



Cambodian Preparedness for ASEAN Economic Community 2015

**Presentation to the Bar Association
of the Kingdom of Cambodia
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Background

- The benefit of the ASEAN Economic Community (AEC)
- This report would focus:
 - On the interests and needs of Cambodia in achieving the AEC in 2015, and highlight some of the legal challenges of delivering Cambodia's economic growth under parameters of the AEC,
 - On the gaps or remaining measures that need to be implemented to achieve the AEC,
 - Highlight recommendations, other pertinent issues, and capacity building measures for consideration by Senior Cambodian policy makers.
- The output of the report will thrive for consistency with the existing ADB project framework and other complement and establish policy by other government institutions.



Progress and Challenges Toward the AEC

- ASEAN achievements and Progress of the AEC
 - ASEAN becomes a rules-based community which has achieved in many fields, namely, politico-security, economic, and socio-cultural fields. The most challenging part is implementation side of existing rules and norms at the national level which remains the AEC by 2015.
 - “Key deliverables”, by ASEAN Member-State (AMS) economies, is the specific measure to achieve of the AEC by 2015.
 - For the period January 2008 to December 2009, Cambodia have achieve 70% compliance of the AEC key deliverable and ranked 3rd in its implementation record after Singapore and Malaysia, according the scorecard.



- **Cambodia's Achievement and Progress: Trade Structure**
 - Since accession to the WTO, international trade plays a fundamental role in Cambodia's economic growth with imports and exports representing around 65% of country's GDP.
 - However, Cambodia's trade volume is still small compared to some countries in ASEAN like Singapore, Thailand, and Vietnam.
 - Cambodia's Trade Structure has develop in the areas as following:
 - Tariff policies
 - Custom reform
 - Non-Tariff barriers – NTMs applied by Cambodia
 - Sanitary and phytosanitary measures
 - Technical barriers to trade
 - Other NTM Measures



Improving Transparency and Certainty for the Free Flow of Goods

The effects of the ASEAN Trade in Goods Agreement (ATIGA) and related agreements on AEC's single market and production base:

- ASEAN Tariff Liberalization: ASEAN has made quick progress in traffic liberalization after the AEC Blueprint was approved in 2007. Following the adoption of the ASEAN Harmonized Tariff Nomenclature (AHTN) 2012, AMS are in the process of transposing the ATIGA Tariff schedule and the products specific rules from AHTN 2007 into AHTN 2012.
- ASEAN Trade in Goods Agreement (ATIGA):
 - Facilitate trade by simplifying processes and procedures thereby reducing transaction time and cost of doing business, hence benefitting the business community and the public.



- Trade Facilitation in the AANZFTA : The valuation of goods, advance ruling, risk management provisions, enquiry points, and review and appeal, have been included in this agreement. Thus, the parties have committed to determines following this agreement. These actions designed to facilitate trade to freer, expedited, and less costly regime for importing and exporting in the region.
- Customs Integration- The 2012 ASEAN Custom Agreements : Member States shall ensure that customs controls are limited to such extent as to ensure compliance with their respective custom laws and regulation.
- Rules of Origin (ROO): to facilitate trade and enhance business development in the region.



- Rules of Origin under the AANZFTA: to enhances exporters' ability to take advantage of opportunities under the FTA by providing exporters with two alternative approaches for most goods for testing whether a good is originating.
- Standards under the AANZFTA: Mainly promoting “equivalence” in order to avoid of multiple and costly testing of products in different standards. So the AANZFTA incorporates a basic obligation to use international standard as the basis for national technical regulations, which consistent WTO provisions.
- Sanitary and Phytosanitary (SPS) Measures under the AANZFTA: Differing SPS measures can precipitate trade problems with product standards. Thus, the AANZFTA aims to mitigate this possibility in a number of ways that have practical consequence for the business community.



Improving Transparency and Certainty for the Free Flow of Services and Skilled Labor

The effects of the ASEAN Framework Agreement on Trade in Services and Related Agreements on ACE's single market and production base:

- ASEAN Framework Agreement on Trade in Service (AFAS):
 - ASEAN aims to progressively liberalize trade in services and achieve free flow of services by 2015.
 - The AFAS contains commitments to open up market access in at least 65 services sub-sectors. However, through negotiation, AMS agreed on seven packages of commitments, which cover liberalization of business services, environmental services, professional service, healthcare, construction, maritime transport, distribution, telecommunication, education, and tourism.



- Free Flows of skilled labor – Mutual Recognition Arrangements (MRAs):
 - On mobility of skilled labor, ASEAN has concluded of seven professional services Mutual Recognition Arrangements.
 - ASEAN has been working to conclude an agreement on the Movement of Natural Persons in ASEAN in August 2012 to facilitate movement of peoples engaged in trade in goods, services, and investment in ASEAN.
- Temporary movement of business persons under the AANZFTA: focus on procedures relative to the grant of temporary entry, processing of applications and transparency.
- Trade in services under the AANZFTA: A business in a services sector is required to apply for authorization to supply and recognition.



Improving Transparency and Certainty for the Free Flow of Investment

The effects of the ASEAN Comprehensive Investment Agreement (ACIA) and Related Agreement on AEC's single market and Production base:

- ASEAN Comprehensive Investment Agreement (ACIA): cover the liberalization, promotion and protection of investments by ASEAN investors and ASEAN based foreign investors. All AMS have completed their domestic procedures to enable the ACIA and to enter into force in the first quarter of 2012.
- Key Characteristics of ASEAN Investment Agreements (AIAs) – Regulatory Sovereignty vs. Promoting the Rule of Law: ASEAN AIAs have three common characteristics, namely, “Approval in Writing” requirement, general exception similar to GATT Article XX, and expropriation.



- Investment under the AANAFTA: the AANAFTA gives a broad definition of investment. It provides a range of protections for investors, including the possibility of dealing with a dispute through investor-state dispute settlement action.
- Investor – State dispute settlement: The disputing investor, between investors and governments participating in the AANZFTA, has the choices for settlement the disputes by many ways- the courts or tribunals of those parties, action under ICSID, UNCITRAL Arbitration Rules, or disputing parties agree on any other arbitration institution or any other arbitration rules.
- Fair treatment in administrative proceedings: AANZFTA governments are also required to maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and possible correction of final administrative actions relating to investment issues.



Other Agreements in support of a Highly Competitive Economic Region

- ASEAN countries will need to regulate competition policy and laws for business practices in order to achieve fair competitive conditions. And those competition policy and laws differ from one to another ASEAN country.
- Others agreements also support competition policy such as the AANZFTA.
- In the region, ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) prepared a work plan as a part of the AEC Blueprint to reflect the new objective of ASEAN, which is strengthen IPRs protection for enhancing integration.



- The Cambodian government also has desire to promote and protect IPR as a tools to attract the foreign direct investment to the country.
- In Cambodia, as a new WTO member, government has made a lot of efforts to comply with the WTO commitments, in particular in terms of compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement), by enact various laws and regulations including IP and related laws.
- For international level, Cambodia government has also carefully considered on the treaties and conventions related to IPRs.



Towards Full Integration into the Global Economy

- FTA Agreement and ASEAN Framework for Regional Comprehensive Economic Partnership: ASEAN has continue integration into the global economy with ASEAN dialogue partners. ASEAN has FTAs with China, India, Japan, the Republic of Korea, Australia, and New Zealand.
- The individual members also concluded bilateral free trade agreements.
- ASEAN Leaders endorsed and reinforced on the ASEAN Framework for Regional Comprehensive Economic Partnership because of recognizing its benefits of sound and sustainable economic.



Dispute Settlement in ASEAN

- When ASEAN was established in 1967, there was no single provision about dispute settlement.
- In 1976, the dispute settlement mechanism of ASEAN was established by the Treaty of Amity and Cooperation in Southeast Asia (TAC).
- There was three weakness of TAC-dispute settlement provision – voluntary nature, no explicit provision for arbitration or adjudication by a court or tribunal, and non-ASEAN member states may be represented as observers at meeting of the High Council.
- Apart of the TAC, the economic disputes settlement had covered by Vientiane Protocol, which was created by the Senior Economic Officials Meeting and governs formal disputes resolution under the 1992 Framework Agreement on Enhancing ASEAN Cooperation. This core of the dispute settlement mechanism is the mandatory procedure which provides for good offices, conciliation or mediation.



- In 2007, ASEAN charter was adopted that give the legal personality to ASEAN. The dispute settlement mechanism provides in chapter VIII. The mechanism can be in form of good offices, conciliation, mediation, or arbitration. The dispute settlement can differ from one to another case depending on a specific instrument and case.
- There is another protocol to the ASEAN Charter on Dispute Settlement Mechanisms, recommended by a High Level Experts Group, and signed by ASEAN foreign ministers on 8 April 2010 in Hanoi.



CAMBODIA “Preparedness” for ASEAN Economic Community 2015

- To implement of AEC key agreement, Cambodia should develop a detailed “to do” list for each respective agreement to be used as a self-assessment tool.
- There is a various negotiations that need to complete, namely:
 - Customs and ASEAN Single Window (ASW)
 - Infrastructure transport development,
 - Standards and conformance
 - SPS and food standards
 - Energy security
 - Freer flows of services: Qualified services professionals
 - Freer flows of capital



- IPRs
- Foreign direct investment
- Comprehension of ASEAN labor legislation and practices
- Issues and constraints on IPR development in Cambodia
- The following checklist is helpful to those issues:
 - WHO – are the government agencies responsible for the area in question?
 - WHAT – do they need to change their current practices to be fully compliant?
 - WHY – do the agencies need to make change? Are alternatives acceptable?
 - HOW – should they make the change, pay for it, be enabled to do it and coordinate it?



Areas of Needed Capacity Building

- To narrow the development gap toward AEC 2015, there are two recommendations to Cambodia:
 - Recommendations for the public sector: Cambodia should be pro-active in the design of Initiative for ASEAN Integration (IAI) to ensure and reflect substantive gaps in priority economic sectors and activities essential for integration.
 - Recommendations for the private sector: ASEAN is currently developing strategies to engage and promote the growth of small and medium-sized enterprises (SMEs). Thus SMEs can play an important role in building the AEC in Cambodia.



- The specific capacity building activities are customs, trade facilitation, transport, standards and conformance, SPS, freer flows of capital, portfolio investment, tourism, E-commerce, and synergy with GMS integration initiatives.
- The specific capacity building for lawyers and senior officials is really importance for Cambodia. And the capacity building in specific areas of international law also need.



CONCLUSION

- The development of AEC is in its early stages and is a work in progress. In the meantime, significant challenges remaining on financial services, investment and capital market liberalization and associated enforcement, monitoring and conflict resolution mechanisms.
- In the context of Cambodia, Cambodia continues to affirm on the following matter:
 - The values of its ASEAN membership and its agenda for a future community
 - At the leadership level, the government's vision and policy commitment to the strategic value of Cambodia's members in ASEAN and associated regional arrangements
 - At the political and institutional level, Cambodia has relied on the ASEAN driven agenda to enter a "second generation of reforms" through increasing investment on "soft" aspects of development.



- To realize the ASEAN Community, Cambodia must contribute its fair share by continuing to strengthen the rule of law, and enhance its judiciary system and legal infrastructure. Further, Cambodia need to adopt in a timely manner supportive laws and regulations.
- Implementing the AEC remains a challenge that need to address the remaining measures, particularly the ratification of AEC agreements. Thus, it is critical that Cambodia continues to engage the private sector, strengthen connectivity, address the development divide, and build stronger institutional support, better macroeconomic and policy coordination.