empires*, in *The Cambridge History of Southeast Asia: Volume Two: The Nineteenth and Twentieth Centuries*, 329, 330 (Nicholas Tarling ed., Cambridge U. Press 1992).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 331.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 332.

<sup>23</sup> U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Indonesia*, <http://www.state.gov/r/pa/ei/bgn/2748.htm> (accessed Mar. 14, 2006).

<sup>24</sup> *Background Note: Burma*, *supra* n. 13.

<sup>25</sup> U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Philippines*, <http://www.state.gov/r/pa/ei/bgn/2794.htm> (accessed Mar. 14, 2006).

<sup>26</sup> U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Malaysia*, <http://www.state.gov/r/pa/ei/bgn/2777.htm> (accessed Mar. 14, 2006).

<sup>27</sup> *Background Note: Singapore*, *supra* n. 12.

<sup>28</sup> For an excellent accounting of this phase of Southeast Asia's development, see Matthew Jones, *Conflict and Confrontation in South East Asia 1961—1965: Britain, the United States, Indonesia, and the Creation of Malaysia* (Cambridge U. Press 2002).

Lumpur, Singapore itself seceded from Malaysia in 1965.<sup>29</sup>

Amidst this background, ASEAN was formed in 1967 with the signing of the ASEAN Declaration in Bangkok.<sup>30</sup> Original member states included Thailand, Indonesia, Malaysia, Philippines, and Singapore.<sup>31</sup> The short document set forth ASEAN's goals as accelerating economic growth, promoting regional security and stability, and expanding trade.<sup>32</sup> To carry out these goals, the Bangkok Declaration created an annual meeting of Foreign Ministers and a standing committee to carry on the work of ASEAN.<sup>33</sup> In spite of its stated goals, ASEAN's unspoken objective was to create stability in the midst of growing communist insurgencies in Vietnam and Cambodia.<sup>34</sup> All parties involved knew that economic progress would be slow.<sup>35</sup>

#### B. *Economic Integration & ASEAN Enlargement*

In 1976, ASEAN members for the first time "created practical programs affecting trade and security."<sup>36</sup> At the ministerial meeting in Bali, Indonesia that year, the member states signed the Treaty of Amity and Cooperation in Southeast Asia, which established a loose framework for economic cooperation and development.<sup>37</sup> It also enshrined the ASEAN principle of "[n]on-interference" in the "internal affairs" of other member states.<sup>38</sup> The Declaration of ASEAN Concord, signed at the same meeting, stated that the five member states would cooperate in "trade in order to promote development and growth of new production and trade."<sup>39</sup> These documents initiated the first experiments with regional integration within ASEAN, producing various industrial projects, industrial complementation schemes, and the beginnings of preferential trading rights such as lowered tariffs.<sup>40</sup> None of these initiatives were very successful in creating a cohesive regional trading bloc.<sup>41</sup> Instead, the five member countries started industrializing their own economies and looked beyond each other to

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<sup>29</sup> *Background Note: Singapore*, *supra* n. 12.

<sup>30</sup> ASEAN Secretariat, *supra* n. 1.

<sup>31</sup> *Id.*

<sup>32</sup> *The ASEAN Declaration (Bangkok Declaration) Thailand, 8 August 1967*, <http://www.aseansec.org/3628.htm> (accessed Mar. 14, 2006).

<sup>33</sup> *Id.*

<sup>34</sup> Lee Kuan Yew, *From Third World to First: The Singapore Story: 1965-2000* 329 (HarperCollins 2000).

<sup>35</sup> *Id.* at 330.

<sup>36</sup> Haas, *supra* n. 14, at 813.

<sup>37</sup> *Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976* art. 4-6, <http://www.aseansec.org/1217.htm> (accessed Mar. 14, 2006).

<sup>38</sup> *Id.* at art. 2.

<sup>39</sup> *Declaration of ASEAN Concord Indonesia, 24 February 1976* § B(3)(ii), <http://www.aseansec.org/1216.htm> (accessed Mar. 14, 2006).

<sup>40</sup> Haas, *supra* n. 14, at 816-18.

<sup>41</sup> *Id.*

establish major trading partners.<sup>42</sup>

In 1984, Brunei joined ASEAN after gaining independence from Great Britain.<sup>43</sup> The tiny nation of 350,000 people depends largely on oil and gas to sustain its economy, and has had very little impact on ASEAN or efforts to integrate regionally.<sup>44</sup>

By the mid-eighties, ASEAN countries were enjoying a period of relative peace and prosperity. Together with policies that attracted foreign direct investment, most ASEAN countries were enjoying annual growth rates in excess of six to eight percent.<sup>45</sup> Singapore, which had the most liberalized economy and had developed the most economically, had been pushing for some time for an ASEAN-wide regional free trade area, but these efforts had been rebuffed due to suspicion from the other major members.<sup>46</sup> By the late-eighties, however, China and India had begun liberalizing their economies, and foreign direct investment was diverting to those large markets.<sup>47</sup> Singapore's Prime Minister, Lee Kwan Yew worked with Thai Prime Minister Anand Panyarachun to propose the ASEAN Free Trade Area.<sup>48</sup>

In 1992, during a summit meeting, ASEAN members agreed to regional trade integration and passed three important trade documents.<sup>49</sup> The first was the Singapore Declaration of 1992, which calls for ASEAN members to "move [to] a higher plane of political and economic cooperation" and for the establishment of AFTA with the ultimate goal being tariffs of zero to five percent by 2008.<sup>50</sup> The Framework Agreement on Enhancing ASEAN Economic Cooperation (Framework Agreement) declares that the Common Effective Preferential Tariff ("CEPT") scheme would be the main mechanism for establishing AFTA.<sup>51</sup> In a nod to the ASEAN culture of non-interference in domestic matters, the Framework Agreement specifically states that while all ASEAN member states would participate in ASEAN "economic arrangements, two or more Member States may proceed first if other Member States are not ready" to liberalize.<sup>52</sup> The dispute resolution clause of the Framework Agreement is startlingly short

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<sup>42</sup> *Id.* at 817.

<sup>43</sup> U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, *Background Note: Brunei*, <http://www.state.gov/r/pa/ei/bgn/2700.htm> (accessed Mar. 8, 2006).

<sup>44</sup> *Id.*

<sup>45</sup> Lee, *supra* n. 34, at 340.

<sup>46</sup> *Id.* at 341.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Jack I. Garvey, *AFTA after NAFTA: Regional Trade Blocs and the Propagation of Environmental and Labor Standards*, 15 Berkeley J. Intl. L. 245, 267 (1997).

<sup>50</sup> *Singapore Declaration of 1992* § 2, <http://www.aseansec.org/5120.htm> (accessed Mar. 14, 2006).

<sup>51</sup> *Framework Agreement on Enhancing ASEAN Economic Cooperation Singapore, 28 January 1992* art. II(A)(2), <http://www.aseansec.org/5125.htm> (accessed Mar. 14, 2006).

<sup>52</sup> *Id.* at art. I(3).

and equally conciliatory. It states that any differences between ASEAN members shall “be settled amicably between the parties” and when necessary, an “appropriate body” may be designated to settle the dispute.<sup>53</sup> Finally, the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (“CEPT Agreement”) provides for the legal framework of tariff reduction for eligible ASEAN-produced goods.<sup>54</sup> The CEPT Agreement applies to all ASEAN member states and all manufactured goods.<sup>55</sup> Originally, Tariffs were to be reduced to between zero to five percent by 2008.<sup>56</sup> Quantitative restrictions and non-tariff barriers were similarly slated for elimination.<sup>57</sup> However, this time frame was later accelerated to 2003.<sup>58</sup>

Although the CEPT Agreement was the most significant step ASEAN had taken to integrate its member economies, it was an agreement that was riddled with significant escapes for economies concerned about the pain that often accompanies economic liberalization. The rules of origin, for example, called for preferential tariffs to be applied to any product “if at least 40% of its content originates from any Member State.”<sup>59</sup> This requirement was recently modified to permit twenty percent ASEAN content for purposes of “cumulation.”<sup>60</sup> Another provision of the CEPT Agreement, and one later invoked by Malaysia to protect its domestic auto industry,<sup>61</sup> allowed for an importing country to suspend preferential tariffs “for such time as may be necessary” when import of a particular product threatens to cause “serious injury” to sectors producing like or competitive products in the importing country.<sup>62</sup>

Under the CEPT Agreement, ASEAN member states categorized their tariff lines into four general categories. The General Exception List is to be used only to permanently exclude products for the “protection of national security, public morals, human, animal or plant life, and articles of artistic, historic and archeological value.”<sup>63</sup> The Sensitive List is to be used

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<sup>53</sup> *Id.* at art. IX.

<sup>54</sup> *Agreement On The Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area Singapore*, 28 January 1992, <http://www.aseansec.org/5124.htm> (accessed Mar. 14, 2006).

<sup>55</sup> *Id.* at art. II.

<sup>56</sup> *Id.* at art. IV.

<sup>57</sup> *Id.* at art. V(A).

<sup>58</sup> *Protocol to Amend the Framework Agreement on Enhancing ASEAN Economic Cooperation* art. 1, <http://www.aseansec.org/12369.htm> (accessed Mar. 14, 2006).

<sup>59</sup> CEPT Agreement, *supra* n. 54, at art. II(4).

<sup>60</sup> *Implementing Guidelines for Partial Cumulation Under ASEAN Cumulative Rules of Origin* <http://www.aseansec.org/17297.pdf> (accessed Mar. 14, 2006). These new guidelines have resulted in a boost in export value from countries such as Thailand. Petchanet Pratuangkrai, *AFTA Trade: Exports Boosted by Duty Privileges*, *The Nation* (Sept. 8, 2005) (available in LEXIS, News library; *The Nation* file).

<sup>61</sup> *See infra* § III(E).

<sup>62</sup> CEPT Agreement, *supra* n. 54, at art. VI.

<sup>63</sup> ASEAN Secretariat, *ASEAN Free Trade Area (AFTA): An Update*, <http://www.aseansec.org/10342.htm> (accessed Mar. 8, 2006).

for unprocessed agricultural products, which are indeed sensitive items for most ASEAN countries.<sup>64</sup> Items on the Sensitive List are given a longer time frame for liberalization into AFTA.<sup>65</sup> The Temporary Exclusion List is for tariff lines that a government wishes to temporarily shield from trade liberalization.<sup>66</sup> Finally, once an item falls into the Inclusion List, the member state must grant zero to five percent duty privileges for that item.<sup>67</sup>

In late 2004, ASEAN announced another acceleration of liberalization, when the six more developed members of Brunei, Malaysia, Indonesia, the Philippines, Singapore, and Thailand announced the abolition of tariffs in the autos, textiles, and electronics sectors by 2007.<sup>68</sup> Cambodia, Laos, Myanmar, and Vietnam were given until 2012 to follow.<sup>69</sup> ASEAN has also announced plans to create an ASEAN Economic Community by 2020.<sup>70</sup> Components of this Economic Community include AFTA and an ASEAN Single Window (a customs initiative to facilitate trade).<sup>71</sup> In 2005, the inaugural East Asia Summit took place, with the goal of creating an East Asia Free Trade Area.<sup>72</sup>

### C. *Current Literature*

Prior literature on AFTA and its role in strengthening ASEAN, predictably, has focused on AFTA's genesis. In 1993, shortly after the Singapore meeting that established AFTA, Kenevan and Winden described the key AFTA documents in some detail.<sup>73</sup> Even in that early stage of development, Kenevan and Winden warned that excessive exceptions, unclear definitions, weak dispute resolution mechanisms, and a poorly defined monitoring institution were all key weaknesses in the AFTA founding documents.<sup>74</sup> Soon thereafter, Haas demonstrated that AFTA was a response to the growing influence of other trading arrangements, particularly the European Union and the North American Free Trade Agreement ("NAFTA"),<sup>75</sup> and recommended ASEAN "actively strive to implement a successful economic framework and a harmonized legal institution."<sup>76</sup> The role that ASEAN might play in a much bigger Asia-

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

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

<sup>68</sup> Amit Chanda, *ASEAN Accelerates Pace of Progress Towards Free Trading Regime*, World Markets Analysis (Nov. 29, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>69</sup> *Id.*

<sup>70</sup> Mohd Arshi Daud, *Summit to Gauge ASEAN's Attractiveness as Single Economic Entity*, Malaysia Economic News (Dec. 7, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Peter Kenevan & Andrew Winden, *Recent Development: Flexible Free Trade: The ASEAN Free Trade Area*, 34 Harv. Intl. L.J. 224 (1993).

<sup>74</sup> *Id.* at 235.

<sup>75</sup> Haas, *supra* n. 14, at 821.

<sup>76</sup> *Id.* at 867.

Pacific economic grouping was explored by Dichter.<sup>77</sup> Dichter suggests that the development of a large Asia-Pacific economic grouping, founded on international trade law, would be more effective to removing barriers to free trade and could “evolve” to provide a forum to resolve non-trade transnational issues.<sup>78</sup> Kiriya combined “theoretical prediction” with empirical analysis<sup>79</sup> to suggest that AFTA may be flawed because it only addresses tariff reductions, and true integration requires much more.<sup>80</sup> Other commentators have been critical of AFTA’s lack of a robust and transparent dispute resolution mechanism<sup>81</sup> and suggested that linking trade concessions to environmental and labor standards might produce a more robust free trade area.<sup>82</sup> Most recently, White has reiterated the argument that AFTA has tremendous promise as a regional trading area and predicted that AFTA will prove successful in the long run.<sup>83</sup> Bello, however, has stated that, “We had 30 years to build an ASEAN house, and we blew it.”<sup>84</sup> He argues that in its first two decades of existence, ASEAN was hijacked by politics.<sup>85</sup> In essence, he blames AFTA’s lack of success on three factors: a lack of a common vision on a free trade area, a lack of relevance to industry, and a lack of effort to make ASEAN a democratic effort involving the people of ASEAN.<sup>86</sup>

Thus far, no literature has addressed the success or failure of AFTA in relation to any specific industry, or the consequences of Malaysia’s invocation of the AFTA mechanisms for delay of sensitive products or sectors. Current literature is also silent on what the future holds for AFTA, especially in light of a proposed ASEAN-China Free Trade area and the continued march towards bilateral trading agreements by ASEAN’s more economically advanced countries. This Article seeks to fill those gaps.

### III. OVERVIEW OF REGIONAL AUTO INDUSTRIES

Within the ten member countries of ASEAN, five (Thailand, Philippines, Indonesia, Vietnam, and Malaysia) have some level of domestic

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<sup>77</sup> Harold Dichter, *Legal Implications of an Asia-Pacific Economic Grouping*, 16 U. Pa. J. Intl. Bus. L. 99 (1995).

<sup>78</sup> *Id.* at 153.

<sup>79</sup> Nobuo Kiriya, *Institutional Evolution in Economic Integration: A Contribution to Comparative Institutional Analysis for International Economic Organization*, 19 U. Pa. J. Intl. Econ. L. 53, 96 (1998).

<sup>80</sup> *Id.* at 97-99.

<sup>81</sup> Jeffrey A. Kaplan, *ASEAN’s Rubicon: A Dispute Resolution Mechanism for AFTA*, 14 UCLA P. Basin L.J. 147, 189 (1996).

<sup>82</sup> Garvey, *supra* n. 49, at 274.

<sup>83</sup> White, *supra* n. 15, at 199.

<sup>84</sup> Walden Bello, *Is ASEAN Irrelevant?*, BusinessWorld (Philippines) (Dec. 14, 2004) (available in WL, BUSWLDMAN database).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*; see also Walden Bello, *Can the Philippines “Handle” Globalization?*, BusinessWorld (Philippines) (Jan. 25, 2005) (available in LEXIS, News library; BusinessWorld file) (indicating a major problem with ASEAN was indecision on whether to be a stepping stone for global trade or to create a regional bloc with high tariff walls surrounding the member countries).

auto manufacturing and foreign direct investment by global auto manufacturers. Not surprisingly, these five countries also represent the largest auto markets in the region in terms of vehicle sales. A sixth, Singapore, has no domestic manufacturing base but vehicle sales are still running ahead of Vietnam and therefore remain an important market for manufacturers. Within the countries, there exists a wide range in the level of sophistication in the respective auto industries. Thailand (with its export-oriented strategy attracting large amounts of foreign direct investment) and Malaysia (where a large domestic market has allowed a domestic manufacturer to thrive) represent the most advanced types of manufacturing in the region, with large-scale vehicle production and research and development.<sup>87</sup> The auto industries in Indonesia, Philippines, and Vietnam are smaller and thus largely limited to assembly of completely knocked-down (“CKD”) kits, sourced from other countries. The industries that emerged in these countries began as governments attempted to force industrialization through import substitution policies.<sup>88</sup>

It is not surprising that the world’s major automakers are attracted to ASEAN. The region attracted more than \$20 billion in foreign direct investment in 2003, a forty-eight percent increase over the previous year.<sup>89</sup> The foreign direct investment stock (total amount of foreign direct investment) in ASEAN is up over eighty-five percent since 1995.<sup>90</sup> Over 1.7 million vehicles were sold in the region in 2004, and that number is forecasted to increase to 2.4 million by 2010.<sup>91</sup> AFTA’s promise of lowered trade barriers is attractive to all carmakers, from South Korea-based Hyundai-Kia<sup>92</sup> to niche luxury producers such as Audi, which announced plans to build a plant somewhere in Southeast Asia in 2004.<sup>93</sup> Indian automaker Tata, with an eye towards expansion to the rest of Southeast Asia, is exploring assembling pickups in Thailand.<sup>94</sup> Since the implementation of AFTA tariff rates in 2003, intra-ASEAN trade in auto

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<sup>87</sup> See e.g. *Ready for AFTA and Regional Competition*, New Straits Times 16 (Mar. 27, 2005) (available in LEXIS, News library; New Straits Times Press (Malaysia) file).

<sup>88</sup> *Expert Discusses Effects of FTAs on Automotive Industry in Asia*, Thai Press Reports (May 6, 2005) (available in LEXIS, News library; Global News Wire file).

<sup>89</sup> Audrina Gan, *Case Stories: Southeast Asia Back on Track*, The Edge Singapore (Sept. 27, 2004) (available in LEXIS, News library, the Edge Singapore file).

<sup>90</sup> *Id.*

<sup>91</sup> Ford Motor Company Economist Conferences, Speech, *South East Asia: If Only There Was Co-operation?* (India, Dec. 7, 2005) (copy on file with author) [hereinafter *Economist Conferences*].

<sup>92</sup> Johanna Iivonen, *Hyundai-Kia Mulling ASEAN Production Operations*, World Markets Analysis (Jan. 17, 2005) (available in LEXIS, News library; World Markets Analysis file); *Hyundai Indonesia Upbeat Over This Year’s 13,500 Cars Target*, The Jakarta Post (Feb. 14, 2005) (available in LEXIS, News Library; Global News Wire file).

<sup>93</sup> Lee Peart, *Audi Mulls New Car Plant in Southeast Asia*, World Markets Analysis (Aug. 10, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>94</sup> Lee Peart, *Tata to Assemble Pick-Ups in Thailand*, World Markets Analysis (Apr. 1, 2005) (available in LEXIS, News library; World Markets Analysis file).

products and services increased fifty-five percent from 2002 to 2003.<sup>95</sup> This section will focus on the five primary manufacturing countries within ASEAN and explain their various commitments to regional integration.

A. *Thailand*

In 2003, Thailand's economy grew at the second-fastest rate in ASEAN, posting 6.7 percent GDP growth.<sup>96</sup> On the eastern seaboard of Thailand, close to the deep-sea port of Rayong lies the Eastern Seaboard Industrial Estate ("Estate"). As one drives into the Estate, a signboard proclaiming the Estate as the *Detroit of the East* greets visitors. Here, General Motors, Ford, BMW, and Toyota have established manufacturing operations to serve both the burgeoning Thai domestic market as well as exports to countries all around the world. No discussion of Thailand's auto industry would therefore be complete without a discussion of both domestic and export markets.

Domestically, Thailand's auto industry grew eighteen percent from 2003 to 2004.<sup>97</sup> The industry is the largest in ASEAN, with over 625,000 units sold locally in 2004.<sup>98</sup> The industry is predicted to rise to 890,000 by 2010.<sup>99</sup> Domestic taxes come in the form of excise tax, interior tax, and value added tax, which run from zero to fifty percent.<sup>100</sup> These taxes distort the market to favor pickups and pickup-based sport utility vehicles ("SUV").<sup>101</sup>

Thailand already ranks as the world's second largest producer of pickup trucks, behind the United States.<sup>102</sup> In 2005, the industry produced over 1 million cars, and in 2006 Thailand will export nearly fifteen percent of its production.<sup>103</sup> The government's stated goal is to increase that ration to fifty percent in the next five years.<sup>104</sup>

Not surprisingly, having the strongest and largest auto industry in the region has meant that the Thai government has embraced AFTA. Thailand implemented the five percent AFTA tariff rate for automobiles and parts in 2003.<sup>105</sup> In 2003, Thailand's intra-ASEAN trade in auto products

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<sup>95</sup> *Economist Conferences*, *supra* n. 91.

<sup>96</sup> *Case Stories: Southeast Asia at a Glance*, The Edge Singapore (Sept. 27, 2004) (available in LEXIS, News library; The Edge Singapore file).

<sup>97</sup> *Economist Conferences*, *supra* n. 91.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> M. Sarawasthi & Yong Soo Heong, *WTO's Big Bang Liberalisation May Affect APs*, Malaysia Economic News (Aug. 12, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>103</sup> *Id.*

<sup>104</sup> Wichit Chantanusornsiri, *Pact to Help Reach Auto Export Target*, Bangkok Post (Aug. 13, 2005) (available in LEXIS, News library; Global News Wire file).

<sup>105</sup> *Economist Conferences*, *supra* n. 91.

increased ninety-six percent from the prior year.<sup>106</sup>

The use of Thailand as an export hub is proof positive of decades of careful government encouragement to establish an industry. In the first five months of 2005, vehicle exports grew forty-seven percent from the year prior.<sup>107</sup> Toyota, Mitsubishi, and the Ford/Mazda joint venture, Auto Alliance Thailand, lead as the top three exporters. Even heavy truck manufacturers such as Mitsubishi's Fuso truck division use Thailand as an export hub to the rest of ASEAN.<sup>108</sup> Since 2004, Thailand is in line to receive new auto industry investments totaling \$2.2 billion.<sup>109</sup>

Thailand's auto industry remains the strongest and most capable within the region. Aggressive foreign direct investment by both United States and Japanese manufacturers has created an industry capable of advanced vehicle manufacturing with quality suitable for exports. Local parts suppliers have strong capabilities and therefore local content in Thai-produced vehicles is high, further driving the benefits of an open and liberal auto policy in the Kingdom.

#### B. *Philippines*

The historical impact of American influence on the Philippine culture is reflected within the domestic auto market. It is ASEAN's only left-hand drive market, and the industry is uniquely characterized by the Jeepney, a home-made vehicle that serves both large families and functions as the unofficial answer to a sprawling country's need for mass public transportation. As there are no official statistics tracking the Jeepney manufacturing industry, this portion of this Article will deal only with the *official* auto industry.

The domestic industry in the Philippines continues to suffer the effects of the 1997 Asian Economic Crisis, even while other industries in the region have recovered to their pre-crisis levels.<sup>110</sup> From 2003-2004, the industry shrank to 88,400 units, the only industry to actually shrink in ASEAN.<sup>111</sup> The industry is forecast to increase to merely 119,000 by 2010.<sup>112</sup> Vehicles in the Philippines are subject to excise and value added taxes in the range of two to sixty percent.<sup>113</sup>

The number of vehicles sold in the Philippines is too small to

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<sup>106</sup> *Id.*

<sup>107</sup> Tim Urquhart, *Toyota Leads the Way as Thai Car Exports Increase*, World Markets Analysis (July 20, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>108</sup> *Mitsubishi Eyes Thailand as Export Hub for CKD Parts*, <http://www.nationmultimedia.com/search/page.arcview.php?clid=6&id=116451&date=2005-05-31> (accessed Mar. 9, 2006).

<sup>109</sup> *Economist Conferences*, *supra* n. 91.

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

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

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

<sup>113</sup> *Id.*

sustain domestic manufacturing in a liberalized AFTA environment, and therefore an export strategy is key to the survival of auto assembly plants in the Philippines. Implementing AFTA on time in 2003 with a five percent tariff rate has assisted the Philippines in establishing an export strategy.<sup>114</sup> In 2003, the first year of full AFTA implementation, the Philippines' level of intra-ASEAN trade in auto products increased sixty-eight percent from the prior year.<sup>115</sup>

Philippines' auto industry is characterized by a weak domestic market that, alone among its peers, has yet to fully recover from the effects of the Asian economic crisis in 1997-1998. This weak domestic demand has forced many manufacturers and suppliers to trim back their plans for the Philippines. In spite of this, low World Trade Organization (WTO) tariffs on components and vehicle CKD kits have attracted some major automakers to the country. Some levels of exports have started, and the industry remains poised for recovery. Weak political institutions and a long-term lack of cohesion among government leaders, however, continue to threaten long term stability and investor confidence.

### C. *Indonesia*

Indonesia, like its regional counterparts, has been cultivating a local auto industry for over thirty years. Political turmoil and economic upheaval, however, have robbed Indonesia of the similar success that Thailand has enjoyed. An ill-fated attempt to create a national car along the likes of Malaysia's Proton failed when the Japanese and American governments protested to the WTO.<sup>116</sup> While vehicle assembly is making a nice recovery in Indonesia, supplier capability for complex parts remains a problem.<sup>117</sup> The local market is dominated by van and utility multipurpose vehicles, and thus far automakers that have announced AFTA export intentions for Indonesia have focused their efforts on that class of products.<sup>118</sup> Japanese manufacturers have managed their investments well and look poised to take advantage of regional economic integration in Indonesia. Vehicle sales in 2005 were thirty percent higher than in 2004.<sup>119</sup> The domestic market is expected to top 500,000 in 2005, and reach 750,000 by 2009.<sup>120</sup> Domestically sold vehicles are subject to a luxury tax of up to seventy-five

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Paulsen K. Vandeventer, *The Uruguay Round and the World Trade Organization: A New Era Dawns in the Private Law of International Customs and Trade*, 31 Case W. Res. J. Intl. L. 107, 114 (1999).

<sup>117</sup> *JETRO Vows Support for Indonesia's Revitalization Efforts*, The Jakarta Post (Mar. 1, 2005) (available in LEXIS, News library; Global News Wire file).

<sup>118</sup> *See infra* § V.

<sup>119</sup> Tim Urquhart, *High Interest Rates Will Hurt Indonesian Car Sales, Says Mitsubishi*, World Markets Analysis (Sept. 21, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>120</sup> Zakki Hakim, *AFTA On Auto Sector Moving Slowly*, The Jakarta Post (Sept. 6, 2005) (available in LEXIS, News library; Global News Wire file).

percent.<sup>121</sup>

D. *Vietnam*

Among ASEAN member economies, Vietnam's has been the fastest growing for a number of years, posting 7.3 percent GDP growth in 2003 and an estimated 7.2 percent in 2004.<sup>122</sup> The auto industry is regulated by the granting of licenses by the government. Thus far, there are fourteen vehicle manufacturing joint ventures, eleven operational and three more underway.<sup>123</sup> In the first half of 2005, the domestic market reached 16,000 units, an increase of twenty-six percent from the prior year.<sup>124</sup> For the full year, Vietnam is expected to record sales of 41,700 units.<sup>125</sup> The industry is expected to reach 54,000 by 2010.<sup>126</sup> Despite the low volumes, vehicle prices in Vietnam are among the highest in the world.<sup>127</sup> Vehicles sold in Vietnam are subject to a Special Consumption Tax of up to sixty percent along with a ten percent value added tax.<sup>128</sup> In 2005, the latest entry into the market, Vinaxuki, commenced operations.<sup>129</sup>

AFTA integration remains a problem for Vietnam. Vietnam requested, and received, a two-year delay on reducing the import of auto parts from Thailand to 2008.<sup>130</sup> In return, Vietnam agreed to reduce tariffs on other lines, including livestock and electrical products.<sup>131</sup> The government remains committed to reducing tariffs on CBU vehicles under AFTA, starting with a reduction to twenty percent in 2008.<sup>132</sup> Shortfalls in customs revenue, however, will likely be offset by increases in internal taxes such as the Special Consumption Tax, currently set at forty percent.<sup>133</sup>

E. *Malaysia*

Malaysia is a critical auto market in ASEAN. Total vehicle sales in the first eight months of 2004 rose fourteen percent to over 312,000 units.<sup>134</sup> This places Malaysia as the second-largest market in ASEAN, and the

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<sup>121</sup> *Economist Conferences*, *supra* n. 91.

<sup>122</sup> *Case Stories: Southeast Asia at a Glance*, The Edge Singapore (Sept. 27, 2004) (available in LEXIS, News library; The Edge Singapore file).

<sup>123</sup> *Vietnam's Largest Private Car Factory Operational*, Vietnam News Briefs (Sept. 6, 2005) (available in WL, VIETNBS database).

<sup>124</sup> *Id.*

<sup>125</sup> *Economist Conferences*, *supra* n. 91.

<sup>126</sup> *Id.*

<sup>127</sup> *Vietnam Proposes Tax Cuts on Imported Cars within ASEAN*, Vietnam Economic Times 1 (Jan. 20, 2005) (available in LEXIS, News library; The Global News Wire file).

<sup>128</sup> *Economist Conferences*, *supra* n. 91.

<sup>129</sup> *Id.*

<sup>130</sup> *Vietnam Cuts Import Tariffs for Thai Products*, Thai Press Reports (Apr. 13, 2005) (available at 2005 WLNR 5689977).

<sup>131</sup> *Id.*

<sup>132</sup> *Vietnam Proposes Tax Cuts on Imported Cars within ASEAN*, *supra* n. 127 at 1.

<sup>133</sup> *Id.*

<sup>134</sup> Lee Peart, *Proton Comes Out Fighting Ahead of 2005 Malaysian AFTA Compliance*, World Markets Analysis (Sept. 30, 2004) (available in LEXIS, News library; World Markets Analysis file).

largest for passenger cars. In 2005, the industry is expected to sell 520,000 units.<sup>135</sup> By 2010, the industry is expected to rise to 639,000 units.<sup>136</sup> If Malaysia fully implemented AFTA, a host of car companies would be interested in expansion plans there.<sup>137</sup> Unfortunately, other considerations have meant that those plans are still collecting dust on a bookshelf.

Malaysia's domestic auto industry is dominated by Proton, a national carmaker owned by the government. Protectionist government measures have meant that Proton traditionally enjoyed market share in excess of sixty percent.<sup>138</sup> This share dropped to forty-five percent in 2004, as aggressive price-cutting by Japanese and Korean automakers enabled more Malaysians to purchase non-Proton vehicles. In 2005, the company's goal was to increase market share back to fifty percent,<sup>139</sup> but analysts predicted a further decline in market share to below thirty-five percent.<sup>140</sup> When Proton's management<sup>141</sup> and dealer network<sup>142</sup> complained that the government was not doing enough to protect it from foreign competition, outspoken Minister of International Trade and Industry Datuk Seri Rafidah Aziz said that the government had always taken steps to protect Proton's interest since it began.<sup>143</sup> Aziz also freely admits that whenever Malaysia was forced to reduce tariffs, it engaged in price "simulation" in the market so that there was a sizeable difference between the price of imported and Proton-manufactured vehicles.<sup>144</sup>

Proton's success in an open, liberalized trading environment hinges on its ability to become globally competitive.<sup>145</sup> Tariff and non-tariff measures may protect its market share, but without access to critical new

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<sup>135</sup> *Profile—Malaysia's Automotive Industry*, Asia Pulse News (Nov. 30, 2005) (available in LEXIS, News library; News, All (English, Full Text) file).

<sup>136</sup> *Economist Conferences*, *supra* n. 91.

<sup>137</sup> See e.g. Lee Peart, *Sime Darby, Alfa Romeo, in Distribution Talks in Malaysia*, World Markets Analysis (Sept. 14, 2004) (available in LEXIS, News library; World Markets Analysis file); see also *Japan's Toyota Motor to Build Plant in Malaysia's Kedah State*, AFX European Focus (Sept. 16, 2004) (available in LEXIS, News library; AFX.COM file) (reporting on Toyota's plans to expand manufacturing in Malaysia in anticipation of market liberalization); *Renault Plans to Introduce More CKD and CBU Models in Malaysia*, Malaysia Economic News (Nov. 17, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Assif Shameen, *Proton Hits Heavy Traffic*, 3942 BusinessWeek 16 (July 25, 2005) (available at WLNR 11427020).

<sup>141</sup> See e.g. Mohd Arshi Daud, *Proton Hopes New Auto Policy Can Help Spur Local Economy*, Malaysia Economic News (Apr. 9, 2005) (available in LEXIS, News library; Malaysia Economic News file) (quoting Proton CEO Tengku Tan Sri Mahaleel Tengku Ariff as cautioning the Malaysian government that lowering trade barriers would devastate the Malaysian company).

<sup>142</sup> Tim Urquhart, *Proton Dealers Call for Ban on Small-Cars Imports into Malaysia*, World Markets Analysis (July 21, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>143</sup> *Proton Given Govt's Protection Throughout, Says Rafidah*, Malaysia Economic News (Mar. 11, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>144</sup> *Id.*

<sup>145</sup> *Get Ready to Compete in Open Market*, New Straits Times 14 (May 26, 2005) (available in LEXIS, News library; New Straits Times Press (Malaysia) file).

technologies and larger markets for economies of scale,<sup>146</sup> it risks being inundated should Malaysia liberalize.<sup>147</sup> One solution would be to find a partner in a global automaker. Throughout 2003 and 2004, the government made no secret of its plans to locate a partner for Proton.<sup>148</sup> Germany's Volkswagen (VW) emerged as an early suitor, and the possibility of a tie-up was greeted with cheer from investors.<sup>149</sup> VW would provide technology, products, capital, and a distribution network outside Malaysia for Proton products.<sup>150</sup> In return, VW would obtain a foothold in the largest passenger car market in ASEAN.<sup>151</sup> Proton, which has excess capacity in its plants, could assemble VW models for distribution in the region.<sup>152</sup> By mid-2005, discussions between Proton and VW were at a standstill.<sup>153</sup> In early 2006, discussions between the two companies collapsed amidst reports that Proton's management refused to cede management control to VW.<sup>154</sup> Proton's share price dropped more than ten percent on the news.<sup>155</sup>

A second carmaker, Perodua, has close ties to Toyota. In 2004, Toyota's Indonesian subsidiary began shipping CKD kits of its Avanza multi-utility vehicle for final assembly by Perodua in Malaysia.<sup>156</sup> Perodua, which is twenty-five percent owned by Toyota's Daihatsu division, has also invested heavily in expanding production capacity in anticipation of AFTA compliance.<sup>157</sup> Analysts agree that Perodua is in much better shape to face AFTA than Proton.<sup>158</sup>

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<sup>146</sup> In 2004, Proton only exported six percent of its vehicle production. *Overseas National Car Sales Unsatisfactory*, Malaysia Economic News (Mar. 22, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>147</sup> Analyst Graeme Maxton postulates that, "As a marginal producer with falling market share even in its home market, Proton lacks the scale it needs to compete against bigger rivals." Shameen, *supra* n. 140, at 16.

<sup>148</sup> See e.g. *Proton's Search for Foreign Partner is Aimed for the Best*, Malaysia Economic News (Sept. 28, 2004) (available in LEXIS, News library; Malaysia Economic News file) (reporting that Proton is negotiating with "several world leading automotive manufacturers" for a strategic partnership).

<sup>149</sup> Thomas Ryard, *Proton in Alliance Talks with VW*, World Markets Analysis (Oct. 1, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>150</sup> John Burton, *Prospects for Proton Look Gloomy*, Financial Times 19 (Jan. 14, 2006) (available in LEXIS, News library; Financial Times (London) file).

<sup>151</sup> *Id.*

<sup>152</sup> Paul Newton, *Proton to Manufacture Two VW Models for Asian Market*, World Markets Analysis (Nov. 3, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>153</sup> Leela Barrock, *Proton-VW Talks Come to a Standstill*, The Edge Malaysia (July 18, 2005) (available in LEXIS, News library; The Edge Malaysia file).

<sup>154</sup> Newton, *supra* n. 152.

<sup>155</sup> *Id.*

<sup>156</sup> Lee Peart, *Toyota Indonesia to Begin Avanza Exports to Malaysia*, World Markets Analysis (Oct. 7, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>157</sup> Lee Peart, *Perodua Expands Vehicle Production Capacity*, World Markets Analysis (Oct. 8, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>158</sup> *Perodua Set to Face Auto Liberalisation*, Malaysia Economic News (March 2, 2005) (available in LEXIS, News library; Malaysia Economic News file) (pointing out that, as a younger auto company, Perodua started with the knowledge the market would be liberalized eventually); *but see Perodua Says It Requires More Time to Meet Market Liberalisation*, Bernama the Malaysian National News Agency (Mar. 7, 2005) (available in LEXIS, News library; The Global News Wire) (reporting that Perodua

In 2000, Malaysia sought to delay transferring auto tariff lines to the Inclusion List under CEPT.<sup>159</sup> In typical collaborative ASEAN fashion, the member states passed the Protocol Regarding the Implementation of the CEPT Scheme Temporary Exclusion List, which permitted member countries to delay implementing AFTA for any product whose transfer into AFTA “would cause or have caused real problems.”<sup>160</sup> Malaysia promptly invoked the Protocol to delay transferring over 218 auto-related items into its Inclusion List.<sup>161</sup> Instead of the five percent rate by 2006 as mandated by AFTA, Malaysia sought to delay implementing a twenty percent rate until 2005.<sup>162</sup> Assuming a five percent annual step-down, Malaysia would not reach a five percent tariff rate until 2008.<sup>163</sup> Details of how Malaysia would implement the delay were scarce, and even by late 2004, the government had yet to announce how it would liberalize the auto industry.<sup>164</sup> Industry executives were left with no choice but to adopt a wait-and-see approach on how to include Malaysia in their regional integration plans.<sup>165</sup>

Efforts by Malaysia to delay implementation of AFTA brought an angry response from its neighbors, especially Thailand<sup>166</sup> and Indonesia.<sup>167</sup> By the end of 2004, however, as Malaysia appeared ready to lower tariff rates to twenty percent, Thailand was seeking ways to lower the rhetoric with Malaysia.<sup>168</sup>

In 2005, Malaysia carried out its promise to lower the tariff rate for CBU vehicles to twenty percent.<sup>169</sup> The import duty on some classes of

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executives claim that eleven years existence is not enough for an automotive company to be fully competitive).

<sup>159</sup> Waranee Kunawasen, *ASEAN's Trade Liberalization Falters*, The Nikkei Weekly (Oct. 16, 2000) (available in LEXIS, News library; The Nikkei Weekly (Japan) file).

<sup>160</sup> *Protocol Regarding the Implementation of the CEPT Scheme Temporary Exclusion List*, art. 1, at <http://www.aseansec.org/12365.htm> (accessed Mar. 14, 2006).

<sup>161</sup> Serina Joon, *AFTA: Malaysia at the Crossroads*, The Edge Malaysia (May 30, 2005) (available in LEXIS, News library; The Edge Malaysia file).

<sup>162</sup> *Id.*

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

<sup>164</sup> Rafidah: *PM to Announce Full Implementation of AFTA Before Year Ends*, Malaysia Economic News (Sept. 11, 2004) (available in LEXIS, News library; Malaysia Economic News file); Leslie Lopez, *Malaysia to Set Plan to Lower Car-Import Tariffs*, Wall Street Journal A15 (Nov. 11, 2004).

<sup>165</sup> See e.g. Clarence Ngui, *The Race Hots Up*, Malaysian Business 16 (Aug. 16, 2004) (available in LEXIS, News library; Malaysian Business file) (quoting various auto executives who have placed a hold on their plans until the Malaysian government clarifies its policies).

<sup>166</sup> See e.g. Busrin Treerapongpichit, *Call for Compensation Over Malaysia's Tariff Decision; Lost Opportunity Costs Total B100bn*, Bangkok Post (Apr. 27, 2001) (available in LEXIS, News library; Global News Wire file) (reporting that the Federation of Thai Industries called for Malaysia to compensate Thailand for up to 100 billion baht in “lost opportunity costs”).

<sup>167</sup> *Indonesia Seeks Malaysian Compensation for AFTA Delay*, Asian Economic News (June 11, 2001) (available in LEXIS, News library; News, All (English, Full Text) file).

<sup>168</sup> Lee Peart, *Thai Prime Minister Forecasts End to Malaysian Auto Spat in 2005*, World Markets Analysis (Dec. 1, 2004) (available in LEXIS, News library; World Markets Analysis file); *but see Tariff Cuts May be Postponed*, The Nation (May 21, 2005) (available in LEXIS, News library; The Nation file) (indicating Thailand would reciprocate any tariff rate delays implemented by Malaysia).

<sup>169</sup> *Profile—Malaysia's Automotive Industry Nov. 2005*, AsiaPulse News (Nov. 30, 2005) (available in WL, ASIAPULSE database).

vehicles went from 190 percent to twenty percent under AFTA.<sup>170</sup> The long-awaited emergence of the Malaysian Automotive Policy (“MAP”), however, continued to be elusive.<sup>171</sup> The government continued to insist on protectionist measures by simultaneously increasing the excise tax on imported vehicles.<sup>172</sup> In some classes of vehicles, excise duty went from 100 percent to 250 percent.<sup>173</sup> Proton, however, retained a pricing and profit advantage because of an excise tax rebate.<sup>174</sup> The most controversial measure was to retain the approval process for importing vehicles, a process that allocated the permits to local bumiputeras (persons of Malay ethnicity).<sup>175</sup> The requirement for an approval permit in order to import vehicles ensures that imported vehicles, in spite of lower tariffs, remain much more expensive than Proton vehicles.<sup>176</sup> The use of approval permits has been roundly criticized, even in Malaysia, as an opportunity for cronyism,<sup>177</sup> a charge the Minister for Industry, Aziz, soundly denies.<sup>178</sup>

The new policy was greeted with dismay by both Proton<sup>179</sup> and non-national car companies.<sup>180</sup> Toyota threatened a pullout, and Nissan placed expansion plans on hold.<sup>181</sup> Rather than lead to lower vehicle prices and therefore higher industry volumes, the industry braced itself for higher vehicle prices.<sup>182</sup> By 2008, Malaysia may be forced to abandon the use of approval permits when certain provisions of the WTO agreement come into force.<sup>183</sup>

In the meantime, serious in-fighting at Proton led to at least two attempts to displace Proton’s CEO, a protégé of former Prime Minister

<sup>170</sup> Siow Chen Ming, *A Shift in Favour of ASEAN Cars*, The Edge Malaysia (Jan. 10, 2005) (available in LEXIS, News library; The Edge Malaysia file).

<sup>171</sup> Even after the new year in 2005, the government was still silent on the measures it was implementing. Azlan Abu Bakar, *Automotive Firms to Meet Ministry on New Tax*, Business Times 1 (Jan. 4, 2005) (available in Lexis, News library; Business Times (Malaysia) file).

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

<sup>173</sup> Siow Chen Ming, *Motor Industry Awaits MAP Incentives*, The Edge Singapore (Feb. 7, 2005) (available in LEXIS, News library; The Edge Singapore file).

<sup>174</sup> Lee Peart, *Malaysia to Retain Excise Tax Rebate for Proton in 2005*, World Markets Analysis (Dec. 10, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>175</sup> Zuraimi Abdullah, *Policy on APs to Stay, Says Rafidah*, Business Times 1 (Jan. 8, 2005) (available in LEXIS, News library; Business Times (Malaysia) file).

<sup>176</sup> M. Sarawasthi, *supra* n. 102.

<sup>177</sup> *Unravelling the APs Mystery*, New Straits Times (Oct. 9, 2005) (available in LEXIS, News library; New Straits Times Press (Malaysia) file).

<sup>178</sup> Nuraina Samad, *AP Issue is Just One Fish Ball on My Plate*, New Straits Times (Oct. 6, 2005) (available in LEXIS, News library; New Straits Times Press (Malaysia) file).

<sup>179</sup> Tim Urquhart, *Proton CEO Criticises Malaysian Government’s Car Industry Policy*, World Markets Analysis (June 30, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>180</sup> Lee Peart, *Malaysian Auto Assemblers Threaten Exit Over New Duty Regime*, World Markets Analysis (Jan. 13, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>181</sup> *Id.*

<sup>182</sup> Rizalman Hammim, *Foreign Cars to Cost Up to 10 Per Cent More*, Malay Mail (March 3, 2005) (available in LEXIS, News library; Global News Wire file).

<sup>183</sup> M. Sarawasthi, *supra* n. 102.

Mahathir Mohammed.<sup>184</sup> After a public war of words with the government wherein he complained that the government was not doing enough to protect Proton,<sup>185</sup> he was forced out by Proton's board in mid-2005.<sup>186</sup> In light of these management problems at Proton, the government rushed to reassure the public that Proton's performance in getting ready for AFTA liberalization would proceed on-course.<sup>187</sup> Export plans, seen as critical to Proton's survival, remained tentative.<sup>188</sup> Most recently, the government has continued its push to prepare the domestic auto sector for increased liberalization and competition.<sup>189</sup> The new Malaysian Prime Minister, Abdullah Badawi, has promised that protection for Proton will eventually end.<sup>190</sup> By late 2005, the government was still fine-tuning the various instruments of trade policy at its disposal in an attempt to comply with its trade obligations while still helping Proton survive,<sup>191</sup> including giving into pressure to phase out the controversial Approval Permit requirement.<sup>192</sup>

Malaysia's haltering entry into AFTA is emblematic of the problems AFTA has had generally. In lowering tariff barriers as a result of AFTA, for example, Malaysia has also lowered tariffs for non-AFTA countries. By doing so, cheap imports from South Korea have found a stronghold in Malaysia's robust car market. Indeed, in 2005, there were twenty-one vehicle models sold in Malaysia that were not part of AFTA.<sup>193</sup> If AFTA's promise for the auto industry is to be realized, all vehicle markets should maintain common and high external tariffs to allow the ASEAN markets time to develop.<sup>194</sup> Although this lesson appears lost on the Malaysians, they did agree to lower tariffs on CKD kits from Japan as part

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<sup>184</sup> Mohd Arshi Daud, *Mahaleel Survives Another Coup But What Next?*, Malaysia Economic News (Feb. 8, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>185</sup> Tim Urquhart, *Proton CEO Criticizes Malaysian Government's Car Industry Policy*, World Markets Analysis (June 30, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>186</sup> Tim Urquhart, *Proton CEO Forced Out by Board*, World Markets Analysis (July 26, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>187</sup> *Proton Ensures Management Problems Will Not Affect Performance*, Malaysia General News (May 4, 2005) (available in LEXIS, News library; Malaysia General News file).

<sup>188</sup> Proton announced in 2005 that it was investigating small scale exports to Russia and China. Goh Thean Eu, *Proton Plans to Expand into Russia*, Business Times 2 (June 29, 2005) (available in LEXIS, News library; Business Times (Malaysia) file).

<sup>189</sup> *Pro-Active Attitude Vital, Says Rafidah*, Malaysia Economic News (Dec. 8, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>190</sup> *Protection for Carmaker Proton Will be Reduced, Abdullah Says*, Japan Economic Newswire (July 7, 2005) (available in LEXIS, News library; Japan Economic Newswire file).

<sup>191</sup> *NAP Aims to Make Auto Industry Competitive*, Malaysia Economic News (Oct. 4, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>192</sup> *Govt Announces NAP Framework to Make M'sia Regional Automotive Hub*, Malaysia Economic News (Oct. 19, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>193</sup> Mohd Arshi Daud, *Proton Hopes New Auto Policy Can Help Spur Local Economy*, Malaysia Economic News (Apr. 9, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>194</sup> See e.g. Woranuj Maneerungsee, *Too Many FTAs Could Hurt ASEAN*, Bangkok Post (May 30, 2005) (available in LEXIS, News library; Global News Wire file) (quoting Dr. Somkiat Tangkitvanich, research director of Thailand Development Research Institute, as saying that too many bilateral free trade agreements could "erode" ASEAN's drive for economic integration).

of their 2005 free trade agreement with Japan.<sup>195</sup>

#### IV. USING AICO TO TRADE CBU VEHICLES<sup>196</sup>

As previously discussed, the implementing mechanism for AFTA is the CEPT Agreement. As tariff lines move into the CEPT Inclusion List, their tariffs drop to zero to five percent. The full implementation for AFTA was scheduled for January 1, 2003. Prior to that date, it was possible for companies to use another mechanism, AICO, to obtain zero to five percent preferential tariff rates. This section of the Article details how one automaker, Ford, used AICO to its advantage in 2002 in order to obtain duty-free privileges for complete vehicles one year ahead of AFTA's implementation.<sup>197</sup>

The AICO Agreement<sup>198</sup> was signed by ASEAN member states in 1996.<sup>199</sup> The objectives of the Agreement were to promote increased ASEAN industrial production, closer ASEAN integration, increased investment, and increased industrial complementation.<sup>200</sup> The most attractive feature of AICO was that, if granted, the company involved would receive a zero to five percent tariff rate ahead of AFTA implementation.<sup>201</sup> Member states were granted the authority to decide each AICO application individually.<sup>202</sup> Although not mentioned specifically, AICO was targeted at the auto industry, and more specifically, at the Japanese automakers that already had established complementation networks.<sup>203</sup> From its inception, AICO was fraught with difficulty for the industry, especially as each Member State was given complete discretion on the process for approving AICO applications.<sup>204</sup> In 1997, there were only seven applications filed.<sup>205</sup> By 1999, forty-six applications had been filed, of which thirty-three involved manufacturing in Thailand.<sup>206</sup> Of those thirty-three, twenty-eight

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<sup>195</sup> *Tokyo's Deal with KL a 'Slap in the Face,'* The Nation (May 27, 2005) (available in LEXIS, News library; The Nation file).

<sup>196</sup> In the interest of disclosure, the author was involved in this commercial project in his role as Director for ASEAN Governmental Affairs for Ford Motor Company at the time.

<sup>197</sup> Ford affiliate Volvo had already been using AICO to gain tariff concessions for parts and components. Zuraimi Abdullah, *Volvo Positions Itself for AFTA Era*, New Straits Times 23 (May 18, 2000) (available in LEXIS, News library; New Straits Times Press (Malaysia) file).

<sup>198</sup> A full-text version of the Agreement can be found at <http://www.aseansec.org/1948.htm>.

<sup>199</sup> ASEAN Secretariat, *Cooperation in Industry*, <http://www.aseansec.org/10014.htm> (accessed Mar. 12, 2006).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Hidetaka Yoshimatsu, *The State, MNCs, and the Car Industry in Asia*, 29 J. of Contemporary Asia 495 (Oct. 1, 1999).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Car Makers Eye AICO Scheme*, The Nation (June 18, 1999) (available in LEXIS, News library; The Nation file).

were from the auto industry.<sup>207</sup>

The use of AICO to trade CBU vehicles, as opposed to parts, was unprecedented in 2002.<sup>208</sup> In Ford's estimation, the AICO would also bring intangible benefits along with the immediate tariff reductions. At the time, automakers were nervous about AFTA's viability for the auto industry. Malaysia had delayed implementation, and there was concern that the Philippines and Indonesia, which had much to lose in light of Thailand's capability as an export hub, would also delay.<sup>209</sup> The use of the AICO was therefore seen as a means of reassuring domestic assemblers and parts makers that AFTA, if fully implemented, would lead to success for all countries through the use of regional integration.

Like most automakers, Ford's strategy in the mid- to late-1990s was to regard each market in ASEAN as a separate emerging market poised for solid future growth. This national market view led to the establishment of assembly plants in multiple locations throughout the region, specifically Malaysia, Thailand, Vietnam, and the Philippines. By 1999, all four plants were producing identical vehicles. Under a regional integration strategy, the plants would instead focus on making one or two products, and then trade the vehicles with other plants.<sup>210</sup> Ideally, Malaysia would make the passenger car product since Malaysia was the biggest passenger car market in ASEAN. The Thai affiliate would produce pickup trucks since Thailand was the biggest pickup market in ASEAN. The Philippines would then produce the SUV product, as it was the newest plant and the Philippines had the lowest duty rates on parts from Japan and the United States (where the SUV was sourced from). If Ford could realize these location-specific advantages, it would realize an AFTA strategy that would lead to greater volume, more consumer choice, and lower costs.

Thus, in 2001, Ford filed an AICO application with the governments of Thailand and the Philippines for AICO privileges to apply to CBU vehicles.<sup>211</sup> Under the AICO application, Ford proposed to move production of its passenger car from Thailand to the Philippines.<sup>212</sup> It also sought to introduce a new SUV, the Ford Escape, by building it in the

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<sup>207</sup> *Id.*

<sup>208</sup> The AICO Agreement contemplates the use of AICO for both finished products and raw components, but due to the highly protective nature of government policy on the auto industry, most auto AICOs were granted for parts and components. ASEAN Secretariat, *ASEAN Industrial Cooperation Scheme*, <http://www.aseansec.org/6402.htm> (accessed Mar. 12, 2006).

<sup>209</sup> Sarah Meyers, *Ford Raises Investment in Export Programme*, World Markets Analysis (Sept. 10, 2002) (available in LEXIS, News library; World Markets Analysis file).

<sup>210</sup> Lee Peart, *Ford Looks to Asia for Expansion*, World Markets Analysis (Feb. 15, 2002) (available in LEXIS, News library; World Markets Analysis file).

<sup>211</sup> *Ford Offers RP Thailand AICO Scheme*, Manila Bulletin (May 9, 2001) (available in LEXIS, News Library; News, All (English, Full Text) file).

<sup>212</sup> Gil C. Cabacungan Jr., *Ford Seeks Lower Duty for AICO Plan*, Philippine Daily Inquirer (May 9, 2001) (available in LEXIS, News Library; News, All (English, Full Text) file).

Philippines and exporting it to Thailand.<sup>213</sup> In return, Ford proposed ceasing production of its pickup truck in the Philippines, and importing the pickup truck, a new SUV product, as well as parts and components from its Thai affiliate.<sup>214</sup> After running into some initial resistance,<sup>215</sup> the AICO was approved by both governments,<sup>216</sup> and Ford became the first automaker in the region to trade CBU vehicles at zero to five percent tariff rates. In doing so, Ford also persuaded the Philippine government to adopt export incentives to encourage other automakers to export CBU vehicles from the Philippines.<sup>217</sup>

Ford Philippines exported 10,000 CBU vehicles in 2004, and expects to export more than 14,000 in 2005.<sup>218</sup> Exported vehicles include the Escape SUV and Focus sedan to Thailand and Indonesia.<sup>219</sup> The AICO scheme's relevance, in the meantime, has not diminished. It can still be used by companies, for example, to realize preferential tariffs in countries such as Vietnam and Malaysia. Toyota recently announced a study to use AICO to trade passenger and commercial vehicles between Thailand and Malaysia.<sup>220</sup>

#### V. CURRENT INTEGRATION EFFORTS

By 2005, most automakers in ASEAN were using the AFTA mechanisms to export from their base factories. Ford, of course, was building on its AICO project to expand trade between its Thai and Philippine affiliates. Nissan produces the Liberty multi-purpose vehicle in Thailand for export to Southeast Asia.<sup>221</sup> It also produces the X-Trail compact SUV in Indonesia for export.<sup>222</sup> German automaker BMW, on the other hand, has been slower to take advantage of AFTA. It owns only one assembly plant in the region, in Rayong, Thailand.<sup>223</sup> The company sold 13,000 vehicles in ASEAN in 2004, but the Thai plant only manufactures for the Thai market, while local assemblers build vehicles for the Malaysian

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> Gil C. Cabacungan Jr., *Thailand Cool to Ford Export Plan*, Philippine Daily Inquirer (June 1, 2001) (available in LEXIS, News library; Global News Wire file).

<sup>216</sup> Gil C. Cabacungan Jr., *Gov't OKs Ford's AICO Project*, Philippine Daily Inquirer (Aug. 6, 2001) (available in LEXIS, News library; Global News Wire file).

<sup>217</sup> Iris Cecilia C. Gonzalez, *Auto Export Program Gets Boost from New Palace EO*, BusinessWorld (Oct. 15, 2003) (available in LEXIS, News library; BusinessWorld file).

<sup>218</sup> Elaine Ruzul S. Ramos, *Ford Sees Exports of 14,000 Units This Year*, Manila Standard (Nov. 14, 2005) (available at 2005 WL 18399287).

<sup>219</sup> *Id.*

<sup>220</sup> *Automotive Sector of M'sia and Thailand Gain from AICO Scheme*, Malaysia Economic News (May 30, 2005) (available in LEXIS, News library; Malaysian Economic News file).

<sup>221</sup> Lee Peart, *Nissan Cashing in on AFTA Trade Privileges in Thailand*, World Markets Analysis (June 27, 2003) (available in LEXIS, News library; World Markets Analysis file).

<sup>222</sup> *Id.*

<sup>223</sup> Siow Chen Ming, *BMW Bides Time at Rayong*, The Edge Singapore (Feb. 28, 2005) (available in LEXIS, News library; The Edge Singapore file).

and Indonesian markets.<sup>224</sup> A trial run of exports from Thailand to Indonesia was successful, and the company has publicly stated its intent to use Thailand as a base to serve all of ASEAN.<sup>225</sup> Even exporting in very small volumes can prove feasible within AFTA, as France's Peugeot recently demonstrated with a shipment of twenty-four vehicles from its Indonesian subsidiary to Thailand.<sup>226</sup> Peugeot also has plans to export vehicles from Malaysia.<sup>227</sup> Of course, these vehicles must still satisfy AFTA's forty percent local-content requirement to qualify for duty-free privileges, and it is hard to imagine a localization program for such small volumes.

Toyota, which owns multiple plants throughout the region, has also started using AFTA to ship CBU vehicles between countries. In 2004, Toyota began exporting its Avanza van product from its Indonesian affiliate to Malaysia in CKD form, and as a CBU vehicle to Thailand.<sup>228</sup>

Tiny Suzuki has also started to use AFTA to take advantage of export opportunities. In 2005, it began exporting its all purpose vehicle from Indonesia.<sup>229</sup>

## VI. INTEGRATING OUTSIDE ASEAN AND CLOSING THOUGHTS

In the wake of collapsing global trade talks at the WTO, ASEAN appears determined to move forward with economic integration. In November 2004, there were seventy-eight ongoing trade negotiations around the world, thirty within Asia, and a further twenty-two involving Asia.<sup>230</sup> In the initial days of AFTA, Malaysian Prime Minister Mahathir warned that bilateral trade agreements may weaken AFTA by providing a "backdoor" for goods to enter an ASEAN member country and then be re-exported to other ASEAN member countries, exploiting the loose rules-of-origin to take advantage of preferential tariffs.<sup>231</sup> His worst fears may be coming true. This integration is happening on both bilateral (between an ASEAN member country and a non-ASEAN country) and multilateral (between ASEAN

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<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> Johanna Iivonen, *Peugeot Begins Exporting from Indonesia to Thailand*, World Markets Analysis (Nov. 5, 2004) (available in LEXIS, News library; World Markets Analysis file); but see Aranee Jaiimsin, *Peugeot Plans Thai Manufacturing Base*, Bangkok Post (Nov. 5, 2005) (available in LEXIS, News library; Global News Wire file).

<sup>227</sup> *Naza to Assemble 10,000 Peugeot 206 Models Early Next Year*, Malaysia Economic News (Sept. 7, 2005) (available in LEXIS, News library; Malaysia Economic News file).

<sup>228</sup> *Indonesia's Toyota Motor Launches Exports of Avanza Vans to Malaysia*, AFX-Asia (Oct. 7, 2004) (available in LEXIS, News library; AFX-Asia file).

<sup>229</sup> Johanna Iivonen, *First Suzuki Vehicles Exported from Indonesia*, World Markets Analysis (Apr. 20, 2005) (available in LEXIS, News library; World Markets Analysis file).

<sup>230</sup> *Expert Discusses Effects of FTAs on Automotive Industry in Asia*, *supra* n. 88.

<sup>231</sup> Wayne Arnold, *Pacific Nations Rush to Sign Trade Pacts; Bilateral Agreements Are Being Driven by Emergence of China*, The International Herald Tribune 1 (Mar. 12, 2005) (available in LEXIS, News library; The International Herald Tribune file).

collectively and a non-ASEAN country) levels. Multilateral discussions include China, India,<sup>232</sup> Japan,<sup>233</sup> South Korea, New Zealand, and Australia.<sup>234</sup> Malaysia is negotiating free trade agreements with the United States and Japan, and has proposed bilateral agreements with Australia, Bangladesh, India, and Pakistan.<sup>235</sup> Singapore has signed bilateral trading agreements with Australia, New Zealand, Japan, and the United States.<sup>236</sup> Thailand has attempted bilateral trading agreement discussions with Japan, but progress proved rocky because of concerns of imported cars from Japan, while the sensitive topic of rice has been avoided altogether.<sup>237</sup> Auto industry executives have warned that even an agreement to reduce tariffs on autos would result in a one-sided deal in favor of Japan, as the Japanese would implement non-tariff barriers to keep Thai exports from the market.<sup>238</sup> Japanese automakers promised to invest an additional \$1 billion into Thailand if AFTA was signed.<sup>239</sup> In late summer 2005, the governments announced a tentative deal.<sup>240</sup> Indonesia has noticeably refrained from engaging in any discussions on bilateral trading agreements.

As integration efforts proceed, opening a crack in the wall surrounding ASEAN, especially with regards to China, appears to pose some risks.<sup>241</sup> Already, Chinese automaker Chery has announced plans to export vehicles from China to Malaysia and perhaps from there to other parts of Southeast Asia.<sup>242</sup> Fellow automaker Geely has also announced plans to establish operations in Malaysia to take advantage of AFTA.<sup>243</sup> China's role in this economic expansion causes the most angst among commentators. The free trade area being contemplated between ASEAN and China appears to be a "half open model," characterized by grossly

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<sup>232</sup> Aroonim Bhuyan, *Can Indo-ASEAN Trade Benefit India?*, The Economic Times (Nov. 30, 2004) (available in LEXIS, News library; Global News Wire file).

<sup>233</sup> Japan and ASEAN wish to conclude a free trade agreement by 2012. Arnold, *supra* n. 231.

<sup>234</sup> *Southeast Asia at a Glance*, The Edge Singapore (Sept. 27, 2004) (available in LEXIS, News library; The Edge Singapore file).

<sup>235</sup> Cindy Tham, *Benefits and Pitfalls of FTAs*, The Edge Singapore (Jan. 31, 2005) (available in LEXIS, News library; The Edge Singapore file).

<sup>236</sup> Arnold, *supra* n. 231.

<sup>237</sup> Arnold, *supra* n. 231; *Tokyo's Deal with KL a 'Slap in the Face'*, The Nation (May 27, 2005) (available in LEXIS, News library; The Nation file); *Thailand Japan FTA: Prelude to Competition within the Region*, Thai News Service (Aug. 17, 2005) (available in WL, THAINS database).

<sup>238</sup> *Ford Motor Executive Wars that Thai-Japan FTA May Stop Car Sales by Thailand to Japan*, Thai Press Reports (June 15, 2005) (available in WL, THAI PRESS database).

<sup>239</sup> Jeerawat Nathalang, *Final Piece of Tokyo's Auto Jigsaw Falls into Place*, The Nation (Aug. 2, 2005) (available in LEXIS, News library; The Nation file).

<sup>240</sup> *Id.*

<sup>241</sup> See e.g. Woranuj Maneerungsee, *Too Many FTAs Could Hurt ASEAN*, Bangkok Post (May 30, 2005) (available in LEXIS, News library; Global News Wire file) (warning that bilateral trade agreements could "weaken ASEAN's bargaining power" and render it unattractive for further foreign investment).

<sup>242</sup> Lee Peart, *Chinese Carmaker Chery Aims to Step Up Exports*, World Markets Analysis (Oct. 19, 2004) (available in LEXIS, News library; World Markets Analysis file).

<sup>243</sup> *M'Sia Set to be Hub for Chinese Cars with RM200 MLN Plant in Kuantan*, Malaysia Economic News (May 30, 2005) (available in LEXIS, News Library; Malaysian Economic News file).

disproportionate advantages to China.<sup>244</sup>

Commentators have observed that part of ASEAN's problem is that for the more industrialized member states, their trading partners have always been non-ASEAN countries such as the United States, European Union, and Japan.<sup>245</sup> This fact alone could lead AFTA to a state of forced irrelevance.<sup>246</sup> The experience of the auto industry in ASEAN, however, has demonstrated that AFTA has critical implications for the region. Foreign direct investment in the auto industry in the region, for example, has exploded after the 2003 implementation of AFTA.<sup>247</sup> Ironically, one of the most sensitive of the sectors that national governments have long sought to protect is also the sector with the strongest desire for AFTA integration. Product specialization and market cross-shipments demonstrate the clear benefits of AFTA to all stakeholders: governments, assemblers, suppliers, and customers. The recent proliferation of free trade agreement negotiations poses an alarming risk to the development of a sustainable ASEAN economic community. The lack of standards harmonization and distortive tax policies that suppress consumer demand further complicate the dream for a common market. As ASEAN begins to look outwards for future trade ties, it may do well to remember these lessons.

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<sup>244</sup> Bello, *supra* n. 84.

<sup>245</sup> See *e.g. id.* (observing that in 2001, intra-ASEAN exports accounted for only twenty percent of ASEAN's total exports, the same figure as in 1970).

<sup>246</sup> There is some evidence that intra-ASEAN trade is finally beginning to rise. Over the last three years, the level of trade between Thailand and Malaysia, for example, has grown by almost twenty-four percent. *AFTA Draws M'Sian Firms to Kingdom*, *The Nation* (Dec. 30, 2004) (available in LEXIS, News library; *The Nation* file).

<sup>247</sup> *Economist Conferences*, *supra* n. 91.