LEGAL TECHNIQUES AVAILABLE TO FACILITATE AND PROMOTE REGIONAL ECONOMIC DEVELOPMENT

GENERAL INTRODUCTION

> "I think the survival of the nations of Southeast Asia would depend on their ability to develop, beyond the old-fashioned nationalism. We should widen our common interests and common responsibilities and of course our common loyalties. We should grow beyond our national borders and co-operate for our common security and prosperity.
>
> I really do not see any other way out than this. If we look to Europe for example, we could see the historic necessity for the Western European countries to work towards supranational authorities in coal, steel, agricultural products, markets, defence etc.
>
> The same historical needs also apply to Southeast Asia".[1]

"Rhetoric or Realism?" would be an apt title for the above-quoted extract. Regionalism lies essentially on its twin pillars: (i) the realization of the necessity for regional co-operation and, (ii) the legal techniques to effectuate this desire. Without the former, the latter is irrelevant, without the latter the former is empty rhetoric. The basic conclusion of this paper is that while the latter is in abundance, the spirit is weak.

Clair Wilcox[2] has identified a tiered perspective of regional co-operation. At the lowest tier lies: (i) the mere agreement to consult on matters of common interest with no prior commitments to take common action. In ascending order they rank:

(ii) Measures involving forms of common action — international, educational and cultural exchange — that do not impair freedom of action in economic fields.

(iii) Policy co-ordination directed towards the creation of a common front, in negotiations relating to such matters as commodity stabilization and international trade.

(iv) Participation in specific projects of mutual interest for example, the Mekong River Project — involving no commitment to co-operate in other fields.

(v) Promotion of intra and inter-regional trade, while preserving independence of action with respect to trade control.

1. Dr. Adam Malik, Indonesia's Foreign Minister, "The Challenge of the Seventies" Asia Magazine, November 23, 1969 page 3.
2. "Regional Co-operation in Southeast Asia" Vol. IV No. 2, Malayan Economic Review (1964) page 106.

(vi) Customs union or free trade area.

(vii) Economic integration, co-ordinating development plans and establishing common monetary and fiscal policies.

(viii) Political, economic and social unification.

An examination of Article 2 of the ASEAN Declaration[3] reveals that the co-operative efforts envisaged do not progress further than tier 4. This is probably accounted for by the desire to preserve national sovereignty, the fear of losing it without guarantee that the loss will be offset by the advantages of economic development, and the fear of unequal distribution of economic gains.

The first two reasons are mutually inconsistent, and one has to take an edge over the other. The achievements of any half hearted efforts will prove inadequate when compared to the sacrifices necessary. The problem of unequal distribution of economic benefits can be overcome. Thus in the field of investment, excessive agglomeration in any one area can be curtailed by levying a special tax on such further investments in that area. The problem areas can be made more competitive by the creation of a favourable climate of investment which involves essentially the improvement of infra structure facilities and financial incentives to investments in such areas.

In direct contrast to Adam Malik's views on the matter, there appears the "realism" of Dr. Goh Keng Swee. He identifies three basic actions which operate against regionalism.[4]

The first involves the "many disparities in levels of development, technology, access to capital, infrastructure and other factors". If this reasoning is used to effectively preclude regionalism, it can be so used *ad infinitum* for there will never be any one time, when the levels of

3. "Second, that the aims and purposes of the Association shall be:

1. to accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations;

2. to promote active collaboration and mutual assistance in matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;

3. to provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative fields;

4. to collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communication facilities and the raising of the living standards of their peoples;

5. to promote Southeast Asian studies;

6. to maintain close and beneficial co-operation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer co-operation among themselves".

See text in 1967 International Legal Materials 1233.

4. Speech at the annual dinner of the University of Singapore Society, reported in Straits Times, January 26, 1970, at page 5.

economic development of all ASEAN countries, coincide. In any event, there are integrative measures which facilitate the vast disparities of economic development among member states.

The second reason involves the absence of clear thinking.

> "While all proclaimed the virtues, necessity, benefits and inevitability of regional economic co-operation there has been precious little clear thinking on it".[5]

As long as no firm commitment to regionalism is made, at national levels, the forum for clear thinking will not exist. In this instance an analogy can be drawn to the wide public debates and literature on the problems of integration that existed in Britain in 1961. It is no coincidence that this occured only after the British Government declared its firm intention to join the EEC.

Thirdly,

> "Besides, the disparities among these countries and policies of governments who based their industrialization programme principally on the basis of import substitution.
>
> They were producing goods formerly imported and making their production viable by laying down a high enough import duty to shut out imports.
>
> In itself, import substitution did not provide the basis for self-sustaining industrial growth, and because each government wants to get the benefits of such growth for its own citizens, it is unlikely to be attracted by appeals based largely on abstract theoretical reasoning of the advantages of common market arrangements".[6]

Import substitution is in the long run only a stop gap measure for economic development, and even then can only be of any immediate importance to Indonesia. Secondly, it is possible, via the legal techniques to be suggested in this paper, to ensure an equitable distribution of the benefits of economic integration. Thirdly, the reasoning behind economic integration is not backed solely by theoretical reasoning. The experience of the EEC and EFTA particularly, bear out the efficacy of economic integration.

Dr. Goh thus concludes that at least for the foreseable future, regionalism in S.E. Asia will be confined to areas like production and buffer stock arrangements in the tin mining industry, the pooling of passenger rights between the main airlines of the region, the carriage of goods between destinations within the region, and the travel and tourist industry.

Besides the rhetoric of regionalism there are several cogent premises, both theoretical and empirical which compel the urgency of regionalism. The reasons hereinafter assembled relate first to trade liberalization and thence to plan harmonization.

In an increasingly protection-orientated world trade regime, the developing countries find themselves at a disadvantage in attempting to break into developed markets, with their secondary industrial products, and being still in dire need of the heavy capital goods of the

5. *Ibid.*
6. Dr. Goh Keng Swee's speech to the University of Singapore Society, *op. cit.*

developed countries. Reliance on primary produce has been proved insufficient in a declining terms of trade position. In such a regime of world trade, the developing countries have yet to effectively utilize intra regional trade as a device to provide wider markets.

As compared to total trade figures with all countries, the intra regional figures are dismally low, except for Singapore where entreport trade has been traditionally the mainstay of the island state's economy.

DIRECTION OF INTERNATIONAL TRADE

Exports or Imports to:	*Year or Quarter:*	*SABAH*		*MALAYSIA SARAWAK*		*W.MALAYSIA:*	
		Exp:	*Imp:*	*Exp:*	*Imp:*	*Exp:*	*Imp:*
All Countries	1962	19.2	19.5	33.3	32.7	171.9	180.9
	1963	22.5	24.9	30.5	32.5	176.8	187.8
	1964	21.2	24.3	32.7	36.6	162.4	130.3
	1965	24.9	27.5	35.4	39.6	181.1	136.4
	1966	29.3	28.3	37.9	42.9	.....	.....
Developing* ECAPE Countries	1962	5.7	9.0	15.7	24.3	13.5	68.8
	1963	7.3	11.4	17.5	23.3	11.7	70.8
	1964	7.9	11.7	20.4	25.2	12.5	47.1
	1965	10.1	13.7	23.5	27.4	14.0	41.0
	1966	9.9	14.0	22.8	31.4	.....	.....

		INDONESIA		*SINGAPORE*	
		Exp:	*Imp:*	*Exp:*	*Imp:*
All Countries	1962	177.6	183.9	202.2	270.0
	1963	154.1	131.8	201.2	287.8
	1964	167.9	142.4	150.8	218.9
	1965	.....	.....	168.7	238.7
	1966	.....	.....	201.4	255.0
Developing ECAFE Countries	1962	36.8	41.8	68.7	127.5
	1963	30.1	29.8	73.0	127.6
	1964	22.7	40.4	56.3	76.9
	1965	.....	.....	62.8	83.8
	1966	.....	.....	89.4	89.1

		PHILIPPINES		*THAILAND*	
		Exp:	*Imp:*	*Exp:*	*Imp:*
All Countries	1962	138.6	146.7	113.6	135.6
	1963	181.9	154.6	115.3	148.5
	1964	184.8	217.1	147.8	166.6
	1965	191.8	223.8	155.7	182.8
	1966	195.9	234.1	173.4	293.3
Developing ECAPE Countries	1962	5.7	12.1	52.8	22.5
	1963	5.9	17.9	57.2	22.1
	1964	7.0	21.9	69.8	25.7
	1965	6.6	29.3	72.8	24.1
	1966	9.4	20.3	77.1	32.2

SOURCE: Asian Economic Statistics: in Vol. 18 Economic Bulletin for Asia and the Far East, pages 169-173. (UN-ECAFE Publication) (1967-8).

* Note that this breakdown pertains to 'Developing ECAFE Countries' and as such is greatly inflated. If the figures are restricted to ASEAN Countries, the proportion of intra-regional trade to total trade will be even lower.

The reason for such low trade figures is not difficult to find. The developing countries have concentrated on primary exports to developed countries, and imported their capital goods from them in return. Historically there has been this slow growth because traditional trade links were established mainly with the former metropolitan and other industrial countries, and services such as shipping, insurance, banking, supplier's credits and marketing were organized to support such trade. Few, if any facilities exist to support intra regional trade. Further, the need to export to developed countries is heightened by the corresponding needs of developing countries for capital goods.

To promote industrial growth and alleviate their chronic balance of payments positions, the developing countries embarked on import substitution industrialization, and this entailed tariff protection. As the developing countries, on approximately parallel levels of development, can only produce similar import substitutes, the potential for intra regional trade became minimal if not non existent.

Furthermore, tariff imposition served not only to protect local infant industries, but also as the primary revenue source of the developing countries. As such, prospects of trade liberalization appear dim if no corresponding compensations are made to replace the loss in revenue caused by trade liberalization.

Finally, developing countries will not want to expand trade for trade's sake, and will therefore want to take particular care to dovetail with their own development policies any trade liberalization measures in relation to other developing countries. Particularly, they will not wish to accentuate the already considerable differences in degrees of development between them.

Trade liberalization unaccompanied by plan harmonization appears ineffective, as the experience of the Latin America Free Trade Association and the European Economic Community has revealed, The impetus and the direction in which both private and public investment is projected is greatly affected by investment policies and development plans, the former having a greater impact on private investment than the latter. The increased importance of plan harmonization[7] is the result of, *inter alia,* the following factors.

With the possible exception of Singapore, all ASEAN countries have current formally declared development programmes. The mere liberalization of trade will have a chaotic effect on development programmes which are not attuned to the impact of trade liberalization. As such, plan harmonization is indispensible to a free trade policy.

The freeing of trade in the region may lead to the agglomeration of industries in the more advanced countries of the grouping (particularly those with a well developed infra structure). There are ad-

7. See generally ECAFE .'The Rationale of Plan Harmonization and Economic Co-operation in the ECAFE Region" RP/WPH. 1/A.3; 7 November 1966; and specifically H. Kitamura and A. Bhagat "Regional Harmonization of National Development Plans and Trade Co-operation"; 1967 Vol. 18 E Bulletin for A & F.E. 12.

mittedly several measures which could defuse the problem of inequitable distribution of the benefits of economic integration, but the most effective would be plan harmonization which effectuates a policy of equitable distribution.

The existing trade and production patterns are not such that the mere lifting of trade barriers would cause a marked increase in intra regional trade flow. This is the consequence of the production patterns being identical in agriculture[8] and duplicatory in industry,[9] as undue emphasis is placed on import substitution and self sufficiency to the detriment of export orientated industries. There is thus a marked absence of complementarity so that free trade will not *ipso facto* cause a greater volume of intra regional trade.

> "In theory, the case for free trade as a means of economic growth is based on the assumption of elastic supply and perfect mobility of internal resources. Removal of trade barriers, it is argued, will enable the countries concerned to specialize on those lines of production in which they have a comparative advantage, and such specialization will lead to more efficient use of the region's resources. But in a developing region the price and market mechanism is not expected to work efficiently enough to bring about a radical change in allocation of resources in a more rational direction, and market criteria will be far from satisfactory guides in re-allocating resources.... Free Trade, while relieving the demand deficiency, would hardly solve the problem of supply deficiency and internal immobility with which many developing countries are faced".[10]

The momentum attained by national development planning can more easily be directed into regional planning, than if there were no already existing framework of national planning. It becomes easier for countries to confront one another with their plans, and to work out some mutual adjustments when inconsistencies are found.

Effective exploitation of economies of scale would require in most cases considerable investment efforts which may be beyond the capacity of individual nations. Hence the need for deliberate planning of joint efforts among ASEAN countries for establishing efficient plants of economic size in common in some of the key industries.

The prevalence of excessive duplication of production efforts is well recognised in developing countries. This results not in only in the cost of production being high, but also the wastage of already scarce resources of capital, skilled labour and managerial talent. Regional planning would avoid such wasteful duplication and cause the elimination of existing inefficient producers in the wider regional market by the operation of market forces.

A factor of particular local importance lies in the impact of trade liberalization on revenue sources. In Indonesia, particularly, such duties on imports form the bulk of national revenue as the necessary administrative tax structures do not exist. The across-the-board approach to

8. The major items in agricultural production in ASEAN countries being rubber, rice and copra.
9. The major items in industrial production in ASEAN countries being tin, petroleum and cement.
10. H. Kitamura and A. Bhagat, *op. cit.* at page 14.

lifting import duties would therefore be wholly unacceptable, if no compensatory measures are adopted. The plan harmonization approach stems the tide of this problem somewhat, by its emphasis (assuming the adoption of the sectoral method)[11] on a gradual and thereby painless shift in the lifting of import duties, on particular integrated industrial products.

The above enunciated reasons compel the conclusion that regional integration is vital for the accelerated economic growth of ASEAN countries. The final segment of this paper focuses on the legal techniques available vis-a-vis joint ventures. And, it is based on the assumption that the sectoral approach to trade liberalization and plan harmonization is best suited to ASEAN.

Some of the possible advantages of regional joint ventures are:

Joint ventures on a regional basis help towards the raising of capital which may be beyond the ability of any one country by itself. This is especially so in capital intensive industries like iron and steel and petroleum refining. In addition to the raising of capital, it enables the countries participating to spread their risks over a wider area.

Local market and political conditions are more easily attainable via joint ventures. This reason, of more importance to foreign investors outside the area, is nevertheless significant when one remembers that the joint venture forms suggested involve foreign, i.e. beyond ASEAN, equity participation.

The joint venture form, at least insofar as the ASEAN members are concerned, is a readily adaptable device to managerial and technical services from the developed countries.

Most importantly, the joint venture form enables the enterprise to attain a local identity, thus enabling it to be exempt from red tape, entitled to industrial incentives etc. This particularly makes for good public relations.

The basic disadvantage, however, appears in the form of conflict of interests particularly in the areas of dividends policy, the day to day running of the enterprise itself, personnel and purchasing policies. This disadvantage is neutralized if the host country is given majority equity participation while the other member countries and the foreign partner have minority, or no shareholding at all. In the last case their investment can be limited to the provision of managerial and technical know-how, the supplying of raw materials, and the sales agency form of participation.

It is intended to conclude this general introduction with some of the unspoken premises which work against economic integration in S.E. Asia.

In the last ASEAN Ministerial Conference in the Cameron Highlands, Malaysia in December 1969, the question of widening membership was raised. Singapore particularly, objected to this, on the grounds

11. See page 97 infra.

that ASEAN has to be qualitatively improved before any enlargement is considered. Perhaps the instability and outcome of the Vietnam conflict had much to do with the objections, especially as regards South Vietnam's desire to join ASEAN.

In the field of economic development, only Singapore and perhaps Malaysia are making real gains. While Singapore and Malaysia hopefully forge ahead in the 1970's, and Indonesia makes its long overdue economic recovery, the disparity in economic progress and standards of living will be accentuated, and this may prove explosive politically, if the gap between Singapore and the rest of South East Asia is not narrowed.

Finally, the most touchy aspect of ASEAN politics lies in the realm of race relations. It will take a long time before the man-in-the-street in Jakarta will accept Singapore as part of the community of South East Asia. On the freeing of trade barriers, perhaps the only people most able to utilize advantageously such opportunities will be the Chinese of South East Asia. This, quite understandably, proves an effective deterrent to economic integration to many South East Asian Governments.

ASEAN PERSPECTIVE

To date, it has been three years since the inception of ASEAN, a time span which is too short to form any conclusive opinions as to its effectiveness and progress. A resume of ASEAN's achievements and plans reveal the following:[12]

Commerce and Industry: ASEAN countries are working in close co-operation particularly on activities concerning primary commodities like rubber and tin.

To stabilize rubber price Malaysia had agreed to a regional marketing arrangement put forward by Thailand. The arrangement would come into force as soon as member countries had established marketing practices, including quality control.

Approval was being sought to establish products display centres in ASEAN capitals, to have joint trade missions, and closer co-operation among the private sector. There are also recommendations to compile and study specific data in trade liberalization aimed at achieving a free trade area.

Tourism: Most countries in the region had implemented the seven-day entry visa for the convenience of tourists. Many countries had agreed to accept collective travel documents for grouped tourists. Programmes had been prepared to encourage tourists to visit ASEAN countries. Of particular interests are the efforts of Indonesia and Singapore to promote the Bali Project, aimed at mutal benefit. The year 1971 had been designated 'Visit ASEAN Year'.

12. Recommendations of the Standing Committee of ASEAN, submitted to the annual Ministerial Meeting at Cameron Highlands, Malaysia in December 16, 1969. Reported in Straits Times, December 9, 1969 at pages 1 and 24.

Shipping: Efforts and resources were being urgently consolidated to establish machinery to counteract the monopolistic practices of shipping conferences. Member nations had pledged to co-operate in developing their national shipping lines by helping each other. The feasibility of a US$250 million, ASEAN Shipping Line is being studied under a joint agreement between ASEAN countries, signed in June 1968. A minimum fleet of 600,000 d.w.t. is envisaged to maintain services to USA and Europe, as well as within the region.

Civil Aviation: There were projects to improve ground facilities, including airport administration and operation and weather forecasting. The standing committee recommended that aircraft equipment, spare parts, maintenance and handling equipment should be standardised. It had been agreed that a study group be formed to examine the adoption of a multi-lateral agreement on traffic lights for non-scheduled aircraft.

Transportation and Telecommunications: The Kuala-Lumpur-Medan VHF link was scheduled to be completed by the end of 1970. Satellite earth stations in Indonesia, Malaysia, Philippines and Singapore were at different stages of progress and most of them would be in operation within the next two years. These are purely national projects, which are however constantly reviewed by a permanent sub-committee.

Food Supply and Production Including Fisheries: There were proposals for field surveys, exchange of visits of agricultural extension planners, workers and farmers group. Indonesia has extended facilities to conduct research. Fishery research centres will be developed.

Mass Media: A multilateral agreement was recommended. Specific and active projects and programmes would be spelt out for implementation. This could include broadcasting regular programmes about ASEAN, organizing cultural film festivals on a rotation basis and undertaking joint film productions.

As can be observed, progress has been peripheral rather than substantial. Further ASEAN co-operation, in the real sense, will probably have to await the successful implementation of most of these measures.

The primary function of this paper is to explore, collate and suggest suitable legal techniques available to promote and facilitate regional co-operation in ASEAN. In the introductions to each of the three segments, the theoretical and empirical assumptions of regional co-operation are explored, while the major portion of each segment will collate and suggest available legal techniques. The conclusions to each segment will consist a brief evaluation of each technique and its acceptability to ASEAN.

The content of the term 'legal techniques' requires some elucidation. In most case, the techniques collated involve a greater economic content than strictly legal content. However, this does not detract from the formal categorization of the technique as legal. This is the consequence of the functional reality of legal codes. The role of legal techniques in most cases involves the final manifestation of the device in a legal code, at national or international levels. This paper utilizes both the functional concept of legal codes as well as the mental dichotomy

between the initial concept and its legal form. Thus wherever possible, legal codes or agreements are incorporated into this paper, together with the original concepts.

LIBERALIZATION OF TRADE BARRIERS FOR REGIONALLY PRODUCED GOODS

I. Theoretical Assumptions of Economic Integration.
II. Legal Techniques Available:
  (i) Lesser Integrative Measures;
  (ii) Customs Union;
  (iii) Free Trade Area;
  (iv) Partial or Sectoral Integration.
III. Payments Arrangement Scheme.
IV. Conclusions.

I. THEORETICAL ASSUMPTIONS OF ECONOMIC INTEGRATION[13]

Trade liberalization is here envisaged as an integral component (together with plan harmonization) of the process of economic integration. According to the functional method of integration, integration is established through administrative measures, and can only be maintained by continuous administrative action. The institutional method of integration involves the liberalization and ultimately the complete elimination of these administrative measures through mutual agreement, in order to free the exchange of goods across the borders of the member states and so form a large market in which the laws of supply and demand can be effective without regional administrative intervention. If, (as it is) the problem of integration is seen as part of the more general problem of formulating the best possible economic policy, the functional method becomes unsatisfactory.

The provision of an expanded market is suitable for mass production techniques, which are particularly important in the steel industry with the necessary concentration of production in large units requiring heavy capital investments. The factors of production are more productively utilized in a regional market, thus reducing, through specialization, modernization and expansion, the production costs of the industries. The liberalization of trade barriers would facilitate the movement of essential raw materials and result in cheaper procurement, thus lowering overall costs and making the regional products competitive. The ultimate benefits of the liberalization of trade barriers are increased consumption and net consumer purchasing power and thus an improvement in the standard of living of the community.

Trade liberalization is of little value if the factors of increased production are not present to take advantage of freer trade. The E.E.C. experience in this context is instructive. U.S. investment, with its inherent organizational flexibility, innovation and market research has

13. See generally "Economic Integration: Theoretical Assumptions and Consequences of European Integration". (1959) R. F. Sannwald & J. Stohler. Princeton University Press, New Jersey.

carved out European markets to the detriment of European industry, which is still groping around for the appropriate corporate structure.

The Final Act of UNCTAD of 1964 postulates the desireability of regional groupings thus:

> "regional economic groupings, integration or other form of economic co-operation should be promoted among developing countries as a means of expanding their intra-regional and extra-regional trade and encouraging their economic growth, and their industrial and agricultural diversification with due regard to the special features of development of the various countries concerned as well as their economic and social systems".[14]

II. LEGAL TECHNIQUES AVAILABLE

There are generally, three integrative models available to developing countries, with the primary objective of trade liberalization, i.e. a customs union plus on the model of the European Economic Community;[15] free trade area on the models of the Latin American Free Trade Area and the European Free Trade Area;[16] and the sectoral model of the European Coal and Steel Community.[17] A necessary supplement to such trade liberalization methods, is some form of payments arrangement which will facilitate trade increase without crippling effects on the individual country's balance of payments positions. Lesser integrative measures appear in the forms of multilateral or bilateral trade agreements; free lists for the imports of selected commodities; and regional quotas for selected commodities.

The survey[18] of the legal form of the three major integrative models will be conducted on the following bases: (i) purposes and objectives; (ii) institutional structure; (iii) main features; and (iv) degree of supra national control.

For reasons hereinafter to be enunciated, it is felt that the complex institutional and heavy initial commitments required by the customs union and free trade area models, render them premature for ASEAN.

(i) *Lesser Integrative Measures*[19]

Independent of any institutional framework required for trade liberalization, it is possible for co-operation to take place at lower levels, thus allowing the participating countries full control of proceedings.

14. Proceedings of the United Nations Conference on Trade and Development, I Final Act and Report (N.Y.U.N., 1964) page 11.
15. For text of the Treaty of Rome see European Yearbook Vol. 4 (1958) pages 413-639 and further Protocols in Vol. 5 (1959) pages 427-453.
16. Stockholm Convention; U.K. Treaty Series No. 30 of 1960, Cmnd. 1026 London H.M.S. 0.
17. For text see European Yearbook, Vol. (1955) pages 354-457.
18. This survey will be essentially expository and will draw extensively on the cited works.
19. These measures were enunciated by UNCTAD in "Trade Expansion and Economic Co-operation among developing countries" TD/B/68 page 7-8, and the Report of the Working Group of Experts in ECAFE "Regional Economic Co-operation in Asia and the Far East: Asian Development Bank and Trade Liberation". Regional Economic Series No. 2. E/CN. 11/707.

Relaxation of tariff barriers and quantitative import restrictions can take place both at multilateral and bilateral levels. Countries may engage in multilateral negotiations in which those who are significant suppliers of specific products would participate. It is also possible to agree on future production plans on a specialization basis, quite akin to plan harmonization. Such negotiations may aim either at an agreement not to raise the existing level of tariffs, or to reduce the levels of certain duties on a selective basis or to apply some form of across-the-board reduction, i.e. an arrangement by which governments would agree to a reduction of a range of tariffs by an agreed percentage.

Negotiations might also be conducted on a bilateral basis, and the concessions resulting from them could be automatically extended to all other participants. This may not be satisfactory as one country may end up enjoying the benefits of such automatic application without having to give any concessions itself. Hence it has been suggested that countries could be authorized to withdraw concessions from any other country which has not made any counterpart concessions in return, before specified time limit. Countries would thus be induced to make their own contributions to the expansion of trade. The threat of differential treatment would act as a stimulus with the result that the benefits of equality of treatment would probably be maintained in most cases.

In order to avoid discrimination and friction which may develop between pairs of countries the following safeguards have been postulated:

(i) the members might agree to report to an appropriate independent body all quotas they grant to other countries.

(ii) arrangements might be made whereby bilateral agreements would be reviewed regularly with the participation of other supplier countries of the same product. This technique has the advantage that it may lead to a progressive multilateralization of the bilateral quotas and give other suppliers an opportunity of obtaining a share of the additional trading benefits.

(iii) Finally, countries that allot import quotas among supplying countries may agree to consult in advance with all supplier countries as to the method of allocating such quotas.

Another suggested form of trade liberalization is that of the creation of a free list for the imports of selected commodities. The list is not to be identical for the whole region, but would vary from one country to another, depending upon its imports needs and possibilities.

The Lists could be drawn up in the following way:

(a) Each country circulates a list of commodities which it would like other countries to put on their free lists. On this basis, each country would establish its own preliminary free list which should include as many of the proposed items as possible;

(b) This forms the basis of multilateral negotiations. During these negotiations, each country would try to find a reasonable balance between the export possibilities which it expected from the lists of

other countries for its own products and the additional imports it would allow for the goods on its own list.

(c) The legal form of such negotiations could crystallize in a multilateral agreement of a Protocol.

(d) The lists should be reviewed at regular intervals of two to three years in order to adjust any net imbalances of each country vis-a-vis the rest of the region, which might have resulted in the operation of the free lists and to take account of changing production and demand patterns.

The final measure of trade liberalization, not dependent on heavy national commitments to a supranational organization, is the creation of regional quotas for selected commodities. Each country would establish purchasing quotas for selected products in addition to quotas which would continue to be available to the countries of the grouping. Each country would undertake to issue import licences to the full extent of regional quotas. These licences would specify that the goods concerned must be imported from the ASEAN region. The procedure and legal form of such a measure is identical to that suggested for the creation of the free list for the imports of selected commodities.

The essential disadvantage of these methods reveals itself when one observes that as regards the negotiations to lift tariff barriers, the method is indentical to that in operation in GATT in the pre-Kennedy Round era. It was in fact the unsatisfactory progress that was being made then that led to the necessity of the Kennedy Round type negotiations and the failure of the last UNCTAD Conference in Delhi.

The negotiations of 'free list' is again unsatisfactory as there will be a tendency to include the same items as in the free lists. As almost all ASEAN countries are at the same stage of industrial development, the items on these lists will tend to be those not produced in the region. These in turn will do nothing to change the local trade or production patterns.

Even if such measures are possible, some difficulty is posed by GATT provisions.[20] These measures would conflict with GATT provisions.[21] Article 24 of the General Agreement on Tariff and Trade only provides exemption to a customs union or a free trade area. This does not therefore cover the lesser integrative measures discussed above. However, a waiver under Article 25 might be granted for such arrangements, as was done with the ECSC.

(ii) *Customs Union*

The customs union plus is a complete form of co-ordination, including the free movement of goods and services and factors of production; and involves co-ordination of all sectors of the economics of the participating countries and common investment, fiscal and monetary and social policies. The Treaty of Rome contemplates the freeing of all

20. Malaysia and Indonesia are full members while Singapore is a *de facto* member.
21. Part 3; Article 3 contains the general prohibition to differential tariff treatment.

internal trade by the end of the transitional period in that customs duties and all quantitative restrictions on imports from members to members will be eliminated. By the end of the transitional period, the community is to have a single external tariff.[22] Articles 2 and 3 of the Treaty postulate the further purposes as being; the abolition of obstacles to free movement of persons, services and capital; the inauguration of a common agricultural policy, as well as a common transport policy; the establishment of a system ensuring that competition will not be distorted; the laying down of procedures to co-ordinate economic policies of the member states and to remedy disequilibria in balance of payments; the approximation of respective legislation; the creation of a European Social Fund; the establishment of an European Investment Bank; and finally, making provisions for the association of overseas countries and territories with the community.

The institutional development of the E.E.C. has reached the stage wherein the common institutions of the E.E.C., the E.C.S.C. and Euratom have been merged. Thus on March 19, 1958 the new assembly of the six member states held its inaugural session vested with the powers of the parliamentary institutions of all three associations. On March 30, 1962, it formally decided to adopt the title of "the European Parliament".

On April 8, 1965, a treaty signed in Brussels provided for the constituting of a single Council of Ministers for the three communities. In this instance at least, this merger was not quite as significant as it appears. Past practice allowed the same ministers to sit in all three Councils, as the member states remained free to send ministers most competent as the occasions demanded.

On March 25, 1957, a separate convention was concluded. Section II provided that the Court of Justice exercise the functions set out in the two new treaties for the E.E.C. and Euratom. Provision was also made for the replacement of the existing Court of the E.C.S.C. by this new common Court of Justice.

Of more importance to this paper, however, are the institutions as provided for at the outset of the Treaty of Rome. As such, the following discussion will focus on the original treaty provisions.

Article 4 prescribes that the institutional structure of the Community shall consist of an Assembly; a Council of Ministers; A Commission, and the Court of Justice.

The Assembly[23] does not enact legislation; it is a deliberating body with authority to review and debate on problems of the Community. In the law and policy-making process it has only the right to be consulted. It renders opinions to the Commission and the Council. Its sole sanction, if its opinions are not followed, is the power to censure the Commission by a two-thirds majority vote, in which event the Commission must resign.

22. Both of which have been achieved as of 1st July 1968.

23. Articles 137-144.

The members of the Commission[24] are appointed by common agreement among governments of member states. It is an independent and powerful executive organ composed of persons chosen for their general competence and if indisputable independence. The Commission executes the decisions of the Council of Ministers and on its own initiative, submits proposals for Community laws to the Council.

The Council of Ministers[25] has predominant policy making power. As this institution is the major controlling power of the Community, it has been deemed necessary for the national governments to retain a large measure of control. The Council makes its final decisions, in most cases after the consultative machinery of the Commission or the Assembly or the Economic and Social Committee has been put into action.

The Court of Justice[26] consists of independent judges vested with authority to ensure the observance of law in the interpretation and application of the Treaty.

The Economic and Social Committee consists of 'representatives of producers, farmers, transport operators, workers, traders, artisans, the professions, and of the general interests'. The state representation is twenty-four representatives for France, W. Germany and Italy; twelve for Belgium and the Netherlands and five for Luxembourg. This Committee assists both the Council and the Commission in a consultative capacity.

Other institutions of the community include the European Investment Bank and the European Social Fund set up pursuant to Articles 123-128.

To prevent the subversion of the fundamental premises of free competition, the Treaty seeks to prevent interference from private combinations and the governments of member states. By article 85, any private arrangement which affects the trade among the members and has as its purpose or effect, the hindering, restraining, or distorting of competition within the area, is forbidden, and declared to be null and void. The prohibition is expressly aimed at preventing price fixing, production controls, the division or markets, unfair discrimination between customers and tie-in agreements.

An escape clause is provided in Article 85 (3) where permission has to be secured from the Commission on the grounds that the arrangement promotes economic and technological progress or the production or distribution of goods. It also necessitates that consumers secure a just share of the profits resulting from the arrangement. The restraints involved are indispensible for achieving the benefits derived and competition is not eliminated as to a substantial portion of the goods affected.

Private enterprises are prohibited, via article 86, from abusing a dominant position in the common market or in a substantial part thereof. Again, the principal measures sought to be prevented are listed

24. Article 157.

25. Articles 145-154.

26. Article 164-188 and the Protocol on the Statute of the Court.

as; imposing inequitable prices or business conditions, restricting production, sales or technical development to the detriment of consumers, creating competitive disadvantages between customers by unjustified discrimination, and tying in products or services.

Regulation 17, adopted pursuant to article 87, implements the Community's anti-trust and monopoly laws. It empowers the Commission to investigate both incorporated and unincorporated enterprises and to obtain information from member states and their agencies, for the purpose of examining competitive conditions in any industry or enterprise. Regulation 17 also specifies the powers of the Commission to investigate the procedures for obtaining exemptions and the sanctions available to secure compliance.

Governmental interference to free trade is dealt with by Articles 91-101. Article 91 authorises the Commission to make recommendations to any member state guilty of dumping practices, with a view to bringing them to an end'. If this does not work, it is provided that the member state injured shall be authorised to take appropriate protective measures.

Articles 92-94 concern and grant sanctions against member states which distort or threaten to distort competition by favouring certain enterprises, thereby adversely affecting trade among member states. Article 92 (3) (a) exempts such practices from sanctions only when the concerns are those regarded as socially and economically beneficial, such as 'aid intended to promote the economic development of regions where the standard of living is abnormally low or where there exists serious under employment'.

The concept of supra nationality[26a] only begins to exist when a State agrees that it is willing to carry out decisions to which it is itself opposed. To that extent, it lays itself obliged to comply with directives which may infringe upon its sovereignly. The EEC reveals some measure of supra nationality in its institutional framework.

The Commission only has the right to frame the policy and to execute it. The decision whether or not a policy is to be adopted is taken by the Council of Ministers, which is, as it were, the legislature of the community. As a result of this separation of legislative and executive functions, the Assembly (which is now common to all three bodies) has a closer and more immediate right of control over the Commission of the EEC than it has over the High Authority of the ECSC. The Assembly can control only the body that frames the policy and executes it, but not the legislative organ which decides upon its implementation.

This brief survey of the EEC Model has revealed several significant features. The objectives of the EEC are wider in scope than that required for a customs union and in this respect project towards the creation of a political, social and economic common market.

26a. See generally, "The Challenge of the Common Market" U. W. Kitzinger (1962) Chapter 2 on 'Supranationalism and Sovereignty' page 54. Basil Blackwell, Oxford.

Towards the attainment of this end, it has been realized that half measures remain totally inadequate. While the complex institutional structure of the EEC falls somewhat short of the degree of supranational control of the ECSC, it is nevertheless a necessary compromise to accomodate the smaller Benelux group countries. The decisional process of the EEC has thus revealed a myriadic form, based on a permutable structure of desired ends and the hesitance of Member States to release national control over such areas.

The initial success of the EEC can be attributed to several inherent factors, independent of the trade liberalization measures undertaken. In the immediate post-war period, intra regional trade was a reality, not an ideal to be realized by the customs union. The requisite intra regional transport and communication patterns and financial institutions were in existence to support this pattern of trade. Industrial production during this period covered a broad spectrum, in its bid for both European and international markets. The existing framework of industrial production was thus already geared to the fierce competition of international markets, outside the assured colonial markets. The creation of the customs union was thus the occasion, not the cause, of the phenomenal economic progress that was immediately experienced in Europe.

Following the initial phenomenal growth, the EEC, as a whole has declined into an atmosphere of crisis. This stagnation or levelling off is not the result of the economic integration measures initially put into force, but due to the lack of momentum in economic integration. The gap between the idea of economic integration and reality is dramatically put into focus by the European crisis of integration that exists today. The common market has been advantageously utilized not by Europeans, but by US investment in the EEC.

The absence of any momentum has been variously been ascribed to three new developments. There has been a revival of national self confidence and a consequent desire for independence from the US. The US/USSR nuclear stalemate has removed the *raison d'être* for integration i.e. the prevention of wars against member states. The post war era has been one of economic boom. The historical forces that worked towards community solutions to problems, in the immediate post World War 2 era, are no longer with us.

The lessons from the European crisis are vital to SE Asia. Firstly, the importance of innovation, research and corporate flexibility cannot be over emphasised. Secondly, the third segment of this paper, deals with what the EEC has shown to be indispensible to successful economic integration, i.e. plan harmonization. It is submitted that this, in a nutshell, is the main underlying cause of the contemporary crisis of European integration. There have been inadequate attempts towards plan harmonization, as the revival of national self confidence has given rise to concommittant desire to preserve national sovereignty.

(iii) *The Free Trade Area Model*

In contrast to the customs union, the free trade area permits each of the member countries to adopt its own independent national tariff and trade policy vis-a-vis non member countries. While the EEC which

aims not only at the formation of a customs union, but also a common market, requires a complex institutional framework, the free trade area machinery is less complex.

The purposes of the European Free Trade Area[27] are stated broadly in two categories, i.e., trade in manufactured goods;[28] and trade in agricultural products, and in fish and other marine products to which article 2, in common with all the rules aimed at the establishment of a free trade area, does not apply. Article 22 restates the policies which member states recognise as desirable, i.e., promotion of increased productivity; rational and economic development of production; reasonable degree of market stability in favour of both producers and customers, as well as adequate supplies to the latter at reasonable prices; and the ensuring of an adequate standard of living to agricultural workers and farmers. It further reiterates the avowed intent of member states not unduly to upset established channels of trade in agricultural products.

In contrast to the elaborate institutional framework of the EEC, Article 1(4) of the Stockholm Convention merely states that,

> "The Institutions of the Association shall be a council and such other organs as the Council may set up", and Article 32(3) empowers the Council to set up "such organs, committees, and other bodies as it considers necessary to assist it in accomplishing its tasks".

A Customs Committee was established[29] whose functions are:—

(a) to exchange information, review developments and make reports and proposals to the Council with regard to customs matters referred to in Article 9 of the Convention, in particular, (i), questions of technical character which relate to the day-to-day operation of the provisions referred to in that article, (ii), the interpretation of those provisions, and (iii) the possibility of harmonizing, as far as is necessary for the operation of the Convention, the application of provisions in the Customs legislations and procedures in force in the member states;

(b) to agree on procedures for the administration, by customs authorities of the member states, of the provisions referred to in article 9 of the Convention; and,

(c) to make the necessary arrangements to compile the decisions taken by the Council, and the agreements reached by the Committee, on matters referred to in sub-paragraph (a) and (b) above.

Similarly LAFTA's supreme organ is the Conference of the Contracting Parties which by article 34 of the Treaty of Montevideo has been charged with adopting all decisions in matters requiring joint

27. For text, Stockholm Convention, *op. cit.* For a thorough survey of the workings of EFTA, see J. Lambrinidis "The Structure, Function and Law of a Free Trade Area" (1956) London Institute of World Affairs. Stevens & Sons, London.

28. Article 2(a) of the Stockholm Convention: "To promote in the Area of the Association and in each member state a sustained expansion of economic activity, full employment, increased productivity and the rational use of resources, financial stability and conferious improvement in living standards".

29. Established by Decision No: 8/1960 as amended by Decision No: 21/1960.

action. It lays down the broad policy lines of the Association and actually conducts the annual negotiations for the lifting of trade barriers.

Article 39 establishes the Permanent Executive Committee which consists of one representative of each delegation. The Committee prepares the programmes of LAFTA and represents the organization in its dealings with third countries and international entities, undertakes studies and makes recommendations to the Conference.

The Secretariat is the main assisting body to the Committee and is made up of technical and administrative personnel who are international civil servants.

J. Lambrinidis,[30] has identified a pattern of provisions for trade liberalization that has been adopted in most free trade areas. After a close study of EFTA, he concludes that the following are the essential provisions required for a free trade area:

(1) A Standstill clause: with regard to restrictive measures concerned, by undertaking not to introduce new restrictions of the same kind, nor to increase or intensify existing ones.

(2) A Pace-of-elimination clause: These provisions tackle the task of eliminating restrictions by specifying a rate of reduction or progressive relaxation of the restrictive measure concerned, which covers the transitional period and leads to its ultimate complete elimination. In most cases the volume of existing restrictions on a specified date is taken as the starting point, making the basic duty or basic quota.

(3) A Deadline clause: A date let by which the restrictive measures concerned must be completely eliminated.

(4) A Voluntary Acceleration clause: which enunciates a willingness to proceed, if possible, to a more rapid elimination of the restrictions concerned,

(5) Flexibility or acceleration clause: allowing the Council to alter and to accelerate the pace of elimination envisaged in the Convention.

(6) Supply of information clause: which requires that the Council be given any relevant information by member states with regard to the restrictions concerned.

As the free trade area permits each of the member countries to adopt its own independent national tariff and trade policy vis-a-vis non member countries, questions of origin become vital. In LAFTA,[31] broad norms are set for determining whether origin as well as other standards are satisfied. Raw minerals and animals, vegetable and seafood products resulting from operations and processes in any member country if as a result thereof, the product achieves its final, saleable form qualify. In addition processes and operations must be more than mere assembly, packing or classification.

30. *Op. cit.* at footnote 27, at page 73 of his book.

31. Resolution 11 of the Permanent Executive Committee, March 30, 1962 and Resolutions 49(II) and 51(II).

Resolution 51(II) of LAFTA requires each member state to establish organs authorised to issue a certificate of origin to an exporter whose goods are being sent to another member state under the benefit of tariff concessions.

Several problems arises in deciding the rules of origin.[32] The parties have first to decide the volume of trade that is intended to be freed. Almost all products include some component which is imported from non-member countries, and so it is impracticable to designate area origin status to those products which are totally manufactured within the region. If allowance is made for import content, it is then necessary to determine at what point of added non-area value, the product cases to qualify for area tariff treatment.

The final difficulty is that of devising effective administrative rules and procedures, to verify whether or not there has been compliance with the origin rules.

Article 4(2) of the Stockholm Convention has the practical effect that, as far as origin criteria is concerned, the listed categories of imported materials will be deemed to have area origin if they have undergone some process of production within the Area.

Article 4(1) (a) classifies as of area origin those goods which have been wholly produced within the area.

Article 4(1) (b) accords area origin to goods if they have been produced within the Area by a qualifying process that has been specified for each particular category.

Article 4(1) (c) quantifies Area origin to goods which have been produced in the area and if the value of any non-area materials which have been used at any stage of their production is less than 50% of their export price.

The basic problem faced by a free trade area arises out of possible deflections of trade. The origin rules were concerned to prevent non-members from by passing the higher tariff of one member state by having their goods imported first through the lowest tariff member state.

Deflections of trade are defined to exist, in Article 5(1) of the Stockholm Convention, only when four cumulative conditions have been satisfied: (i) an increase in imports of a particular product from the territory of one member state to that of another, provided that: (ii) this increase be the result of the reduction or elimination of tariffs in accordance with the Convention by the importing State, and: (iii) this increase may be due to significant disparities between the duties or charges levied on the raw materials or intermediate products used in the production in question, in favour of the industries of the exporting member state; and (iv) this increase causes or would cause serious injury to the domestic production of the importing member state.

Article 5(2) adopts a wait and see policy with regard to the adoption of specific rules to deal with deflection. This is because of the difficulty

32. See A. McClellen "Proof of Origin of Goods in the E.F.T.A." 1960 Journal of Business Law 401; and J. Lambrinidis, *op. cit.* at page 90.

of foreseeing what the real problems are and which remedies are best to be applied.

Articles 5(4), (5), and (6) pronounces the Code of Good Conduct where by member states agree to be mindful of the potential 'deflection effects' of their non-Area tariff policies.

Article 5(3) provides transitional relief in urgent cases by empowering the Council to take immediate action to deal with the problem.

The LAFTA approach to tariff reduction and the problems thereto are less complicated. LAFTA utilizes three basic interelated devices:

(i) annual negotiations of reciprocal concessions on particular products;

(ii) triennial negotiations of the 'common' list of products that the parties irrevocably agree will circulate free of all barriers; and,

(iii) negotiations from time to time by two or more members states of 'complementarity' or 'integration' agreements providing preferential treatment for particular products or of the products of particular industries. Instead of setting out in the Treaty the rules of origin, the Treaty leaves such discretion to determine the rules, to the Conference.

The success of EFTA, and to a lesser extent LAFTA, has been much less dramatic than that of the EEC. Testimony to this effect is perhaps available when one notes the rather anomalous situation that while EFTA has always espoused ultimate union with the EEC, its members, i.e. Britain, Denmark and Norway, have periodically applied for membership in the EEC. This gives credence to the assertion that the customs union model at least for developed countries supplies the most favourable structure for the attainment of economic development through integration, although admittedly the political premises of a United Europe has had much attraction.

EFTA's performance can be gauged by the following table:[33]

Percentage Changes in the Value of Some Economic Indicators,

	Increase in value of total imports:		*Increase in value of imports from EFTA:*		*Increase in value of total exports:*		*Increase in value of exports to EFTA:*	
	1954-59:	*1959-65*	*1954-59:*	*1959-65*	*1954-59:*	*1959-65*	*1954-59:*	*1959-65*
Sweden	35.2	82.1	26.1	134.0	39.1	77.3	32.3	107.1
Austria	75.2	83.2	66.7	131.9	58.3	66.0	53.9	151.3
U.K.	18.1	44.1	20.1	66.2	29.3	41.8	20.7	72.5

From the above selected percentage figures, it is at once apparent that EFTA has promoted a sizeable increase intra regional trade, although it must be noted that a part of these percentage figures are the result of trade diverting effects of trade liberalization. The comparison between value of total import and export percentage growth and the increase in percentage value of intra regional trade reveals an enormous divergence. While the former has increased from a few percent to a hundred per cent increase, the latter has doubled and even trebled in

33. EFTA Bulletin: Special Issue: "Effects of FETA on the economics of its member countries" Vol. 4 No. 1 Jan/Feb. 1969 page 5.

value over periods studied. This increase is made more dramatic when one notes that the figures for total trade increase must invariably include the figures for intra regional trade.

LAFTA has made less dramatic progress, although there has been an encouraging increase in intra regional trade.

> "If, on the other hand, comparisons are made between the figures corresponding to the immediate pre-Lafta period and 1963, the situation looks more promising. The value of intra-zonal trade had increased by 169% over the 1959-61 average level for Mexico, 111% for Columbia, 150% for Chile and 37% for Brazil. This dynamism was notably absent in Argentina, and in Ecuador and Paraguay — the 2 least developed members of LAFTA".[34]

However, the area of greatest potential growth, has been disappointingly stagnant. In the creation of complementarity agreements, only two industries, namely, the manufacture of electronic tubes and the manufacture of calculating machines and electronic computing systems have materialized.

The LAFTA Treaty is vague and cautious when compared to the Treaty of Rome. The commitments under the Treaty relate to the freeing of existing trade. There is no specific compulsion upon Member States to free trade in products not presently exchanged. The principle of reciprocity, while vaguely alluded to, has not been defined with sufficient precision, thus leaving the Treaty inadequate in these vital areas of trade liberalization.

The difficulties of the LAFTA Treaty are exacerbated by the product-by-product method of negotiation, and the absence of quantitative targets for the reduction and elimination of tariffs on broad commodity groups within specific time limits. The enabling of revocable tariff concessions on the national schedules deprives such concessions of the necessary quality of certainty.

A caustic survey of LAFTA in a background documented presented to the Special Commission by the LAFTA Secretariat in August 1964 states:[35]

> ". . . Another limiting factor at the present stage derives from the fact that the process of economic development in each country traditionally has been considered an exclusively national venture directed towards autarkic objectives. Balance of payments considerations are used as an argument for import substitution on a national scale every time there is a possibility of establishing a new economic activity, especially in the industrial field, in any of the Latin American republics . . . Although tariff protection was conceived to meet the competition of high efficient producers in the advanced countries of Western Europe, the United States and Japan, it is almost impossible to get the interested parties to approve a reduction in this protection vis-a-vis producers in the LAFTA countries . . . *Consequently, the Montevideo Treaty has played merely the role of a preferential instrument and not of an integration mechanism".*

34. Miquel Wionczek "Latin American Free Trade Area" Jan. 1965 No. 551 International Concilation; pages 31/32. Carnegie Endowment for International Peace. N.Y.

35. Documento de la Secretaria Para la Comision Especial Creada par la Resolucion 75(III) ALALC Doc. CE/1/di2, Aug. 26 1964 pages 5-6. Cited by Miquel Wionczek, *op. cit.* at page 34. (emphasis added).

(iv) *Partial or Sectoral Integration*

The objectives of the European Coal and Steel Community[36] were stated as, *inter alia,* the development, rationalisation, expansion and improvement of the coal steel industries of the member states, by freeing monopolistic concentration and prohibiting restrictive practices. Article 4 proposes the abolition and prohibition of:

(a) import and export duties with an equivalent effect, and quantitative restrictions on the movement of coal and steel;

(b) Measures or practices discriminating among producers, among buyers or among consumers, specifically as concerns prices, delivery terms and transportation rates, as well as measures and practices which hamper the buyer in the free choice of his supplier;

(c) subsidies or state assistance, or special charges imposed by the State, in any form whatsoever;

(d) restrictive practices tending toward the division of markets or the exploitation of the consumer.

The Executive body of the Community is the High Authority consists of nine members, eight of whom are chosen by member governments by common agreement and the nineth by the other eight. Only nationals of member states may be chosen and not more than two members may be of the same nationality.[37] These members are independent of their national governments.

On the Council of Ministers sits one representative from each member state. The Council was established to assure constant co-ordination between the acts of the High Authority and the states. The concurrence of the Council is necessary for many acts of the Authority and continuous co-ordination provides the required modes of control.

A Consultative Committee keeps the High Authority in touch with the various national pressure groups. The committee is comprised of not less than thirty and not more than fifty-one members being 'industrialists, trade unionists, consumers and dealers'. On most occasions the High Authority invokes the consultative function of the Committee but on a number of points, consultation is prescribed by the Treaty. (e.g. Art. 19(1)).

The European Parliament by virtue of Articles 20 and 21 comprises delegates from the Parliaments of member states. It has rather limited powers; its weightiest being the power to pass a vote of no confidence in the High Authority, and to approve the annual report of the High Authority.

The Court of Justice exercise judicial control over the High Authority. A firm, an industrial association, or a trade union, a member state or even the Council of Ministers, can invoke the Court jurisdiction

36. For text see European Yearbook Vol. 1 1955 pages 354-457. See generally Gerhard Bebr "European Coal and Steel Community" in (1953) 63 Yale Law Journal 1.

37. Articles 9 and 10.

against the High Authority on any of four grounds: they may claim that a decision or recommendation of the High Authority lacked legal competence; that the High Authority had violated procedural rules; or the Treaty itself; or that it had abused its powers. The High Authority itself may appeal to the Court against a resolution of the Assembly or of the Council on procedural grounds or on grounds of lack of competence.

Because the ECSC is limited to two industries, it has been able to be more closely knit. The ECSC has supervisory and enforcement powers to enforce its anti-trust and restrictive practices policies. Agglomeration of industry being only allowed after express permission is granted by the High Authority pursuant to article 65. The anti-cartel provisions of Article 65 of the Treaty of Paris do not preclude non-restrictive and non-discriminatory arrangements which further specialization of production, or facilitate joint selling or buying. Article 65(4) prohibits any agreement 'which would tend directly or indirectly to prevent, restrict or impede the normal operation of competition within the single market' and such practices are automatically rendered void.

Control over the industry is exercised in several directions. Prices, terms and transport rates, must be published and are supervised. Conditions of sale must be uniform; price changes notified to, or authorized by the High Authority. Information is gathered by the High Authority, pursuant to article 47(1), which also provides for penalties for non-assistance. Article 86(4) empowers on the spot verification by Community officers. The High Authority can also conduct enquiries or investigations with the same powers as municipal tax authorities.

Decisions to invest are influenced by the High Authority by its giving advice; by the prohibition of undesirable investments; and by granting loans or guarantees in the case of promising investments projects. The High Authority derives its finance primarily from limited taxes that it has power to levy.

By allowing free operation to market forces, inefficient producers will be edged out of production. If market forces are allowed to operate freely overnight, this would cause grave disturbances to existing industries. Article 1(4) therefore provides a five to seven year transitional period during which the Community, together with member states will financially assist and grant temporary protection to the weaker coal and steel enterprises. Financial assistance will aid such enterprises in specializing their production, modernizing their methods, or otherwise modifying their activities, even to the extent of creating new industries outside the coal and steel industry. Those enterprises which are forced to close down are given preference in establishing new industries, subject of course to the Community finding the proposed project economically sound. If adjustments cause unemployment, the Community contributes to the employees' unemployment compensation. During the transitional period, the Community granted subsidies to coal mines whose operation costs were too high to meet immediate competition. This subsidy was raised by imposing a levy upon the most efficient and productive mines.[38]

38. Convention § 1(4); 23; Coal == § 24, 26, 27; Steel == § 29-31.

The decisions of the High Authority are binding on persons or organizations in every respect. The recommendations of the High Authority are binding with respect to the objective specified, but the means towards attaining the objectives are left open, and the opinions of the High Authority are not binding.[39]

The Treaty compels all enterprises in the coal and steel industry to submit their investment plans to the High Authority. The High Authority has the power to prohibit investments when it is probable that the projects in question require discriminatory measures or are uneconomical and have to be sustained by subsidies or protective tariffs. However, the scope of this power to prohibit is limited by the fact that it can only be exercised on investments which have to be financed on borrowed money.

The High Authority has at its own disposal its own and borrowed money which can be used to finance or to provide guarantees for promising investments. It may tax, pursuant to articles 49 and 50(2), the average value of an enterprise's products.

The High Authority has powers to prevent the re-establishment of private cartels or other monopolistic agreements. However the actual exercise of these powers are subject to inherent limitations as access to such agreements is intially difficult because of the cloak of secrecy that usually veils such agreements.

In times of market crises or shortage, the High Authority is empowered to fix minimum prices, production quotas or place restrictions on imports from non-member countries, pursuant to article 58. In times of scarcity, article 59 allows the setting up of a distribution system and production priorities as well as maximum prices.

The High Authority can enforce its decisions directly without recourse to national intervention, and is only subject to the Court of Justice and the European Parliament. Its sanctions include: article 47(3), fines for failure to provide information; article 50(3), fines for failure to pay tax levies; article 54(6), fines for making unauthorized investments; article 58(4), fines for violation of production quotas; restrictive agreements violating the anti-cartel and deconcentration provisions are declared to be void and fines are levied and daily payments exacted via article 66(5). Article 66(5), and (6), empower the Community, after determining an enterprise as being in violation of the deconcentration provision, to order the separation of the enterprises or assets illegally merged, and if necessary, to order a forced sale. As against member states violating the Treaty, article 88 authorises the Community to engage in discriminatory economic practices otherwise forbidden against the delinquent member state, thus temporarily cluding such state from the benefits of the Community.

The peculiar debilitating factor, as regards the ECSC, however, remains in the absence of co-ordination or a common harmonization of the community's energy policy at supranational level. The failure to

39. Article 14.

develop a common energy policy has severely limited the power of the High Authority to control the future of the coal industry.

Paul Fabra of *Le Monde*[40] pointedly concludes:

> "There is no longer a Common Market in coal because, in fact, if not in law, there is no European capital in Luxembourg to direct the mining operations and each government has gone back to managing its own affairs".

Servan-Schreiber[41] concurs thus:

> "The Coal and Steel Community was created in a time of poverty, and the moment of truth was bound to come when that period was over. This has now happened. Faced with over capacities that must be handled by group decisions, the member countries refuse to co-operate and instead play by their own rules. Germany's reply to France's long term plans for the iron and steel industry, worked out between French businessmen and the ministry of finance, was to form a new cartel of German firms. Belgium and Luxembourg took the same path. Each national steel group has fallen back on itself rather than co-operating with the others".

In spite of the crisis facing the ECSC today, it is this model that holds great promise for implementation in ASEAN. Even here, however, the closely knit institutional framework of the ECSC appears prohibitive. As in all cases of regional co-operation, the basic dilemma of developing countries is the means whereby the desire for economic development can be equated with the degree of loss of control to a regional body, over the particular area of activity. In view of this dilemma, the sectoral approach can provide the springboard towards higher forms of integration.

However, for ASEAN, it is felt that radical changes to the basic framework of the ECSC model are inevitable. For one thing, the institutional structure should not be hampered by lack of administrative powers, although it has, of necessity, to be less complex. For this, a co-ordinating Board of Management, consisting of experts, and completed by a secretariat, should prove feasible.

The membership of the controlling body is negotiable, while its powers ought to be as wide as that of the High Authority, or at least include the power to control production, supplies, prices, freight charges, etc.

The basic controlling unit will have plan harmonization powers, and/or a co-ordinating function with the plan harmonization authority as suggested in Part II. The joint ventures promotion techniques and the formation suggested in Part III could be combined to produce a closely knit effective approach to trade liberalization. The products of the sectoral industries will, of course, have to be endowed with regional status, i.e. allowed free access to the markets of the region. The incentives available should be channelled towards such regional industries. Tax incentives, regional markets, more favourable terms of finance from regional financing institutions should all be made preferentially available to the regional industries.

40. Quoted in J. J. Servan-Schreibers's "The American Challenge" (1968) at pages 105-6. Antheneum House Inc. N.Y.

41. *Ibid.*

III. PAYMENTS ARRANGEMENT SCHEME[42]

The desirability of a payments arrangement scheme is envisaged as a necessary supplement to any trade liberalization measures to be adopted. Although a payments arrangement scheme cannot eliminate the obstacles to trade arising from imperfect competition and communication facilities; and it cannot by itself compensate for loss or revenue sources resulting from tariff reduction, the contribution of the payments arrangement is directed to the solution of the balance of payments problems, and it is in this sphere of economic activity that its contributions become substantial. They can be of vital importance in dealing with transitional imbalances arising when the process of trade liberalization is not perfectly synchronized, and when there are delays in the expansion of industrial capacity, so that some of the member countries are unable to take immediate advantage of the trading opportunities that arise. However, it must be noted that the payments arrangement scheme is no panacea for resolving enduring imbalances. The vital role of the scheme is, therefore, not so much to remove restrictions on convertibility, but rather to facilitate the expansion of trade by providing more economical methods of payment, and for allaying fears that trade liberalization may cause transitional balance of payments problems for some of the participating countries.

A payments union is an international organization for settling mutual claims in an area, primarily to make inconvertible currencies inside the area transferable, i.e., to enable Country A, having trade credit against Country B, to use it in payment of a trade debit against Country C. It usually takes the form of an international corporate organization of central banks for corporate multilateral financing of payments deficits and cashless clearings of payments among the participating countries. The payments union may clear multilaterally either all debts of member countries (compulsorily) or it may clear only those debts and credits referred to it voluntarily by the central banks of member countries. The payments union is always able to grant at least automatic interim credits to debtor countries, i.e. credit which the debtor country is entitled to receive according to certain pre-arranged rules until the next settlement day.

The following reasons have been enunciated as being in support of a payments arrangement scheme as a supplement to trade liberalization :[43]

> "A payments Union may be advantageous in any area in a variety of special circumstances:
>
> (a) If there exists a network of bilateral trade agreements and payments agreements which, by virtue of discrimination between trading partners, contracts and diverts trade compared with the volume and direction of trade in the absence of bilateralism, a payments union would expand and multilateralize trade within its area and permit the removal of discrimination between sources of imports and exports.

42. See generally UNCTAD "Payments Arrangements among Developing Countries for Trade Expansion-Report of the Group of Experts" TD/B/80; "African Payments Union" E.C.A. E/CN. 14/W.P. 2/4 Jan. 1966; and "African Payments Union" in Vol. VI, No. 2 Economic Bulletin for Africa, July 1966 page 63.

43. "African Payments Union" Vol. VI, No. 2 Economic Bulletin for Africa, July 1966, page 63, at page 64.

(b) If the bilateral agreements restrict trade and payments relations to certain categories of transactions, e.g. exclude transactions such as transit trade, tourist travel, debt servicing, transfer of profits and amortization, of a payments union could greatly facilitate the extension of the permitted transactions including, for instance, exchange arbitrage transactions in the interest of more intensive trade.

(c) If simultaneous removal of quantitative restrictions on trade within the area is desired, the payments union by providing credit to the temporary deficit countries removes the fear of temporary imbalances through liberalization of trade.

(d) If there exists inconvertibility and exchange instability among the currencies of the area and where in consequence, import policies are largely based on hardness of currency considerations in place of comparative costs, a payments union would restore convertibility and exchange guarantees within the union and would endow the currency of account with a uniform degree of hardness or softness.

(e) If the total foreign exchange reserves within the area are low, the payments union allows a substantial economy in the movement of reserves as only the net balances of each member country with another member country of the payments union require to be settled.

(f) If the economies with inconvertible currencies are high-cost and high-price areas, because competition through imports from convertible areas does not exist, a payments union, by gradually restoring convertibility first within the union area and later also between the union area and the outer world would ultimately equalize cost and prices, except for transport costs, between inconvertible and convertible areas.

(g) If inflation, causing over-importation and under-exportation is to be stopped without creating an import famine, the payments union, by providing international liquidity can keep imports going until exports have a chance to grow.

(h) If transit trade inside the area for which otherwise favourable conditions exist is inhibited by inconvertibility, a payments union would restore opportunities for transit trade.

(i) If inconvertibility in the area is the cause for establishing subsidiary businesses in individual inconvertible countries where they would be uneconomical in the absence of inconvertibility, a payments union would make possible a rational location within the whole area of the payments union.

(j) If due to historic circumstances the trading relations of the economics in the area are principally with the outer world to the neglect of inter-area trade, a payments union is an indispensable pre-condition along with many physical, monetary and organizational changes for establishing a common market. [This is because it acts as a suffer against the immediate balance of payments problems created by trade liberalization].

(k) If due to the same historic circumstances the foreign exchange transactions within the area are traditionally conducted via exchange markets in overseas countries, a payments union can secure for the area concerned the foreign exchange transactions for inter-area transfers.

(l) If there exist temporary or persistent deficit nations and creditor nations inside the area without any means of transferring credit from one economy to the other, a payments union would organize the granting of credits from the creditors to the debtor nations and the adoption of measures to correct a persistent external imbalance.

(m) If some nations inside the area have large multilateral credits with convertible currency nations outside the area and others have deficits with them, the creditor nations vis-a-vis the outer world could make available through a payments union convertible exchange to the deficit nations vis-a-vis the outer world.

(n) If a country on achieving political emancipation wishes to change some of the destinations of exports or sources of imports, a payments union will facilitate the geographical re-direction of trade away from the outer world and into the union area.

(o) If it is ultimately desired to widen the transferability of currencies beyond the limits of the initial area where transferability of inconvertible currencies is organized, the payments union enables the stronger member countries to extend transferability beyond the confines of the payments union area".

It can be observed from the above enunciated reasons that their validity applies with equal force to ASEAN. It is only necessary therefore to take issue with reason (n) enunciated. Contemporary political development in ASEAN dictates a foreign trade policy which welcomes trade with all comers. It is in this light to be noted that even the Philippines, at present is succumbing to trade overtures from the Soviet Union, while Thailand has just signed a trade agreement with Bulgaria. The policy can thus be stated as being the maintenance of existing trade patterns, plus the opening of new channels for intra-regional trade wherever possible.

Several permutations upon the features of a payments or clearing arrangement are possible, but this segment will focus upon three major approaches: the simple payments union; the simple reserve fund and the monetary union.

The simple payments union denotes an automatic credit arrangement closely connected with a mandatory clearing arrangement for some or all classes of transactions. Under this scheme, a member country's deficits and surpluses with other members arising from the periodic clearings are settled, in whole or in part by credits respectively from or to the clearing agency, provided that a credit or debit ceiling is assigned to each participating country. These credits have no fixed maturity and are usually cancelled by reversing the member's balance of payments vis-a-vis the other participating countries.

A simple reserve fund denotes a capital fund made up of gold or reserve assets transferred from the monetary reserves of the member countries and perhaps supplemented by third parties. The assets of a reserve fund may be callable at the discretion of the individual member or available subject to conditions laid down in the agreement or by the governing body. Repayments may be made at fixed term or conditional upon the subsequent reserve position of the debtor country. Drawings on a reserve fund, whether automatic or discretionary, can be made to depend upon member countries' overall balance of payments positions or upon their positions vis-a-vis the other member. If the latter, and if automatic, a reserve fund would operate in such the same way as a simple payments union, but the surplus countries would receive convertible currencies, rather than book credits, enabling them to make payments to countries outside the group.

The monetary union represents the ultimate goal of complete integration of the financial systems of the member countries. This objective may be attained by stages and by different institutional arrangements. At the ultimate stage, a monetary union will ordinarily involve the issue and use of a common currency, automatically providing for the clearing of claims arising from commercial and financial transactions. At that

stage, it likewise provides for a complete pooling of foreign reserves. However, as an institution of immediate importance the possibilities of a monetary union appear to be quite remote. It requires a comprehensive harmonization of economic policies; a high degree of co-ordination of exchange, credit monetary and fiscal policies; as well as a high degree of collective planning in respect of commercial and industrial development policies.

As regards the feasibility of a payments arrangement scheme, it is necessary to consider the availability of sources of working capital for an ASEAN Payments Union.

Generally, three sources suggest themselves for such a structure. Mutual or reciprocal credits can be obtained from all creditor countries within the union, requiring them to lend the whole of their surpluses to the union. Accumulated surpluses so lent, will be re-loaned to deficit countries. Thus, this system will use the monetary strength of the stronger to support the weaker countries. In effect, however, by extending credit to the deficit countries, the creditor countries are really allowing the former credits to buy imports from the latter and thus also preventing declines in production, employment and national income which would otherwise have resulted inside their own economies.

Non-mutual or collective credits can be provided by creditor and debtor countries alike through the payment of capital subscription to the union and thus constituting the fund from which the latter grants its credit.

Gifts and loans from within and without the Union form the third possible source of finance to the payments union. In this connection it should be remembered that the European Payments Union was partly financed by a sizeable gifts from the United States.

It is now intended to consider very briefly some of the legal techniques utilized in the creation and operation of the European Payments Union;[44] the Central American Clearing House;[45] and the draft proposals for an African Payments Union.[46]

The EPU agreement made provision for the granting and drawing of interim finance, the automatic compensation of bilateral balances and the settlement within the Union of each country's net position, partly in gold and partly in credit, in accordance with certain fixed proportions within a system of quotas.

In addition to facilitating the introduction of non-discriminatory trade policies inside Europe, the multilateral clearing allowed substantial economy in the movement of reserves, since only the net balance of each country vis-a-vis all the other member countries as a whole has to be settled. Furthermore, the multilateral clearing allowed members

44. For text of the European Payments Union see European Yearbook Vol. II 1955, pages 363-415.

45. For text of the Central American Cleaning House arrangement, see "UN: Multination Economic Cooperation in Latin America" Doc. E/CN. 12/621.

46. "African Payments Union" in Vol. VI, No. 2 Economic Bulletin for Africa, July 1966, page 63.

to face temporary fluctuations in the balance of payments position providing time to restore their balance of payments without interfering with the potential trade liberalization measures.

The period of settlement was monthly and took place at pre-determined rates of exchange between each currency and a unit of account, the value of which was defined in terms of gold. In effect therefore, the Central Banks had a guarantee of settlement from the union that ultimately any claims in the union resulting from the monthly settlements would carry an exchange guarantee in gold.

The Central American Clearing House (CACH) was established in 1961 by the Central Banks of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, with the object of promoting the use of national currencies for the settlement of transactions within the common market. Settlement periods were fixed at six month intervals, and each member was committed to grant interim credit to the others to a ceiling of US$500,000. The agreement involves a reciprocal exchange-rate guarantee which covers all eligible documents held by the banking systems and intransit items.

The essential features of the Casablanca Proposal signed in Cairo on April 2 1962 are:

Channelling of intra-African transactions to be made compulsorily via the facilities of the Union. The primary source of the union's working capital is to be the capital subscription of each member in convertible currencies to the value of £100,000 each, this subscription will constitute the country's credit quota. The accounting period will be three months. The net debit or credit positions shall be settled partly in credit, partly in gold or convertible currencies provided that the cumulative surplus or deficit stays within the member's credit quota. Debit balances of members in excess of the individual credit quota shall be settled immediately in convertible currencies and gold. In deserving cases the Board of Directors shall allow excess balances, which shall be settled at the end of the financial year in convertible currencies either immediately or in instalments, for which interest is chargeable. The working capital of the proposed union is to be derived solely from the capital subscriptions of member states and interest collected on excess debit balances.

These proposals have been attacked[47] for being too short in life span to really reveal their value, and the withdrawal procedure being too lax. The pegging of the credit quota to the capital subscription is unsatisfactory because this will not help to expand trade as much as mutual credits (i.e. the granting of credits by surplus members to deficit members). This is itself based on the fact that mutual credits are always possible since in any union the sum of the credit balance will equal the sum of the debit balance.

A problem is posed by the prospect of devaluation of any one of the national currencies involved. While the national currencies involved and the credits are pegged to a certain level on a given date, there is no immutability as far as these exchange rates are concerned. Thus

47. "African Payments Union" Vol. VI, No. 2 Economic Bulletin for Africa, 84.

on the devaluation of any one currency, either the existing debit/credit account of the country devaluing has to be adjusted accordingly on only prospective accounts. As the period of clearing is for example, 3 months, the making of adjustments to the detriment of the devaluing country will not be an undue penalty.

Prior to the agreement on any definitive payments arrangement, several basic questions have to be resolved, as to a choice of several available permutable techniques. These questions include the types of transactions that are to be settled through the scheme; whether referral is to be made mandatory or optional; the settlements periods; and interim finance arrangement; and the lending and borrowing criteria to be adopted i.e. whether dependent upon intra regional trade surpluses or overall balance of payments reserve positions.

The Seminar on Financial Aspects of Trade Expansion[48] concluded, after consideration of the various mechanics of payments arrangement schemes, that the following would be feasible features of an ECAFE Payments Arrangement Scheme. It is submitted that these recommendations can form the springboard to an ASEAN Payments Arrangement Scheme.

(a) A simple clearing union, with monthly settlements, would be of benefit to member countries, provided that participating countries offered traders and banks option of using the traditional modes of settlement or additional ones to be established.

(b) Longer term credit commitments and facilities, should be geared to the overall balance of payments, and reserve position of members, rather than to intra-regional surpluses and deficits as such.

(c) The provision of such credits would shift towards the region of a small portion of monetary reserves which are currently invested entirely outside the region.

(d) Interest earnings and various safeguards including guarantees against exchange risks, default, liquidity and inconvertibility would be essential to obtain the assent of lenders to such a system.

(e) As far as borrowing was concerned, any large credits should be discretionary rather than automatic so as to avoid any abuse of the system to finance persistent deficits and elude necessary pressures for balance of payments readjustments. Modest automatic credits might nevertheless be provided to initiate the system until operational contracts among members had made it possible to develop a workable forum for reaching collective decisions on the purposes and conditions and multilateral surveillance of discretionary credits.

The necessity for a payments arrangement scheme, depends on the actual method of trade liberalization adopt. However, it is the basic thesis of this paper that the trade liberalization measures based on

48. Jointly organized by ECAFE and UN Office of Technical Cooperation, and reported in Vol. XIX No. I June 1968 Economic Bulletin for Asia and the Far East page 1, at page 5.

See also Robert Triffin "Payments Arrangements Within the ECAFE Region". *Ibid* at page 13.

customs union and free trade area models are premature for ASEAN. As such the feasibility for a payments arrangement scheme is not envisaged as a measure of immediate implementation.[49]

IV. CONCLUSIONS

The urgency of trade liberalization as a means of economic development is not doubted. The impetus to regional co-operation is boosted by the impending military withdrawal of British forces from Southeast Asia; the possible disengagement of US forces from Vietnam; the furthering of China-backed national liberation movements in Thailand and Malaysia. Towards the object of regional security, military co-operation between Thailand, Malaysia and Indonesia along their common borders, have preceded economic co-operation.

The lack of momentum towards regionalism has existed in the past and still exists. The reasons for this lack include:

The region's geographic dispersion over thousands of islands; the cultural and linguistic diversity (although between Indonesia and Malaysia a common language exists).

The customs union of the EEC model envisages ultimate political union. Indeed it is felt that without substantial harmonization of laws, such union is not possible. This model is inherently premature for ASEAN, for it is necessary for a commitment to be made first towards regionalism before any customs union can be formed.

The political diversity of the region is another stumbling block. Regional stability has been intermittently punctuated by political strife. Thus, within this decade we have witnessed the armed conflict of Confrontation between Indonesia and Malaysia; the Philippines' Sabah claim; and the potentially explosive Indonesian/Singapore relations, as evidenced by the sacking of the Singapore embassy following the hanging of two Indonesians convicted of murder, which was committed during the height of Confrontation. Perhaps, the only unifying factor is that all the countries of ASEAN are non-Communist.

The different colonial histories of ASEAN countries provides yet another cause for late development of regionalism. Malaysia and Singapore obtained independence from Britain without any recourse to armed struggles. (Thus the Sukarno obsession of 'colonialist plot', as he did not conceive it possible for any colony to gain independence without armed conflict). The Philippines, had a varied colonial history with two 'colonial masters', the Spanish and the Americans; and Indonesia attained independence from the Dutch after lengthy conflict. Thailand alone has remained 'uncolonized'. The structure of trade, transport and communication patterns has thus been evolved to support contact with the colonial metropolis, and inter-regional trade and communication links has until this decade been minimal.

Any immediate attempts at the complex trade liberalization methods may prove shortlived without Indonesia's participation. Indonesia, how-

49. The author reaches this conclusion even though ECAFE is currently conducting a series of meetings to finalise a draft proposal on an Asian Payments Union.

ever is presently preoccupied with domestic affairs. Dr. Sumitro, Indonesia's Minister for Trade has said as much:[50]

> "It is now too premature to talk about the Asian Common Market. Where Indonesia is concerned, we are preoccupied with putting our house in order first".

The basic dilemma which faces developing countries is that while it is realized that economic integration is a necessary concommitant to economic development, there is still the hesitance to surrender national control to a regional body the sectors of co-operation. Thus the wide supranational powers given to the regional bodies of the EEC and the ECSC would not be possible in ASEAN. It is the writer's personal belief that this reductance stems from the fact that almost all ASEAN countries have only been allowed to forge their own destines (via the attainment of independence) during the past two decades, and as such are not ready to relinquish this right too easily. The European example, is therefore of lesser relevance here, at least for the present and foreseeable future.

Liberalization of trade barriers, at least insofar as the customs union model is concerned, necessitates the freeing of movement of the factors of production within the regional market. Outside the heavy controls over the movement of capital outside the countries themselves, even movement of labour is highly restricted. In Malaysia, the movement of nationals between West and East Malaysia itself is greatly restricted.

For any regional co-operative measure to be effective, it is necessary that a fully concerted programme is implemented. To this end, it is quite insufficient for there to be mere trade liberalization, without concurrent payments arrangement schemes and plan harmonization commitments. The greater the complexity of measures required, the more remote the chances become for immediate implementation, with ASEAN.

Communication patterns necessarily vital for trade expansion, found in EEC, are lacking in ASEAN, as they are in LAFTA. The inability of LAFTA to utilize effectively the new opportunities presented stem from, inter alia, this inhibiting fact. The Asian Highway is a major step in the direction of development of communication patterns. However, this proves sufficient only to link Malaysia, Thailand and Singapore. The Philippines and Indonesia involve a different proposition altogether. Together they consist of thousand of widely scattered islands. The development of marine communication patterns to supplement the already existing patterns is therefore vital.

The enunciated reasons confirm the historical feet dragging approach to regional economic co-operation and account for its continuance in the near future. Hence it is the conclusion of this part that only the sectoral model of co-operation will prove of immediate significance to ASEAN. However modifications to the ECSC model are inevitable. The institutional structure of the proposed ASEAN model, while not lacking in administrative powers, has to be of a less complex nature.

50. Speech reported in Straits Times November 10, 1969 at page 6.

For this, a co-ordinating Board of Management, consisting of experts and complemented by a secretariat should prove feasible.

The membership of the controlling body should be representative, on a permutable basis which takes into consideration the importance of the industry to each country, the nature of each country's contribution, financial or otherwise and the need for effective control of the sector by the supranational authority and it should be able to control production patterns, supplies, prices, freight charges etc.

The basic controlling unit should work in conjunction with the plan harmonization authority, or it could be one and the same; or if functioning alone, should be given plan harmonization functions, insofar as its sector of control is affected.

The incentives available should be channelled towards such regional industry or industries: tax incentives, regional markets, more favourable terms of finance should all be made preferentially available to the regional industries so set up.

HARMONIZATION OF INVESTMENT AND NATIONAL DEVELOPMENT PLANS

I. Nature of Harmonization of Development Plans

II. Approaches to Regional Harmonization of Development Plans:
   (i) Customs Unions;
   (ii) Free Trade Area;
   (iii) Partial or Sectoral Integration;
   (iv) Trade Agreements.

III. Harmonization of Incentives to Industry.

IV. Legal Techniques Available:
   (i) Complementarity Form of LAFTA;
   (ii) Basic Framework: C.A.E.C.U.
   (iii) Regional Co-operation for Development;
   (iv) Administrative Structure;
   (v) Techniques to Channel Investments into Desired Locations.

V. Sectors Conducive to Plan Harmonization:
   (i) Iron and Steel;
   (ii) Pulp and Paper.

VI. Conclusions.

The importance of harmonization of investment policies and national development plans as a means to economic integration is enhanced both by theoretical as well as empirical evidence. The stunted growth of LAFTA, during the corresponding period has been primarily the result of the absence of any harmonization policies. Admittedly, other historical, economic and political reasons exist, but essentially, the mere lifting of trade barriers has proved that:

> "The aims of economic integration cannot be achieved through the mere liberalization of trade, which must be accompanied by other agreements that constitute a real programme for the achievement of a series of major objectives".[51]

Pursuant to the realization of the inadequacy of mere trade liberalization. the Economic Commission for Asia and the Far East, in a resolution, adopted at its twenty third session:[52]

> "Calls upon the Government of member countries to create a climate of harmony and goodwill, to imbue their efforts with greater zeal and determination, and to explore and implement practical schemes and measures of regional and sub-regional economic co-operation and plan harmonization with a view to further fostering the spirit of mutual help and willingness to embark on joint efforts, accelerating the region's economic growth and attaining the benefits of concerted efforts and co-operation;"

It is therefore, the major premise of this paper that harmonization of policies must be an integral component (together with trade liberalization) of the process of economic integration, and economic development in the region.

'Economic Integration' is defined both as a process of bringing together certain autonomous national economies by "removing artificial hindrances to the optimal operation and introducing deliberately all desirable elements of co-ordination and unification"[53] together with such optimizing effects.[54] It is significant that both definitions involve deliberate planning, so that the ends do not give rise to the necessity for theoretical or value judgment as to the desirability, and the sole inquiry becomes directed to the methods of plan harmonization.

The concept connotes analysis of available data with the sole objective of isolating and excluding inconsistencies and conflicting policies. This involves the presumption that governmental investment policies and national development plans be submitted to the harmonization body before general public release, and a national governmental attitude conducive to making changes when necessary on the basis of reciprocity and mutual benefit. It involves, essentially, a projection to the regional or sub-regional level of national economic planning in the allocation of productive resources.

I. The Nature of Harmonization of Development Plans

Plan harmonization involves essentially the drawing up of an interrelated and consistent set of targets for the economy, embodying the structural changes required and the application of measures to bring about the achievement of these targets. This in turn necessitates the construction of a generalized picture of the economy as a whole in which present and future demands upon various types of resources, physical

51. ECLA "A Contribution to Economic Integration Policy in Latin America" E/CN. 12/728, page 51.
52. Resolution 86 (XXIII) Regional Cooperation and Harmonization of National Development Plans; 14 April 1967.
53. J. Tinbergen, "International Economic Integration" Elsevier, Amsterdam, page 95.
54. Bela Balassa, "Theory of Economic Integration" Richard D. Irwin Inc. (1961), p. 1.

and financial, are matched with available supplies, projected and actual. Any apparent financial imbalance will then indicate the need for corrective fiscal or monetary action; while any apparent imbalance between the measure of goods demanded and that supplied will point to the need for adjustment partly through the promotion of new investments in the directions required and partly through imports and exports.

Joint planning is envisaged as taking place at three levels, involving inherently different measures of co-operation and different degrees of mutual commitments by national governments. At the simplest level, specific projects for new investment in regional industries may be promoted and financed without the full apparatus of a complementarity agreement. The minimum here is for member countries to open their markets to the new industries thus established. At the next level, members countries may adopt complementarity agreements embodying more formal and comprehensive arrangements regarding the manner in which the future demand of the countries is to be satisfied from available and new capacity, including provision for inter-country specialization, market access, margins of preference and consistent patterns of investment incentives. The third and most complex level requires governments to agree to set both the industrial and overall growth targets for the region as a whole.

Multinational regional planning can take three basic forms:—

(a) planning for an economic region, which tends beyond the boundaries of one country, e.g. Lower Mekong River Basin Project;

(b) planning for one or more economic sectors of two or more countries, e.g. ECSC; and

(c) co-ordination of national plans or to the setting of integrated targets for the entire economies of several countries which are members of an international regional organization.[55] This segment will focus on the latter two aspects of regional planning.

II. Approaches to Regional Harmonization of Development Plans[56]

There are generally four forms or approaches available viz: customs union, free trade area, sectoral integration and trade agreements. In this segment, it is intended to survey, at some length, the latter two approaches. This selection being based on the writer's conclusion that the complex integrational apparatus of the former two are as yet premature for ASEAN. It is also intended to consider the promising developments of plan harmonization made by the Regional Co-operation for Development[57] grouping.

55. See Albert Waterson's "Development Planning: Lessons of Experience" John Hopkins Press, U.S. (1965) pages 23-24.

56. See generally "Approaches to Regional Harmonization of National Development Plans in Asia and the Far East" 1964, Economic Bulletin for Asia and the Far East, at page 33; and H. Kitamura and A. Bhagat *op. cit.*

57. Comprising Pakistan, Iran and Turkey, see infra page 107.

(i) *Customs Union*[58]

The traditional customs union is a complete form of co-ordination, including the free movement of goods and services and factors of production; co-ordinating of all sectors of the economies of the participating countries and common investment, fiscal and monetary and social policies. While the traditional models of customs union, do not incorporate plan harmonization, it is readily available and can be incorporated into any existing or future customs union organization.

(ii) *Free Trade Area*[59]

In contrast, the traditional free trade area permits each of the member countries to adopt its own independent national tariff and trade policy vis-a-vis non-member countries. While the traditional models of free trade areas do not incorporate plan harmonization, it is readily available and can be incorporated into any existing or future free trade area.

(iii) *Partial or Sectoral Integration*[60]

Partial or sectoral integration connotes co-ordination of production efforts and policies with respect to specific projects either in agriculture, industry, transport or any other economic activity, but falls short of a complete economic union which covers all sectors of the participating economies. The partial or sectoral integration is necessarily selective and involves decision-making requiring joint or common policies and action with respect to sectors or activities selected. At the minimum, it assumes internal free trade for the products concerned. It mainly aims at regional or sub-regional specialization or joint efforts on a limited selected basis. This approach becomes the only available one when political or other factors make closer forms of integration unacceptable.

> "Furthermore, partial integration or a series of agreements on partial integration, whether by economic sectors or by groups of countries, or by a combination of both, is not incompatible with progress towards overall integration of the area, particularly if a certain co-ordination of national development plans can be achieved. Perhaps this is the fastest way of advancing towards overall integration".[61]

A concerted assult on the problem requires concurrent action on all fronts. Participating countries have first to agree upon production specialization; the resultant agreements have to be converted into concrete terms of industrial treaties between the producer/supplier country

58. See supra page 72 on the EEC Model.

59. See supra page 76 on the ECSC LAFTA model.

60. See supra page 82 on the ECSC Model.

61. O.A.S. Latin American Economic Integration (Washington D.C. 1961) Page 3, Committee of Experts.

or countries and the buyer/user country or countries; agreements will have to be reached regarding trade liberalization with respect to the products directly and indirectly involved in the agreed areas of specialization, these agreements taking the form of trade treaties and finally some protection may be necessary against non-member countries competing in the same market.

The programme of agreed production specialization and long-term trade liberalization in specific sectors will provide the inherent guarantee that the emerging reorganization and new pattern of production and trade will have a certain degree of firmness and certainty.

Finally,

> "The programme of selective agreed specialization among countries will imply partial inter-country and intra-country co-ordination or integration at three levels:
>
> (i) Co-ordination of specific production plans and policies among the participating countries;
>
> (ii) Co-ordination of the countries' foreign trade sectors and policies as determined by (i) above; and
>
> (iii) Co-ordination of trade and production plans and policies within the broad framework of overall national development plans, as determined by (i) and (ii) above".[62]

(iv) *Trade Agreements*

On the scale of closely knit forms of integration, trade agreements and contracts form the lower stratas, as the necessity for prior harmonization and the institutional requirements is at its lowest. This form of co-operation implies specific trading arrangements for selected commodities with assurances of markets for seller-countries, sources of supply for buyer-countries and some stability for trade, volume or price or both for the commodities covered. This form of co-operation, too can lead to a certain degree of specilization and division of labour.

III. HARMONIZATION OF INCENTIVES TO INDUSTRY

The most striking legal techniques utilized in this area of co-operation, is to be found in the General Treaty on Central American Economic Integration[63] (Managua, 13 December, 1960) and subsequent agreements of the association pursuant to the General Treaty. Article XIX of the General Treaty states:

62. "Approaches to Regional Harmonization of National Development Plans in Asia and the Far East" *op. cit.* at page 42.

63. See text in "UN: Multinational Economic Cooperation in Latin America" Vol. 1. Doc. E/CN. 12/621.

> "The Contracting States, with a view to establishing uniform tax incentives to industrial development, agree to ensure as soon as possible a reasonable equalization of the relevant laws and regulations in force. To that end, they shall, within a period of six months from the date of entry into force of the present Treaty, sign a special protocol, specifying the amount and type of exemptions, the time limits thereof, the conditions under which they shall be granted, the systems of industrial classification and the principles and procedures governing their application. The Executive Council shall be responsible for co-ordinating the application of the tax incentives to industrial development."

Pursuant to Articles XIX of the General Treaty, the five countries signed the Agreement on Fiscal Incentives to Industrial Development[64] on 31 July 1962 at San Jose.

Under this uniform regime, incentives are to be extended only to manufacturing industries which contribute effectively to the economic development of the area.[64A] After the Agreement takes effect, the signatories will grant no incentives to activities which do not come within this general definition, except for certain extractive, listing livestock, low cost housing and service activities, as to which each country retains control by its own policies. As for activities covered by the Agreement, the countries will grant incentives only in accordance with Article 3.

The approach of the agreement is selective, and accordingly manufacturing products are divided into three categories, each category being entitled to certain incentives.[65]

Group A Producers: Substantial benefits accure to producers of industrial raw materials and capital goods, and to producers of consumer goods, containers and semi-finished items, provided that at least fifty per cent in value of the raw materials, containers, and semi-finished components are of Central American origin.[65A]

Group B Producers: consists of producers of consumer goods, containers or semi-finished items which use raw materials, containers and semi-finished components less than fifty per cent of which by value are of Central American origin; and which also provide an important net balance of payments advantage and a high added value through the local manufacturing process.

Group C Producers: includes those activities, which, while meeting the general requirement of contributing effectively to economic development, nevertheless do not come within Group A or Group B; plus some which are specifically enumerated in Annex I to the Agreement

64. *Ibid.*

64A. Articles 2-4.

65. See generally, W. S. Surrey & C. Shaw "A Lawyer's Guide to International Business Transactions" pages 932-3 (1963) Joint Committee on Continuing Legal Education, Philadelphia, Pennsylvania.

65A. Article 5.

(i.e. leather shoes, clothing, beer, wines, bitters and various non-alcoholic beverages, tobacco products; and perfumes and cosmetics except soaps and dentrifices).

Article 25 allows each country during the first seven years to classify an industry as 'new' or 'existing' according to its own stage of development. After the seven year transitional period, however, the criteria will become uniform throughout the region.

Three forms of benefits are postulated by the agreement: (i) exemption or reduction of customs duties on imports of machinery, equipment, raw materials, components, containers and certain fuels; (ii) exemption from income taxes on the enterprise and its members, (note that the exemption is unavailable when the enterprise or its members are subject in another country to taxes which make his exemption ineffective, when tax exemptions in one country only increases the tax liability in another); and (iii) exemption from taxes on capital.[66]

"Group A-new" pursuant to Article 11 may receive the following benefits: (i) complete exemption from import duties and related charges, including consular fees, for ten years, on imports of machinery and equipment; (ii) exemption from the same duties, charges and fees on imports of raw materials, components and containers so follows: one hundred per cent during the first five years; sixty per cent during the next three years; and forty per cent during the next two years; (iii) complete exemption from the same duties, charges and fees, for five years, on imports of fuel for use exclusively in the industrial process, except gasoline; (iv) complete exemption from income and profits taxes for eight years; and (v) complete exemption from taxes on capital for ten years.

"Group B-new" are entitled under Article 13 to lesser benefits: followed down the scale by "Group A-existing;[67] Group B-existing;[68] and "Group C".[69] "Group C" industries will receive complete exemption from import duties and related charges including consular fees, for three years on imports of machinery and equipment.

The procedural requirements have succinctly been summarized as:[70]

> "First, application must be made to the Central American Executive Council at Guatemala City, with complete details and information covering the project. If the Council finds the proposed activity to be within the objectives of the Agreement, it will then refer the proposal to a competent technical body for a report on the 'technological and economic aspects of the project, and in particular the market prospects' at the expense of the

66. Article 8.
67. Article 12.
68. Article 14.
69. Article 15.
70. Frank E. Nettier Jr. Chapter on 'Central American Program of Economic Integration' in "A Lawyer's Guide to International Business Transactions" Ed: Surrey & Shaw pages 932-933.

> interested parties. If this report shows the project to be feasible, the Council will then report to the several governments, with its recommendations, regarding the conditions to be attached to the approval".[71]

The actual designation is made by a separate Protocol for each application, signed by the governments. The Protocol sets forth the conditions on which the designation is granted, which may include:[72] (i) the country or countries in which the plants are to be located . . . . ; (ii) the minimum capacity of the plants; (iii) the conditions under which additional plants in the same industry may be designated; (iv) quality standards for the products, price levels and any other requirements deemed necessary for the protection of consumers; (v) regulations regarding participation of Central American capital; (vi) the common external tariff to be applied by all the countries on imports of similar products from outside the area; and (vii) any other provisions which would foster attainment of the Agreement's objectives.

Article 17 expressly stipulates that if an enterprise, which meets the requirements mentioned, wants to set up a plant in the same country in which a similar plant has already obtained exemption as a 'new' industry, it will have the right to the same benefits, and the same obligations, as the earlier plant, for the balance of the period for which the first one received, and if this period is less than the new-comer would have been given as an 'existing' industry it may then have the benefit of the balance of the concessions it would have been granted if it had applied on the 'existing' basis in the first place.

Expansion of existing facilities make an enterprise, by virtue of article 20, eligible for additional concessions.

Articles 26 to 33 provide for the administration of the agreement, by the Executive Council of the Integration Programme; and for the detailed information of the applicant company to be submitted on every application viz: members, capital structure, the proposed project, technical market and economy study.

Industrial incentives in ASEAN countries reveal their high competitive and duplicatory nature. Incentives may be given to industries in furtherance of myopic import substitution policies for uneconomically small markets. Tariff protection in Malaysia, Singapore, Indonesia and the Philippines could, and is, used to protect against all imports, even from ASEAN countries. They should be harmonized to protect regional industries and by the media of trade agreements, the respective countries can agree not to impose any protective measures on regional industrial products. To facilitate a gradual transition, measures could be made to allow the individual countries a transitional period in which they can impose their own forms of protection, as against non-member countries, after the lapse of which time, the incentives have to be uniform.

71. Agreement of Integration Industries, Article IX.

72. *Ibid;* Article III.

INDUSTRIAL INCENTIVES IN ASEAN [A]

	THAILAND	MALAYSIA	SINGAPORE [B]
Exemptions & Licenses:	Exemption from import duties on machinery, component parts and accessories. Exemption from business tax on machinery, component parts and accessories. Exemption from income taxes from industrial activity for five fiscal years. Exemption from import duties for raw or necessary materials (Group A). 50% reduction and 33.1/3% reduction on import duties respectively for Group B and C. One or more special rights and benefits may be granted.	Relief from income tax for 2 to 5 years, with possible extension for a total of up to 8 years. Exemption from import duties for machinery and in some cases of raw materials.	Tax exemption up to 5 years for pioneer industries. Tax exemption on the income increased as results of expansion. Rate of depreciation may be accelerated up to 100% within one year. Double deduction for tax purposes allowed on advertising expenses in promoting export of local products. Interest paid on loans will be exempted from tax. (Overseas) Income from royalties and technical assistance fees which are re-invested, is completely exempted from tax. Exempted from import duties for machinery and equipment required by manufacturing industries and all supplies/raw materials required by industries.
Guarantees & Protection:	The State will not engage in any new industrial activity in competition with that of promoted person.	Protection of foreign investments against expropriation. Imposition of protective import duties to protect local industries. Protection against dumping by for exporters.	To protect new industries tariff duties or quota restrictions may be imposed. E.D.B. may act as a guarantor for local industries.

A. SOURCE: Appendix VI Report of the Survey Mission on the Pulp, Paper and Rayon Industry in S.E. Asia" AIDC93) 6 December 1967.

B. See postscript at page 139 for latest amendment.

	INDONESIA	PHILIPPINES
Exemptions Licenses:	Exemption from company tax on profit for maximum 5 years. Exemption from dividend tax on part of profit paid to share-holders for maximum 5 years. Exemption from company tax on part of profit which is reinvested. Exemption from import duties for machineries, equipment, instruments, raw materials and spare parts. Exemption from capital stamp duty on placing of capital originating from foreign capital investment. Imposition of company tax maximum 50% for a period of maximum 5 years. Accelerated depreciation on fixed equipment. Extra licenses can be granted by Government Regulations.	Capitalized organizational and pre-operating expenses may be deducted from taxable income. Accelerated depreciation may be allowed. Net operating loss incurred in any of first ten years may be carried over as deduction from taxable income. Exemption from tariff duties and compensating tax for machineries, equipment and spare parts. Tax credit of 100% on domestic capital equipment. Tax credits for taxes withheld on interest payments on foreign loans. Reinvested profit shall be allowed as a deduction from taxable income. In addition Pioneer Enterprises shall be granted exemption from all taxes under National Internal Revenue Code except income tax.
Guarantees & Protection:	Protection by imposing higher tariff duties for imported goods.	Anti-dumping protection through a directive banning for a limited period the import of certain goods. Protection from Government competition. Protection of patents and other proprietary rights.

IV. LEGAL TECHNIQUES AND FORMS AVAILABLE

(i) *Complementarity Form of Lafta*[73]

Pursuant to Articles 15 to 17 of the Treaty Establishing a Free-Trade Area, and Instituting the Latin-American Free Trade Association, Resolution 99 (IV) "Norms and Procedures for Complementarity Agreements", was passed on 8 December 1964. The material provisions being:

> Article 3: "The program of liberalization of each Complementarity Agreement shall:
>
> (a) Specify the products included in the Agreement, in conformity with the specifications and coresponding code-numbers of NABALALC; (b) Indicate the manner in which duties and restrictions applying to the products specified shall be eliminated, it being understood that the rate of liberalization may differ as between countries and products included in the Agreement; (c) Provide for the maintenance of the margins of preference agreed upon for the products included in the liberalization programme; and, (d) Define the requirements as to origin to which the products concerned shall be subject, in accordance with the general norms approved by the Conference".
>
> Article 5: "Contracting Parties participating in a Complementarity Agreement shall endeavour to include in such Agreement provisions relating to:
>
> (a) Harmonization of treatment accorded to imports from third countries related to products included in the sector concerned, as also of raw materials and components employed in the manufacturing process in question; (b) Co-ordination of governmental programs and incentives, with a view to facilitating sectoral complementarity and harmonizing the treatment accorded to capital and services originating either within or outside the Area and involving the sector in question; and (c) Regulations to prevent unfair trade practices, in line with the general norms adopted by the Conference".[74]

Inter-country specialization may take two forms or a combination of both, i.e. vertical or horizontal. In the vertical structure, each country might maintain or establish a fully integrated industry, comprising all stages of a particular manufacturing process from raw material to finished product. Specialization can be secured through an agreement whereby each firm would undertake to concentrate on a limited number of products, instead of manufacturing the entire range. Countries would satisfy their needs partly from domestic production and partly from trade with the other members of agreement; each of the specialized firms would thus gain the advantages of a access to a region-wide market. In the case of horizontal specialization, various stages of a particular industrial process might be located in different countries. Each of the participating countries might specialize in the production of certain components, while assembly plants for the finishing stages might be set up in several countries, using both domestically produced and imported components. Where necessary, both forms of structuring may be adopted concurrently.

In LAFTA, only two complementarity agreements have been signed to date. In July 1962, one dealing with data processing machines and

73. Latin American Free Trade Association; Montevideo, 18 February 1960; See text in "UN: Multinational Economic Cooperation in Latin America" Doc. E/CN. 12/621.

74. *Ibid.*

certain carefully defined materials and components required for their production or operation was signed by Argentina, Brazil, Chile and Uruguay. In February, 1964, another agreement was signed by Argentina, Brazil, Chile, Mexico and Uruguay, dealing with valves for radio and television sets as well as their parts and components. In August, a draft complementarity agreement covering the glass industry was announced.

The lack of progress in the development of complementarity agreements has been identified as being the result of,

> "the reluctance of Latin American manufacturers to disturb the traditional rules of the game, and break out of the vicious circle of low output, high costs, and a high degree of national protection and restrictionism".[75]

In February 1964 another agreement was signed by Argentina, Brazil, Chile, Mexico and Uruguay, dealing with valves for radio and television sets as well as their parts and components. In August 1964, a draft complementarity agreement covering the glass industry was announced.

The lack of progress in the development of complementarity agreements has been identified as being the result of,

> "the reluctance of Latin American manufacturers to disturb the traditional rules of the game, and break out of the vicious circle of low output, high costs, and a high degree of national protection and restrictionism".[76]

The industries covered have been peripheral industries of little significance, when compared to the Coal and Steel Industry which was covered by the Treaty of Paris which established the European Coal and Steel Community. The primary defect of the LAFTA approach lies in the absence of coherent planning for industrial expansion and the not unnatural selfish motive of wanting reciprocity in the benefits that might accure. Another shortcoming lies in the lack of precision in the definition of products in connexion with complementarity agreements. If the value added to imported components and materials is very small, as in the case of simple assembly operations, inclusion of the product concerned in a complementarity agreement may simply provide a means for foreign companies to escape heavy duties on finished goods.

It is however, been asserted that,

> "the reconciliation of these divergent interests cannot be achieved by purely legal rules or automatic devices, because such rules and devices cannot distinguish a *bona fide* build-up of industrial capacity from small beginnings from the undermining of regional protection through simple assembly of imported components. Since questions of judgment are involved, planning machinery is again required, operating in accordance with regionally accepted criteria".[77]

While it is admitted that legal codes cannot change or direct attitudes and are unable to define with precision the value added to products, it cannot be wholly conceded that legal codes are thereby unhelpful.

75. S. Dell "A Latin American Common Market?" (1966) at page 131; Oxford University Press.
76. S. Dell "A Latin American Common Market?" (1966) at page 131; Oxford University Press.
77. S. Dell, *op. cit.* at page 133/134.

The creation of the determining body is to be made *via* a legal code. The code itself, while not attempting to define in *vacuo,* can nevertheless allow the determining body sole discretion in deciding such questions or lay down certain guidelines to be noted before a decision is made. In either event, the legal rules prove indispensible.

The reluctance to negotiate complementarity agreements unless there is immediate benefit to the participating countries can be overcome. This legal form can also assist in overcoming any possible unequal distribution of the benefits of integration. This technique is found in the Transitional Article of the Agreement on the Regime for Central American Integration Industries (Tegucigalpa, 10 June 1958) which reads:

> "In order to promote an equitable distribution of the Central American industrial integration plans, the Contracting States shall not award a second plant to any one country until all of the five Central American countries have been assigned a plant in conformity with the protocol specified in article III".[78]

(ii) *Basic Framework*

The Central African Economic and Customs Union Model[79]

This segment suggests the adoption at multinational level, with necessary modifications, of the basic framework, utilized by the C.A.E.C.U. in its own attempt to promote and facilitate plan harmonization. The following provisions are instructive:

> Article 47: "The High Contracting Parties agree to harmonize their industrialization policies, development plans and transport policies with a view to promoting the balanced development and diversification of the economies of the member states of the Union, within a framework of which would permit the multiplication of exchanges between the States and an improvement in the living standards of their peoples".
>
> Article 48: "The Member States decided that, as from the date of entry into force of this Treaty, they will communicate to each other documents indicating on their respective economic situations and, for future years, their development plans or programmes and annual reports on the execution of such plans and programmes.
>
> They shall also keep each other informed of their plans for improving and developing communication routes which may be of interest to one or more other States, as well as of their national regulations on transport and movement".
>
> Article 49: "The above mentioned documents shall be addressed by each State to the General Secretariat of the Union.
>
> The General Secretariat shall make a comprehensive study thereof with a view to presenting to the Management Committee and to the Council a review of the economic situation of the Union during the period considered.
>
> Such review shall report any distortions which may have been observed, in particular as regards the harmonization objectives defined in Article 47, and shall make proposals for correcting such distortions.

78. See UN. "Multinational Economic Co-operation in Latin America" Vol. 1. Doc. E/CN. 12/621.
79. Membership: Cameroon; Central African Republic; Republic of Congo (Brazzaville); Gabon Republic; and Republic of Chad.
Text of Treaty found in 1965, Vol. 5 International Legal Materials page 699.

The documents and reviews shall be forwarded to the States by the Secretary-General.

In these tasks he may obtain assistance from experts or study institutes approved by the Committee".

Article 50: "The study of these documents shall be included in the agenda for the ensuing meeting of the Management Council, which shall give an opinion regarding them. That opinion shall be communicated to the Council which shall decide as to any measures to be taken".

It can be observed from the above provision, that the method of plan harmonization adopted is primarily one of avoidance of inconsistency. It is foreseeable that the major 'sanction' that will be utilized, when inconsistencies are detected, is that of persuasion supplemented, where necessary by powers to withdraw benefits of the union from the 'delinquent' state. It is not however clear from the provisions, whether the submission of development plans is to be made prior to public release. This does not appear to be so, and as such is the major defect of the agreement, for once development plans are made public, the chances of national governments making adjustments becomes remote.

(iii) *The R.C.D. Model*[80]

The measurers for economic collaboration suggested in the following paragraphs may be broadly divided into two categories: (a) those which can be worked out and implemented forthwith and (b) those which will require detailed study and scrutiny by the Regional Planning Council.

A Regional Planning Council composed of the Heads of the Planning Organizations is established. It will be assisted by advisers, and could meet in any of the regional countries, preferably by rotation. The Council will study the development plans and production potential of countries of the region with a view *inter alia,* to making recommendations on joint purpose projects and long-term purchase agreements. Joint purpose projects will meet the requirements of the three countries. There are several projects for which none of these countries can provide a sufficient domestic market, yet they can be valuable projects if the total requirements of the three countries are taken into consideration. The Council may also make proposals regarding the harmonization of the national development plans in the wide interest of accelerated regional development. The Council will submit its reports to the Ministerial meetings.

Economic co-operation should provide for effective measures to build up and promote trade, since expansion on inter-regional trade, apart from being highly desirable, in itself tends further to promote regional economic growth and amity.

A Committee on trade is established to study, report and recommend, *inter alia,* on the following measures on which agreement in principle has been reached:

80. Enunciated in Istanbul, July 13, 1964, by the Foreign Ministers of Member States. See, Europa Yearbook 1969, Vol. 1 pages 325-327 and Pakistan Yearbook 1969, page 345.

(a) Free or freer movement of goods among the countries of the region through practicable means such as the conclusion of trade agreements, etc;

(b) transit trade arrangements;

(c) establishment of closer collaboration between existing chambers of commerce and establishment of a joint chamber of commerce;

(d) establishment of halls and showrooms, provision of special customs facilities for exhibition and increased participation in each other's fairs;

(e) dissemination of information on a large scale of the export and import potential of the three countries and investigation of the possibilities of joint publicity and joint marketing policy outside the region for similar exportable products.

A Committee on Banking and Insurance is established for collaboration in these fields. The countries of the region will provide technical assistance to each other in the form of experts and training facilities. Such a programme will, apart from intrinsic utility, promote regional understanding and harmony. The Planning Council will be directly responsible for progress in this matter. The committee carries out feasibility studies in regard to the development of some industries on a joint purpose basis.

The organizational arrangements for planning and promoting economic and cultural co-operation is to be simple and effective. The highest decision making body is a Council of Ministers consisting the Ministers nominated by each of the three countries concerned. It shall consider and decide upon measures for regional economic and cultural co-operation. It will also follow the programme in the implementation of its decisions. The Chairman of the Council shall be the Head of State or Head of Government of the host country. The council will be assisted by a Regional Planning Council composed of the Heads of the three planning organizations. They will deal with work relating to regional co-operation including detailed preparatory negotiations and preperation of recommendations for submission to the Council. The Committee will be assisted by sub-committees which will report to it. If necessary, the committee may engage expert consultants to examine particular subjects for regional co-operation. The host country for the time being will provide secretarial facilities.

Initially, nineteen groups of industries in which there were good prospects for undertaking joint enterprises were identified. The Ministerial Council has since approved, or approved in principle, the following joint purpose enterprises:

Bank note paper;* cotton line pulp; kraft paper; ball bearing; textile machinery manuacture; PAS sodium; reactive dyes; optical bleaches; crawler earth moving equipment; shock absorbers; machine tools; gear boxes; clutch systems; steering systems; differential system; aluminium sheets; polyestor fibre; polacrylonitrate fibres; polybutadiene rubber and methanol;* all to be set up in Pakistan.

* Completed or nearing completion.

Aluminium;* carbon black; urea formalehyde; dumpers; seemless steel pipes; and tubes; sodium tripolyphosphates; napthol dyes; caprolactam; polysisoprene rubber; tetraethyl; all in Iran.

Locomotives; kraft paper pulp; streptomycin; organic pigment dyes; basic and chrome dyes; borax and boric acid; machinery for tea industry;* rubber tyred earth moving equipment; concrete mixers and concrete preparation equipment; tungsten carbide;* pressure vessels; centrifugal and special filters for chemical industries; locomotive diesel engines; izmir oil refinery; polystyrene; glycerine; all in Turkey.

In addition there is agreed, a joint purpose enterprise between Pakistan and Turkey for manufacturing resistors, capacitors, semiconductors, and TV pictures, RF tranformers, speakers, mobil radio equipment. All three countries are involved in the proposal for the manufacture of diesel engines required for use in marine craft tractors, earth moving equipment and light and heavy trucks and buses.

RCD activity in the industrial field, including petroleum and petrochemicals, will lead to harmonization of planning in these fields, and the region as a whole will benefit from the scale of the economy and the size of markets. RCD Shipping Services are operating in a number of intra regional routes. Iran's share entitlement in the Conference is 15%; Pakistan 50 % and Turkey 35%. RCD has already concluded certain agreements on selective plan harmonization in three areas; aluminium, banknote paper and carbon black.

Under the joint scheme proposed for aluminium, Iran would establish on the basis of imported alumina, a plant with a maximum capacity of 20,000 tons per annum of aluminium ingots. The equity of the project is about US$8 million, of which Pakistan would take up 10% while Iran and the foreign partner would take up the balance. Pakistan has contracted to buy for a period for five years, 10,000 tons annually, but she remains free to develop her own aluminium industry to meet her requirements beyond 10,000 tons, even during the five year period.

Iran is expected to set up a carbon black plant, part of the production of which will be sold to Pakistan. Pakistan is expected to hold up to 25% of the equity participation in this project. The production capacity of this plant will be 14,000 tons per annum, and will involve the participation of United Carbon Company of U.S.A. Iran will absorb 4,000 tons anually, while Pakistan will take 5,000 tons annually, and United Carbon Company undertakes to market the balance of production. The equity participation will be 50% to Iran and up to 25% to Pakistan.

Pakistan undertakes a banknote paper project which would supply the requirements in banknote paper of both Iran and Turkey at world competitive prices. Iran would contribute up to 10-15% of the equity of the project while Turkey is expected to take up part of the equity capital.[81]

* Completed or nearing completion.

81. 'Subregional Plan Harmonization-RCD Case Study' Vol. 18 Economic Bulletin for Asia and the Far East, page 22; 1967.

(iv) *Administrative Structure*

The administrative structure conceived by the ECAFE Secretariat,[83] in its submission to the First Working Group on Plan Harmonization, envisages a two tiered system, i.e. an organizational structure at sub-regional level and one at regional level.

At sub-regional level: The major function of the sectoral and functional committees would be to formulate and examine the feasibility of joint projects, policies, and other measures of economic co-operation in their respective fields. They would also recommend to the sub-regional ministerial council, through its Executive Committee, a scheme for locating joint projects, so that they could be equitably distributed among member countries without compromising their working efficiency and in conformity with the political aspirations of the countries. These committees would also formulate schemes of specialization for each of the member countries so as to ensure most effective utilization of the resources of the region.

The sectoral committees, after finalizing a proposal for sub-regional co-operation, would submit it to the sub-regional ministerial council through its executive committee. On receiving the approval of the ministerial council and after ratifications by the Governments and the appropriate sectoral and functional committees to implement it with the help of those Governments.

At regional level: The functions of the Ministerial Conference on Asian Economic Co-operation, established in 1961 can be enlarged to make it the supreme and permanent organ responsible for plan harmonization and securing regional co-operation. The scope of the Conference would be a comprehensive one covering all facets of economic development and inter-governmental co-operation including agriculture, industry, transport, trade and factor movements.

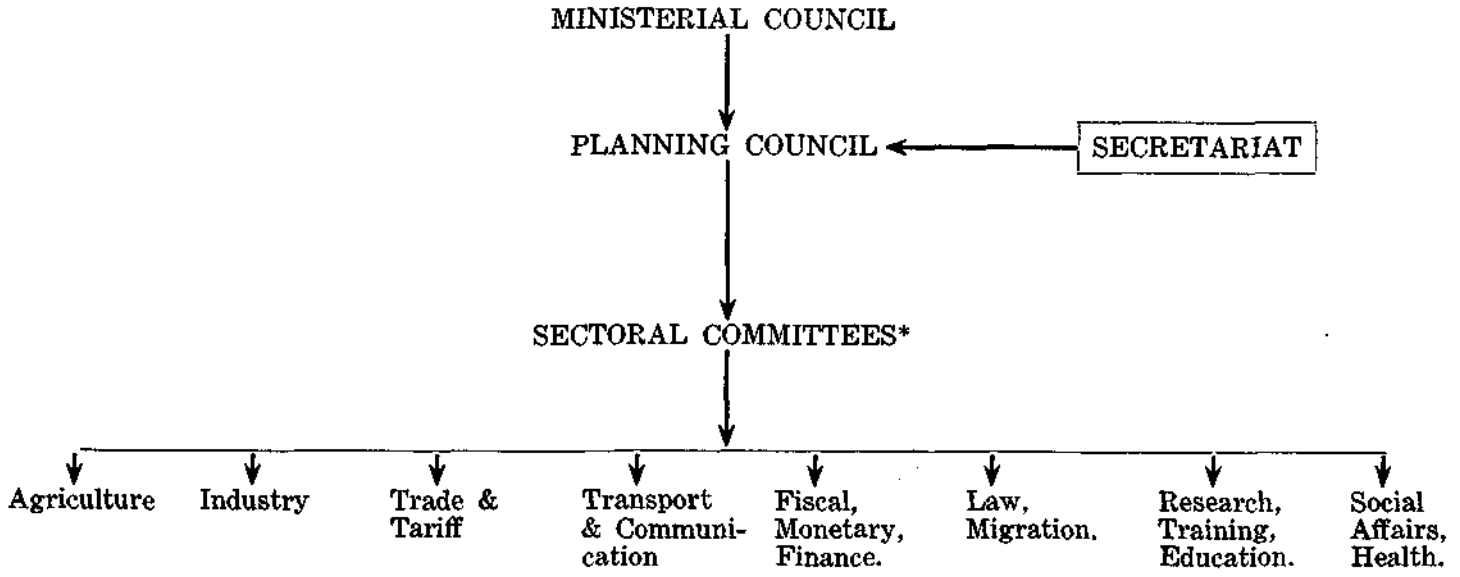
The Ministerial Conference would be helped in carrying out its responsibilities by appropriate sectoral and functional bodies. These sectoral and functional bodies would initiate projects of regional co-operation and submit them to the Ministerial Conference and be ratified by the Governments of the member countries concerned.

A committee on plan harmonization is envisaged whose major function would be to co-ordinate the proposals formulated by the sectoral and functional bodies to ensure their mutual consistency, to develop overall patterns of concrete proposals for co-operation as bases for negotiations by countries among themselves, and to facilitate the integration of these programmes into the national plans.

The committee would provide also the necessary co-ordination between the sub-regional associations, and the regional association. Thus,

83. This segment utilizes solely, the administrative structures recommended by the ECAFE Secretariat "Organizational Form of the Machinery for Plan Harmonization" 1967 Economic Bulletin for Asia and the Far East page 37; and the Report of the First Working Group of Experts, *ibid* at page 11.

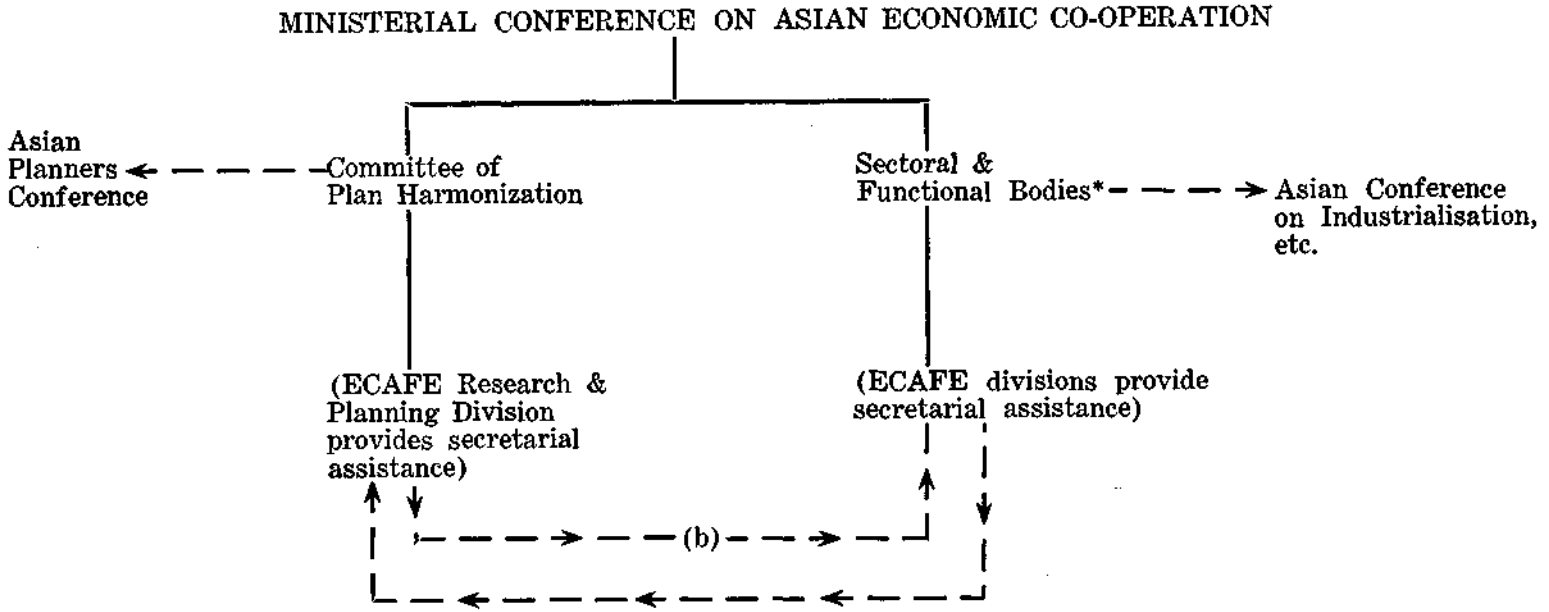
ORGANIZATIONAL STRUCTURE OF A SUB-REGIONAL ASSOCIATION[82A] FOR PLAN HARMONIZATION AND ECONOMIC CO-OPERATION



* The sectoral and functional committees enumerated here are meant to be illustrative only. The ministerial council may decide to have a smaller or larger number of committees depending on the needs.

82A. SOURCE: "Report of the First Working Group of Planning Experts on Regional Harmonization of Development Plans" (E/CN. 11/L. 170) ECAFE Secretariat.

OUTLINE OF AN ORGANIZATIONAL STRUCTURE FOR PLAN HARMONIZATION AT A REGIONAL LEVEL[82B]



* Such as Asian Industrial Development Council, the Asian Highway Co-ordinating Committee, the Mekong Committee etc.

(b) the broken lines indicate the two way reporting links between the Regional Planning Council and the Sectoral and Functional Bodies.

82B. SOURCE: ECAFE Secretariat submission to the "First Working Group of Experts on Regional Harmonization of Development Plans" Vol. 18 Economic Bulletin for Asia and the Far East 1967 page 41.

high level representation of the central planning agencies of the member countries, would be needed to enable the Committee to perform its functions effectively as has been provided for in the case of RCD.

For a start however, there is no immediate necessity for the machinery at sub-regional level. An administrative framework at regional level will suffice, although the services of ECAFE at sub-regional level may prove invaluable to the region as a whole.

(v) *Techniques to Channel Investment into Desired Locations:*[84]

The following are several additional techniques available to control the flow of private investments into desired planned locations.

The national governments may decide that, as regards the sectors or industries which are to be subject to agreed allocations, they would abandon their right to license plants or make national investments decisions as they see fit. For this purpose, they could either refuse to grant licenses to plants that have not been agreed upon by the governments, or provide for the issuing of a common licence, by the regional group, concerning the branches in question.

The governments can make free trade conditional upon the prior agreement on location. In the Central African Customs and Economic Union, each government has to submit to the approval of the other governments projects which interest the whole regional market. If no agreement is reached and if the country concerned sets up the plants nevertheless, the other countries can prohibited the imports of these products or levy compensatory taxes. Under the regime for integrating industries of the Central American Common Market, the products of non-approved projects have to pay the same duties as the products of third countries when imported into another country of the regional group.

The governments can agree upon an obligation to consult in advance before any of them authorized or carried out an investment in particular sectors which would be defined in advance. This allows negotiations and persuasion to ensue. This procedure is adopted by Articles 53-55 of the Treaty establishing the Central African Customs and Economic Union.

The parties can also agree to respect a ceiling, to be fixed, in trade barriers towards the group. They may agree not to authorise or carry out any investment that requires a protection of more than x% towards the other countries of the group. They would, in other terms agree not to erect, towards other countries of the group, trade barriers beyond a certain ceiling. Such a ceiling would impose a degree of discipline upon national planning and new national investment decisions. New investments which from a regional point of view would be clearly anti-economic would thus be discouraged.

84. These techniques were suggested by UNCTD in "Trade Expansion and Economic Integration among developing countries" 1967. TD/B/85. Sect. Report at page 30.

The countries may again, agree that each of them would grant incentives (such as fiscal incentives, state aids, credits or technical assistance), only to projects which have been agreed upon or which are consistent with the criterial established in a regional investment policy. Whether or not such measure is effective will, of course, depend on the relative importance of incentives to industry.

Regional financing agencies, such as the Asian Development Bank could, as an added incentive, make available loans and guarantees on more favourable terms for muti-national or national projects which are consistent with regional investment policy objectives.

These additional techniques, can be used with or without the complex national commitments required in a customs union. However, they are likely to prove more effective, if used as supplements to a concerted effort towards plan harmonization.

V. Sectors Conducive to Plan Harmonization

There is obviously a wide area of products now produced in ASEAN countries, which could be more efficiently be produced for regional markets, as well as industries where capital investments required are too steep for individual countries but not so for a combination of them. There has thus to be a preliminary study, on application by manufacturers, on the feasibility of such industries being planned on a regional basis. Procedures have been suggested whereby an effective machinery to cope with the problems of administration and negotiations could be set up. It is now intended to survey quite briefly two sectors which could become the subject of a plan harmonization scheme, involving joint ventures. They are the iron and steel industry and the pulp and paper industry.[85] The survey will take three directions: availability of raw materials; present stage of development; and possible future for joint ventures. These industries are selected because of the availability of feasibility studies. This does not however exclude other industries from being suitable.

(i) *Iron and Steel Industry*

It has first to be observed that there are five important phases in the development of a project; (i) conception and appraisal; (ii) planning and financing; (iii) organization; (iv) engineering and construction; and (v) operation. The critical factors which have to be taken into account when assesing the feasibility of a particular industry include: (i) markets; (ii) raw materials; (iii) site selection; (iv) plant layout; (v) estimated capital costs; (vi) price analyses; (vii) operating costs; and (viii) profitability.

85. See generally "Report of the Survey Mission of the Development and Expansion of the Iron and Steel Industry in S.E. Asia" A.I.D.C. (3)/5: and ECAFE "Regional Co-operation-Integration of Steel Production in some of the Less Developed Countries of the ECAFE Region" E/CN/I & NR/Sub. 2/C. 38. 17 July 1967: and ECAFE "Industrial Development in Asia and the Far East" Vol. IV, 1966 on Development of Key Industries, page 1.

86. *Ibid.*

The iron and steel industry is a capital intensive industry. The high investment expenditures related to production, the indirect investment not related to it, and the infra structure required in its establishment are principal deterrents in the implementation of the steel development plans in most of the smaller countries in the region. The importance of a large market for the economic justification of the establishment of integrated steel works for large-scale production suggests the desirability of joint ventures between ASEAN countries. Specialization in product-mix and the application of new and proved techniques in iron and steel production would lower the capital expenditures in specialized, small, integrated steel works.

The iron and steel industry depends primarily on the availability of iron and coal supplies. In Southeast Asia, iron ore is to be found in northern Burma, in the districts of Tavoy and Taunggyi where there are haematite and limonite deposits of about 10 million tons with an average iron content of 56%. Here iron deposits with 42.6% content average 59 million tons. In Indonesia complex ores i.e. ores with nickel and chromium content are to be found in Central Celebes, Borneo and Central Java to the sound of 500 million tons. The only presently workable mines are at Lampong (Sumatra) and Pleihari (S.E. Kalimantan) with total production of 4 million tons. In Malaysia high grade iron ore deposits with content of 50-60% are to be found in reserves amounting to 500 million tons, although present production is only 6 million tons annually. In the Philippines, there are mines in Luzon, Samar and Marindique Islands and Mindanao. In Luzon ore reserves amount to 20 million tons. In Mindanao deposits of lateritic ores are found to be about 232 million tons, but are of the complex type. In Thailand the largest deposits are in Changwat Lopburi. At Kanchanaburi the estimated reserves amount to 6 million tons. However, insufficient iron ore supplies in Southeast Asia can easily be supplemented by imports from India and Australia. This is especially important when one notes that the primary supplier of Japan's iron ore requirements has been Australia, the distance between Australia and Southeast Asia being much less.

As for coal deposits, bituminous, non coking coal is found in Kalewa, Burma, which has a low ash and sulphur content but accessability is difficult, only river transportation being available. Production in 1963 reached 8,000 tons. In Indonesia, bituminous and sub-bituminous coals are to be found in S. Sumatra, E. Borneo and Java, but they are of the non-coking variety. Reserves have been estimated, in Java to be about 500 million metric tons. Bukit Assam reserves of lignite have been estimated to be about 2,000 million tons. In Malaysia, coking coal is to be found in Sarawak. In the Philippines, coal is to be found in the Malangas areas of Mindanao; and production in Cebu and Malangas are 200,000 tons annually. Reserves total 10 million tons. Lignite is to be found in Bataan. In Thailand, lignite of low calorific value is available. In S. Thailand dense and black coal deposits with calorific value of 8,000-10,000 BTU/lb. are to be found.

Again, required coal can be imported from Australia, as local availability is insufficient for large scale production.

SUMMARY OF EXISTING CAPACITY AND FUTURE EXPANSION PLANS OF ASEAN COUNTRIES (1967-1975)[87]

YEAR	TYPE OF PRODUCTION	MALAYSIA	SINGAPORE	PHILIPPINES
1967	Iron-making (total)	72,000		
	Steel-making (total)	120,000	120,000	184,000
	Rolling Mill (total)	128,000	153,000	526,000
	Galvanized	48,000	15,000	211,000
	Tin plate	—	—	HD18,000 ET54,000
	Pipes	42,000	90,000	78,000
1968	Steel making Electric	48,000	(Enlarge) 24,000	—
	Overall capacity	168,000	144,000	184,000
	Rolling Mill (total)	60,000	—	370,000
	Overall capacity	188,000	153,000	896,000
	Tin plate	—	—	ET40,000
1969	Steel Making Electric	—	—	—
	Overall capacity	168,000	144,000	184,000
	Rolling Mill (total)	—	—	430,000
	Overall capacity	188,000	153,000	1,326,000
1970-1972		Malayawata No. 2 B.F. 72,000t.	Integrated Mill. B.F. ($400m^3$) 231,000t L.D. (25tX2) cont. casting 255,000t.	Cold Rolling Mill, galvanizing tin plate, cold rolling sheets 102,000t Galvanized 43,000t Tin plate 113,000t.
1973-1975		Possibly Cold Mill.	Possibly another B.F., L.D. Rolling Mills.	—

87. Source: "Report of the Survey Mission on the development and Expansion of the Iron and Steel Industry in S.E.A." *op. cit.* at page 92-94.

YEAR	TYPE OF PRODUCTION	INDONESIA	THAILAND
1967	Iron making (total)	—	20,000
	Steel making (total)	(12,000)	43,500
	Rolling Mill (total)	15,000	37,500
	Galvanized	18,000	150,000
	Tin plate	—	HD24,000
	Pipes	12,000	88,000
1968	Steel making Electric	—	96,000
	Overall capacity	(12,000)	139,500
	Tin Plate	—	—
1969	Steel making Electric	—	190,000
	Overall capacity	(12,000)	329,500
	Rolling Mill (total)	—	150,000
	Overall capacity	20,000	322,500
1970-1972		Tjilegon Project Rolling Mill 100,000t Wire Drawing 10,000t.	Siam Iron & Steel Making 120,000t L.D.
1973-1975		—	—

The preceding estimated production figures reveal that only Thailand is at present and possibly in the future capable of production at economic levels. The study of Indonesia, reveals gross under production in spite of some available resources. The desirability of joint ventures is enhanced when one notes that the combined production of the rest of the ASEAN countries is sufficient for efficient production for a regional market.

A case study has been suggested involving Malaysia, the Philippines Singapore and Thailand.[88] The total population of these countries will be 88 million in 1970 and estimated to be about 140 million in 1985. The estimated production target for the area, on the basis of these figures is 9 million tons in 1985. The possibility exists for these countries to agree on the provision of shipping facilities for the exchange of raw materials and finished steel products.

Philippines and Singapore have the advantage of good harbour facilities. Philippines might specialize in the production of cold rolled sheets, skelp coils and plates for shipbuilding and other industrial uses. Minimum economic tonnage for each of these products is about 100,000 tons on a total tonnage from 300,000 to 500,000 tons of large flat products. Philippines has fairly good reserves of iron ore and potential deposits of coking coal as well as a large market which would be able to absorb some of this large scale production. Surplus could be supplied to neighbouring areas. The Singapore market is limited. Singapore has neither iron ore nor coking coal, but has excellent port facilities. It would therefore be logical for Singapore to produce all the group's

88. ECAFE "Regional Co-operation-Integration of Steel Production in some of the Less Developed Countries of the ECAFE Region" E/CN. 11/I & NR/Sub. 2/C. 38. 17 July 1967.

requirements of bars, small shapes and wire products and certain items of small flat products. Malaysia has resources of tin and iron ore, and it would therefore be logical to produce pig iron and tin in Malaysia for the requirements of the industrial plants in Thailand, the Philippines and Singapore, to supplement their own indigenous production. Thailand has a potentially large market for flat products. Fairly large deposits of iron ores have recently been discovered in the north eastern part of the country. Coking coal could be imported if and when necessary to this area from Australia.

The possible plants may be summarized as follows:

Production target in 1985, 9 million tons for population of about 140 million. 4 integrated plants:

1. 3.5 million tons- flat products including hot rolled sheets and tin plates, in Thailand;

2. 3.5 million tons- specializing in plates and cold rolled sheets, skelp and coils, in the Philippines;

3. 1.5 million tons- specializing in iron production, alloy steels, cast iron pipes and semis for plant 4, in Malaysia and,

4. 0.5 million tons- specializing in small shapes, bars and wire products, in Singapore.

(ii) *Pulp and Paper:*[89]

Paper is the end product of two kinds of pulp, long fibred pulps (3 mm or more) and short fibred plups (Less than 3 mm.) The source of long fibred pulps are from coniferous trees such as fir, spruce, pine, hemlock, cedar and agathis. Few pine species are found in Thailand, Philippines and Indonesia, while experimental pine plantations have commenced in Malaysia, Thailand, Philippines and Indonesia. Short fibred pulps are generally made from broad-leaved decidous species such as birch, beech, popular, oak, and maple, all to be found in temperate zones. In southeast Asia, the main sources of short fibred pulps are rubber wood and mangrove trees.

NUMBER AND CAPACITY OF EXISTING PULP AND PAPER MILLS IN ASEAN[90]

	Number of Mills	Total capacity (ton/year)	Grades of paper	Remarks
Thailand	3	20,000	Writing & printing	—
Malaysia	2	3,500	Wrapping, toilet	—
Singapore	—	—	—	—
Indonesia	4	11,000	Writing & printing Wrapping	—
Philippines	16	125,000	Writing & printing kraft, tissue, toilet cigarette, paperboard.	10 mills produce paper based on imported pulp.

89. "Report of the Sruvey Mission on the Pulp, Paper and Rayon Industry in S.E. Asia" AIDC(3)/2.

90. *Ibid.* at page 67.

NUMBER AND CAPACITY OP PULP AND PAPER MILLS UNDER CONSTRUCTION AND PLANNED IN ASEAN[91]

	Number of Mills	Total capacity (ton/year)	Grades of paper	Remarks
Thailand	1	55,000	Industrial papers	Siam Kraft
Malaysia	—	—	——	——
Singapore	1	15,000	Toilet & printing grades	Eupoc
Indonesia	6	65,000	B.K.P. writing & printing, newsprint.	——
Philippines	3	230,000	Writing & printing kraft paper, newsprint.	Bislig, Rustan and Araneta.

The future of the pulp and paper industry which would render it most amenable to plan harmonization is at once apparent when one considers the following statistics of the unfilled demands for paper in ASEAN.

UNFILLED DEMANDS FOR DIFFERENT GRADES OF PAPER IN THE REGION IN 1970-71[92]

	Year	Newsprint Prod.	Demand.	Writing & Printing Paper Prod.	Demand.	Board etc. Prod.	Demand.
Thailand	1970	0	45	15	48	60	73
Malaysia	1970	0	17	0	21	3.5	49
Singapore	1970	0	15.5	10	23.4	5	52.4
Indonesia	1970	5	38	42.6	50	0	48.5
Philippines	1971	30.5	76	67.5	75	200	146
		35.5	191.5	135.1	271.4	268.5	368.9
Shortage		156		82.3		100.4	

In both the iron and steel industry and the pulp and paper industry, a rational and dispassionate appraisal of the relevant statistics compel the conclusion that plan harmonization on a regional basis, is the only logical solution to the problems inherent in the absence of economies of scale.

VI. CONCLUSIONS

Several industrial activities suggest themselves as suitable for plan harmonization commitments. In Singapore the emphasis is on heavy and engineering industries, electronic components, chemicals and petroleum refining. In Thailand, there exists a comparative advantage in many light industries and assembly-line activities, including automobiles and electronics. Indonesia desires the import substitution industries of assembly, and processing of the primary products that its produces i.e. rubber, timber, copra etc., in its bid to economize on foreign exchange and to bypass Singapore. Malaysia, again, exhibits the same tendencies and is engaged in keen but myopic closed markets policies

91. *Ibid.* at page 67.
92. *Ibid.* at page 68.

particularly aimed at Singapore. The Philippines exhibits a comparative advantage for paper and pulp production, iron and steel, processing of goods and abaca.

To prevent excessive duplication of efforts and a concerted effort towards industrial development, plan harmonization appears inevitable. What is necessary

> "is the confrontation of plans on a collective regional basis, whereby countries could be assured that in concentrating on particular projects, while avoiding others, they would each receive compensating advantages in the form of access to a wider market and the assurance that other countries will not encourage the establishment of similar production facilities."[93]

The model of the RCD proves most amenable to ASEAN conditions, as the very minimum of administrative machinery and commitments are required. Further RCD does not prevent the production of the regional industries been undertaken by other countries, so long as it is over and above that capable of being produced by the regionally set up industries.

A standard form procedure for regional cooperation thus includes the delineation and implementation of the following measures concurrently :

A regional development programme indicating the sector's development prospects, demand projections, the availability of resources in the region, the countries which might find difficulty in competing, and a diagnosis of these situations.

A programme for the reduction of customs duties in the sector, embracing the rate of, and procedures for, the reduction of internal tariffs cover, and above the general reduction and the standardization of external tariffs, as well as the exemptions, special regimes, safeguard clauses and sub-regional provisions, as consistent with the peculiar characteristics of the sector and the regional aims.

An investment and technical assistance programme intended both to strengthen the weak competitive position of some countries and to permit a faster growth of the industry concerned within a regional framework, in line with the targets of the development programme.

A set of provisions co-ordinating the fiscal, social security foreign capital and other systems in terms of the requisite expediency and procedures for reducing customs duties which the member countries have approved for the sector, as compatible with the particular characteristics of the production activities concerned.[94]

This systematic approach requires both plan harmonization and trade liberalization, at least in the sectors concerned, for its effective operation. This approach is most feasible for ASEAN as it attempts to compromise at the hesitance to surrender national sovereignty and the desire for economic development.

93. Report of the Group of Experts "Measures for Economic Co-operation in the ECAFE Region".

94. See generally UNCTAD "Trade Expansion and Economic Co-operation among Developing Countries" TD/B/68.

JOINT VENTURES

I. Legal Techniques Available:
   (i) Co-ordination of Corporate Laws;
   (ii) Equity Participation;
   (iii) Regional Financing;
   (iv) Regional Markets;
   (v) Governmental Guarantees of Sources of Supply;
   (vi) Licensing Agreements;
   (vii) Fiscal and Monetary Incentives;
   (viii) Research Facilities;
   (ix) Regional Arbitration Centre;
   (x) Regional Patents Administration.

II. Techniques to Facilitate the International Corporation and the Regional Holding Company.

III. Conclusions.

A distinction has to be drawn between the legal techniques available to promote joint ventures and those available to facilitate them. In terms of the former, several devices are available and can be made available on a regional basis. As regards facilitating joint ventures, this involves legal and administrative problems as each country has a unique set of them, differing as the legal systems are different. For the purposes of this paper however, it is not intended to delve into the intricacies of legal systems but rather the legal forms suggested will be in consonance with the common law and the Companies legislation of Malaysia[95] and Singapore.[96]

A rather self evident definition of joint international business venture is postulated as:[97]

> "Joint international business ventures envisage the bringing together by persons, corporations or governments from two or more countries, of the various factors that are required for successful business operation. The joint international business venture is joint in that different interests are joining forces, it is international in that these interests are located in one country and some in other countries; it is a business venture in that the purpose of joining forces in the enterprise is to provide a product or service at a price with a view to making a profit."

The joint ventures envisaged in this paper will involve a similar structuring as that conceived and implemented by the Regional Cooperation for Development.[98] This will essentially involve the pre-selection of an industrial activity conducive to both plan harmonization and joint venturing. Governmental and/or national (public) equity participation

95. Malaysian Companies Act, No. 79 of 1965.
96. Singapore Companies Act, No. 42 of 1967.
97. Roy Blough in 'Joint International Business Ventures in Less Developed Countries' in Vol. 2 of "Proceedings of the 1959 Institute on Private Investments Abroad" Matthew Bender & Co. Inc. Publishers, page 513/4.
98. See infra at page 107 on the RCD Model.

is advisable in almost all cases. The industries to be set up will be on the basis of reciprocity, following closely the format of the Regime for Central American Integration Industries (Teguligalpa, 10 June 1958), the Transitional Article of the Agreement of which reads:

> "In order to promote an equitable distribution of the Central American industrial integration plants, the Contracting States shall not award a second plant to any one country until all five Central American countries have each been assigned a plant in conformity with the protocols specified in Article III." 99

Within each joint venture itself, it will probably be necessary to take on a foreign partner, particularly for the purposes of obtaining managerial and technical skills. It will be observed that the setting up of a carbon black plant in Iran, involved the equity and marketing participation of United Carbon Co. of the US, in addition to the equity participation from other members of RCD.

Before the materialization of joint ventures however, feasibility studies and lengthy negotiations on the location of industries have to be carried out. Such co-operative ventures are expressly provided for in the ASEAN Declaration[100] in Article 2 (1) and the administrative set up of permanent committees of specialists (to form the co-ordinating body) is also facilitated by Article 3(c).

The added impetus to ASEAN joint ventures, is to be derived also from the trade liberalization measures of LAFTA.[1] Empirical evidence from LAFTA suggests the conclusion that mere trade liberalization is insufficient to promote regional economic development. The international joint venture by its inherent nature projects towards the establishing of production and distribution on as wide a basis as possible, thus the effective utilization of trade liberalization conditions.

Further, the new developments in regional political consciousness has and will cause changes in the traditional directions of intra regional trade. Indonesia's Minister for Trade, Dr. Sumitro traced the scope of future developments thus:[2]

> "Singapore's role as an entreport trading centre may not be the same as before. We plan to have more processing activities and secondary industries.
>
> These will include assembly of automobile vehicles and consumer durables and part manufacture (of products).
>
> In some of these fields there is scope for Indonesia and Singapore to have some joint ventures. You have the capital and skills. We have part of the skills. We could exchange technological experience."

99. See text in UN: "Multinational Economic Cooperation in Latin America" Vol. 1. Doc. E/CN. 12/621.

100. Art. 2(1) *op. cit.* at page 61 footnote 3.
Art. 3(c) "Third that, to carry out these aims and purposes, the following machinery shall be established:
(c) Ad. Hoc. committees and permanent committees of specialists and officials on specific subjects".

1. For LAFTA, see *supra* at page 81 for an evaluation of its success.

2. Dr. Sumitro in a speech reported in Straits Times Nov. 10, 1969 at page 6.

As with the other co-operative measures to be examined in this paper, it is emphasised that a combination of several of the suggested measures is possible and necessary. Thus the joint venture method is suggested as an adjunct with both plan harmonization and trade liberalization, at least insofar as the products of these regional joint ventures are concerned.

The first seven legal techniques suggested here are intimately involved in the promotion and facilitation of joint ventures which are to be set up on the sectoral basis of trade liberalization and/or plan harmonisation. They are: co-ordination of corporate laws; equity participation; regional financing; regional markets; governmental guarantees of the sources of supply; licensing agreements; and fiscal and monetary incentives.

Research facilities; regional arbitration; and regional patents administration are techniques which are less immediately involved in promotion regional joint ventures but their importance cannot be overemphasised. In addition they improve the investment climate of ASEAN countries.

Before proceeding to consider the various legal techniques available it is perhaps expedient to consider the experience of the Caribbean countries in the field of vertical integration of industries. Caribbean production of bauxite, alumina, aluminium and petroleum is dominated by such vertically integrated international companies. The range of operations of the companies extend from exploration, extraction, refining, processing, transport, and distribution to wholesale and retail sales. Sometimes all stages of production are controlled by the same company.

I. LEGAL TECHNIQUES AVAILABLE

The first part of this segment will focus upon those techniques available to promote joint ventures. The basic model of a joint venture for the purposes of this Part at least, will be that of the iron and steel industry.[3] Since the equity or other participation in the model joint venture will include non-ASEAN corporate participation, the promotional technique examined will include those designed to attract both non-ASEAN as well as ASEAN participation, whether corporate, private or governmental.

(i) *Co-ordination of Corporate Laws*

The present stalemate experienced by the EEC lies particularly in the realm of the failure to utilize new corporate structures to exploit the free market conditions. While European entrepreneurs wait for legal reforms at regional level, their American counterparts have adapted their investments in Europe to changing conditions, thus successfully placating the former. The French government's memorandum on the institution of a European Commercial Company, submitted in March 1965 and the EEC Commission recommended Convention[4] is indicative of two valuable insights. Firstly, the thoughts on legal codes provide a convenient springboard to regional reformation of corporate laws.

3. See charts *supra* at pages 116-117 for a survey for the existing and planned production in ASEAN of iron and steel production.
4. Reaffirmed in a memorandum dated May 3, 1966.

Secondly the diverging national and regional approaches to the same problem thus revealed, is the primary cause of the EEC's state of intransigence.

The French government's proposals envisage a uniform proposed law which each member state would incorporate within its national legal system. The European Commercial Company would have a uniform name in the community, this being protected by national laws. The minimum member of shareholders, capital, methods of raising capital and investment incentives are to be provided by such law. The laws of the member states should accord recognition to a managing body and the shareholder's meeting and shareholders are to be kept informed.

The Commission prefers the avenue, provided by section 220 of the Rome Treaty, which provides for the negotiation of conventions between member states. Pursuant thereto the commission envisages a convention along the following lines:[5]

"1. The European-type company would be similar to the French 'Societe Anonyme'.

2. All types of corporations now in existence would have access to this new form.

3. The Convention would define the conditions to be fulfilled by any firm in order to become a European corporation.

4. The Convention would stipulate the conditions to be fulfilled by national legislations to permit the national 'Societe Anonymes' to become European companies.

5. The Convention would define rules applicable to mergers and determine the powers of the directors of international groups."

(ii) *Equity Participation*

As it is envisaged that the countries themselves will take up equity participation, together with foreign partners, the question of transfer rights, share transferability over national frontiers, and protection against expropriation become of vital importance. The treatment of such companies as regional companies would greatly simplify share transferability. The co-ordination of corporate laws could facilitate easy transferability over national frontiers. Thus if the venture involves companies at different stages of production located in different countries, provision could be made for the registration and quotation on the respective Stock Exchanges, in all countries involved. Alternatively the administrative red tape involved in such transfers could be waived or expressly exempted in the case of the regional industries.

In the absence of the co-ordination and harmonization of corporate laws, de facto arrangements by the joint venturing partners could take place on the conventional basis. Thus the basic agreement would have

5. *Ibid.* Cited by Patrick Juillard in "Recent Developments in the EEC" in the Symposium: Private Investors Abroad: Problems and Solutions at pages 247-248. (1967) Matthew Bender. N.Y.

incorporated in it such vital matters as the law applicable, voting arrangements permissible, restrictions on share transferability, arbitration etc.

Not every joint venture is capable of operating satisfactorily, at least insofar as the partners are concerned. Share transferability outside the first two major ASEAN partners, may have to be restricted, if regional incentives are to continue. Two legal techniques suggest themselves as appropriate. The restrictions can be made to operate either to the advantage of a national (corporate or otherwise) of the withdrawing partner state or to the benefit of the partner state which remains. In either case the technique of the right of pre-emption and the buy-sell provision would operate to the benefit of such state.[5a] The right of pre-emption merely allows the remaining partner right of first refusal to purchase the withdrawing partners interest. This method is somewhat unsatisfactory because lack of finance may force unwelcome partners and time may be wasted.

> The buy-sell provision is more appropriate as "it can be invoked by either participant and guarantee that one must sell to the other or its designee. Under this scheme, in the event of the inability of the participants to agree on the continuation of their joint ownership, either could state to the other a price at which it would be willing to sell its own interest or to buy or find a purchaser for that of the other. The other party would then be required either to buy or find a purchaser for the additional interest, or to sell its own, at that price."[5b]

The advantages of this solution are that it breaks any possible deadlock and allows the fixing of a fair price. As this measure is quite drastic, it is possible to provide that the technique is only to apply after an initial lapse of a period of years. This ensures a period of grace within which the venture could flourish, thus making a severance less desirable.

Indonesian and Filipino law provide for expropriation on the grounds of public interest. In view of the widespread expropriation that occured in Indonesia during the years of Sukarno, the mere declaration that such protection exists is inadequate. A partial though not totally satisfactory solution is the joint venture corporate structure. This form although making it less likely that the company will have its property expropriated, does not totally exclude the possibility that the foreign element only may be expropriated. However, if all the ASEAN countries have equity holdings in other ASEAN countries, the chances of retaliation will prove an effective deterrent.

The repatriation of profits again proves inadequate if merely declared to be allowed. The mere declaration of the ability to do so while wide administrative powers remain in the hands of government officials is less satisfactory. It is preferable that guarantees of a certain percentage at any one time be guaranteed. Again the reciprocal equity participation acts as a deterrent as retaliation is always possible.

(iii) *Regional Financing*

It is not intended here to delve into the problem of the creation of another regional financial agency, although such agency would un-

5a. Described by Carly E. Maw's "Joint Ventures Abroad — Forms and Methods" in International Commercial Contracts (1965) Matthew Bender & Co. Inc., N.Y.
5b. *Ibid.*

doubtedly promote and facilitate joint ventures as well as trade liberalization. The existing facilities of the Asian Development Bank or that of a new financing regional agency, (if necessary) can gear its financing policies to joint ventures on similar bases as that adopted by LAFTA.[6] The financing should be made available for new or expanded plants capable of producing for regional markets. The funds should be devoted to complementary operations involving firms in different countries of the integrated regions. Care should be taken to avoid the creation of excess production capacity within the regional market. Finally, balanced development should be achieved. Disparities in the rates of growth of member countries should be discouraged, as should increased trade imbalances arising from the trade liberalization programme. The declared intention to allocate finance, preferentially to regional ventures on favourable terms would prove an effective promotional device. It is not intended, however that particularly the Development Bank, be precluded from giving same or even better terms to infrastructural development. What is proposed is that within the sphere of industrial financing, preferential treatment be accorded to the regional ventures.

(iv) *Provision for regional markets:*

A United Nations study[7] indicates the economies of scale necessary for the iron and steel industry, which is a particularly capital intensive industry. The table prepared there, indicates that a plant with a capacity of a half million tons will involve a unit cost of 18% greater than one with one million tons capacity; whereas a plant with a quarter of a million tons capacity involves unit costs 33% higher than one with a million tons capacity.

On the basis of available resources, infrastructure development and potential demand, ECAFE has in a case study involving Thailand, Malaysia, Philippines and Singapore[8] concluded that for a production target of 9 million tons for a population of 140 million in 1985 the following four integrated plants prove feasible:

1. A 3.5 million tons plant producing flat products including hot rolled sheets, and tin plates, to be sited in Thailand;

2. A 3.5 million tons plant specializing in plates and cold rolled sheets, skelp and coils, to be sited in the Philippines.

3. A 1.5 million ton plant specializing in iron production, alloy steels, cast iron pipes and semis for plant 4, to be sited in Malaysia.

4. A 0.5 million tons plant specializing in small shapes, bars and wire products, to be sited in Singapore.

6. In UN. "Multilateral Economic Co-operation in Latin America, I: Texts and Documents (N.Y.) 1962 Vo. 1 page 57-66.

7. UN. "A Study of Iron and Steel Industries in Latin America" N.Y. (1954) p. 112.

8. ECAFE "Regional Co-operation: Integration of Steel Production in some of the Less Developed Countries of the ECAFE Region" E/CN. 11/I & NR/Sub. 2/C. 38. 17 July, 1967.

It is interesting to note, in passing, that Singapore has planned expansion schemes which are ambivalent enough to prove most conducive to regional co-operation or committently, highly competitive for the regional market. National Iron and Steel Mills plan a:

> "new complex in Jurong which will produce medium sections, billets and steel plates, none of which are produced by way of export surplus elsewhere in Southeast Asia. Initially one third of the output or about 100,000 tons will be exported, but the proportion will then decline as home demand rises probably by 5% a year after 1972." [9]

By way of a caveat, the same article notes that a joint scheme involving Thai and Singapore business men has not materialized because of the reluctance to make such high costs commitments, the continued existence of which relies precariously on good diplomatic relations between the two countries. The thesis of this paper is thus corroborated for it is a prerequisite to any regional cooperative measures that the governments concerned, make firm irrevocable commitments to regionalism, rather than vague, illusionary declarations of intentions to cooperate.

Thus, if the four plants concerned are given governmental guarantees by way of a protocol to the ASEAN Declaration or even a multilateral or bilateral international agreement to the effect that at least in the iron and steel industry, each country will produce only the above quantities of the specified products, and will not produce any others, for the regional markets; and that no tariff, quantitative restrictions or other barriers to regional trade in these products will be levied; this technique will suffice both to promote as well as facilitate regional production oriented industries.

(v) *Governmental Guarantee of Sources of Supply*

In addition to the international treaties or protocols guaranteeing free access to the markets, the utilization of local raw materials is promoted and certainty of supplies assured by the concurrent agreement by governments to desist from any tariff, quantitative restrictions or other measures which would divert or prevent the export of raw materials required by the regional joint ventures. Thus in the iron and steel industry, Malaysia, Indonesia and the Philippines could guarantee sources of supply to all ASEAN iron and coal available locally. While with iron and steel the guarantee of local sources of supply may not rate high on the list of priorities, primarily because Southeast Asian sources are insufficient and alternative sources are easily available from India and Australia,[9a] it may nevertheless prove vital to such joint ventures as the pulp and paper industry.[9b]

9. Dick Wilson, Business Times, page 1; section of Straits Times, Monday 24 November, 1969.

9a. See *supra* page 116 on an evaluation of available resources of iron and coal in ASEAN countries.

9b. See *supra* page 118 on an evaluation of available resources of pulp and paper ASEAN countries.

(vi) *Licensing Agreements:*

The national governments may agree that, as regards the sectors or industries which are to be subject to agreed locations, they would abandon their right to license plants or make national investments decisions as they see fit. For this purpose, they would either refuse to grant licenses to plants that have not been agreed upon by the governments or provide for the issuance of a common licence, by the regional group concerning the particular industries in question.

The latter approach has been adopted by the East African Community,[10] albeit to be fully implemented only after a transitional period of twenty years. A reading of Article 23 of the Treaty proves instructive:

"1. Subject to this Article, the Partner States agree to continue the industrial licensing system formulated in the three East African Industrial Licensing laws now in operation in the Partner States, whereby the manufacture of certain articles, scheduled under the said laws is regulated and the East African Industrial Council is empowered to grant industrial licenses in respect of the manufacture of such articles.

2. It is agreed that the industrial licensing system shall continue until the expiration of twenty years from the commencement of the said East African Industrial Licensing laws.

3. It is agreed that no additions shall be made to the schedules of articles, the manufacture of which is subject to industrial licensing under the said East African Industrial Licensing laws.

4. Subject to paragraph 5 of this Article, the Partner States agree to support the early replacement of the said East African Licensing laws by one law to be introduced into the East African Legislative Assembly for enactment as an Act of the Community.

5. It shall be agreed that the law proposed in paragraph 4 of this Article shall generally be in similar terms to the said East African Industrial Licensing Laws, except that an appeal shall lie to the Industrial Licensing Appeal Tribunal on a matter of law only."

In 1953, all three members of the East African Community, adopted the Ordinance granting the Council broad powers of regulation over production of specific commodities scheduled by the territorial governors on Council recommendation and with the consent of local legislative bodies.

Provision is made for thorough investigation by the Council of each application; publication requirements and hearing procedures afford some protection to interested parties to raise objection. Section 3 lays down the guidelines to be considered before the granting or denial of licences:

> " a) the capital, technical skill, and the raw materials available to the applicant;

10. Members are Kenya, Tanzania and Uganda. Text in 1967 Vol. 6 International Legal Materials pages 932 to 1057.

b) the siting, or proposed siting, of any factory in relation to the availability of power, fuel, labour, transport, raw materialism land and water;

c) the potential production of, and the potential demand for, both within and without the E.A. Territories, the schedule articles in respect of which the application is made insofar as, in the opinion of the Council, such production and demand is likely to affect the undertaking in respect of which the application is made;

d) the interests and conditions of service of the labour employed or to be employed by the applicant;

e) the interests of the potential consumers of the scheduled articles in respect of which the application is being made;

f) the general promotion and development of industries and the avoidance of uneconomic competition." [11]

The acute problem of localization of industry can be remedied by setting a quota of industries to be satisfied in each member country before licenses will be granted for further industries in the same country. The industries existing when the agreement is to come into operation have likewise to be adjusted, to avoid excessive agglomeration.

For ASEAN, a permanent specialist committee can be endowed with similar powers exclusively, towards the licensing of industrial enterprises, in particular industries.

(vii) *Fiscal and Monetary Incentives* [12]

Incentives available are duplicatory and in many case can and are granted to myopic import substitution orientated industries. While the degree of competitiveness is undoubtedly high, the ultimate location of industry will depend on the availability of other facilities.[13]

The countries may thus agree, even on the basis of existing industrial incentives legislation, that each would grant such incentives only to the projects which have been agreed upon or which are consistent with the criteria established in a regional investment policy. The effectiveness of this measure depends upon the relative importance of incentives as regards the location of industries in Southeast Asia.

This approach has been adopted by the Central American Common Market.[14] Under this uniform regime, incentives are to be extended only to manufacturing industries, which contribute effectively to the economic development of the area. After the agreement takes effect, the signatories will grant no incentives to activities which do not come within this general definiton, except for acertain extractive, fishing livestock, low-cost housing and service activities, as to which each country

11. East African Community, text, *op. cit.*
12. See *supra* page 98 on Harmonization of Incentives to Industry.
13. See *supra* page 113 on Techniques to Channel Investments into Desired Locations.
14. See Articles 24 of the Agreement on Fiscal Incentives to Industrial Development, 31 July 1962, San Jose.

retains control by its own policies. As for activities covered by the agreement, the countries will grant incentives only in accordance with Article 3 of the agreement.

Article 8 of the Agreement postulates three forms of benefits: (i) the exemption or reduction of customs duties on imports or machinery, equipment, raw materials, components, containers and certain fuels: (ii) exemption from income taxes on the enterprise and its members (although this exemption is unavailable when the enterprise or its members are subject to tax in another country, which makes this exemption ineffective when tax exemption in one country only increases the tax liability in another); and (iii) exemption from taxes on capital.

On the successful application by a particular enterprise, the actual designation will be made by a separate protocol signed by the governments. Article 3 stipulates that it shall set out the conditions on which the designation is granted and these may include: (a) the country or countries in which the plants are to be located; (b) the minimum capacity of the plants; (c) the conditions under which additional plants in the same industry may be designated; (d) the quality standards for the products, price levels and any other requirements deemed necessary for the protection of consumers; (e) regulations regarding the participation of Central American capital; (f) the common external tariff to be applied by all the countries on imports of similar products from outside the area; and (g) any other provisions which would foster the attainment of the Agreement's objectives.

The parties can, in addition, conduct bilateral double taxation agreements which would prevent the dividends and returns on capital investments from being taxed twice, once at source and again in the hands of the ultimate shareholder. The efficacy of such double taxation agreements as a promotional device for joint ventures is evidenced by the widespread spate of double taxation agreements between ASEAN, particularly Singapore and the capital exporting nations of W. Europe, Japan, Australia and the US.

(viii) *Research Facilities:*

Particularly in the capital intensive industries, research plays a vital role in the development and marketing processes. The iron and steel industry is no exception to this rule. ECAFE has decided to set up a Southeast Asian Steel Institute in Singapore.[15] The members of the Institute are Taiwan, Indonesia, Malaysia, Thailand and Singapore. Australia and Japan are supporting members of the group, giving financial and technical assistance. The main functions of the Institute are to:

Provide a forum to exchange knowledge and discuss problems relating to the development of the iron and steel industries in member nations.

Provide advisory services and carry out commissions or promote the study of scientific, technological and economic aspects of the industry.

15. Reported in Straits Times, Tuesday, November 18, 1969, page 7.

Encourage the establishment and extension of training programmes for personnel employed in the industry.

Promote standardization of products and their utilization within member nations.

Collect, collate and publish statistics of iron and steel production, consumption and trade.

Disseminate the results of its activities by publications and other means to regional, national and international organizations and agencies and the public.

While this is a step in the right direction, the question of the effectiveness of such a centre remains to be answered. It will at best prove interstitial, for the real innovations which are invaluable to industry, will be made by private enterprise and most likely will be patented.

Economic development increasingly depends upon the development of technology. Inasmuch as the 'takeoff' period following the first industrial revolution depended on increased mechanization, so also the 'takeoff' period for SE Asia today, depends on a self-generating economic development which in turn is not possible without technological innovation.

SE Asian countries will first have to select specified industries which have a high growth potential (as was done in Japan), and pool their efforts and resources into these selected areas. The costs of research and technological development are enormous and thereby beyond the means of any single country in the region or of a single or several corporations. Joint ventures in 'regional industries' and co-ordinated government financial assistance in research provide the only answer.

The importance of research for economic development is dramatically portrayed in the crisis of European integration. The EEC has been advantageously utilized not by Europeans but by US investment in the EEC. US organizational flexibility, research and corporate methods have been isolated as the cause for the phenomenal growth in size and power of US investment in Europe, so much so that it may possibly constitute the third largest industrial power in the world, behind the US and the USSR.

(ix) *Regional Arbitration:*

In the commercial world of the west, increasing numbers of commercial disputes are being settled extra judicially by means of arbitration. The reasons for the preference of arbitral settlement over that of judicial proceedings include: judicial proceedings are unnecessarily protracted by the existence of exclusionary rules of evidence; the hesitance of judges to take immediate judicial notice of commercial customs; the wide publicity of judicial proceedings; judges frequently do not comprehend commercial customs as well as expert arbitrators; great expenses involved in judicial trials; and the law applicable to judicial proceedings varies with jurisdictions, whereas arbitration takes into account the commercial customs of the parties.

Three ASEAN countries are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.[16] They are Indonesia, Malaysia and Singapore.

The key provision to the Convention is article 25(1) which reads:

> "The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent, subdivision or agency of the Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally."

An interesting and highly important feature of this Convention is that although the consent must be in writing, it need not be given at any particular time prior to the lodgement of requests for conciliation and arbitration. Written consent could be given beforehand as to future categories of investment disputes with the nationals of stipulated countries or in a special agreement between the State party and the private investor, entered into before the investment, subject to the dispute, was made.

Nor is a single instrument of consent the sole means of manifesting it. Thus a host State might in its investment promotion legislation offer to submit disputes arising out of certain classes of investments to the jurisdiction of the Centre, and the investor might give his consent by accepting the offer in writing.[17]

For two reasons primarily, it is desirable that there be a regional arbitration centre in ASEAN or SE Asia, in addition to the above arbitration machinery. For one thing, two members of ASEAN are not members and thus the Convention cannot be invoked by the other States or nationals of the other States and neither can it be invoked by the non-member States or their nationals. It is possible, of course, that the Philippines and Thailand might be persuaded to sign the Convention, thus nonsuiting this reason. Secondly, the time and expense involved in making resort to the International Centre may be inordinate from the point of view of local investors. The existence of a regional arbitration centre could thus provide cheaper and speedier handling of arbitration disputes. For international trade with non-ASEAN countries the ICC may suffice, but for the intra-ASEAN disputes the ease of reference and economy involved in reference to an ASEAN based centre will far outweigh any possible wastage caused by duplication of the international centre at regional level.

There exists today a one-way traffic of arbitration towards the West, where arbitration is well established and qualified arbitration institutions exist. The setting up of the ECAFE arbitration machinery, has in the least rebutted the excuse that there are no competent arbitration facilities in SE Asia, It is yet too early to make any concrete assessments of the efficacy of the arbitration/settlement machinery that exists, and we shall have to settle with a brief observation of the ECAFE Rules.

16. International Centre for Settlement of Investment Disputes ICSID/2.
17. International Centre for Settlement of Investment Disputes ICSID/2.

In January 1966, an ECAFE Conference on International Commercial Arbitration was convened at Bangkok. The recommendations of the Conference concerned such matters as the preparation of ECAFE rules and maintenance of the ECAFE Centre, of lists of arbitrators and of appointing authorities; the development of educational and informational methods for use in the promotion of arbitration in the ECAFE region; the provision of technical assistance to the Centre; model arbitration clauses; and the conciliation of international trade disputes.[18]

> The ECAFE rules apply[19] "in cases when parties have agreed that disputes which have arisen or which may arise out of a contract made between them shall be referred to arbitration under the ECAFE rules. The agreement of parties to resort to arbitration under the ECAFE rules may be indicated in their contract, or if not so included, may be included separately by the parties after a dispute has arisen."
>
> "Disputes referable to arbitration under the ECAFE rules may include those to which a government or state trading agency is a party."[20]

While the ECAFE arbitration machinery is a laudable effort, it is quite regrettable that there is no provision in the rules requiring reasoned decisions. This hinders the natural growth and development of an international *lex mercatoria,* which would have evolved naturally.

As regards choice of arbitrators, the ECAFE rules allow the parties not only to select them themselves, but also the option to leave this choice to an appointing authority. This appointing authority will usually be an arbitral institution or a Chamber of Commerce, and it will make its choice on the parties' behalf.

In the next most important aspect of arbitration rules, i.e. place of arbitration, the ECAFE rules via Section 4 provide:

> "1. Where the parties have not agreed in their contract or later by stipulation on the place of arbitration or where the arbitrator/s appointed by the parties has/have not determined the place, the parties shall endeavour to reach agreement as the place of arbitration by taking into consideration the following among other relevant factors:
>
> a) the convenience of the parties;
>
> b) the location of the goods and relevant documents;
>
> c) the availability of witnesses, surveys and of pre-investigation reports;
>
> d) the recognition and enforcement of the arbitration agreement and the award; and
>
> e) the advantages, if any, of the arbitration being held in the country of the respondent.
>
> 2. If the parties are still unable to agree on a place of arbitration or any other procedure for its determination they shall have recourse for the determination of a place of arbitration to the Special Committee established

18. Text in Vol. 5 International Legal Materials pp. 541-564 (1966); These recommendations were adopted by the ACAFE at its 22nd annual session in Delhi, in March 1966 UN. Doc. E/CN. 11/721; 10 February 1966; page 17; paras. 59-62.
19. Section 1-2.
20. Section 1-3.

in accordance with article V below. In such case the Special Committee shall, in makings its determination as to the place of arbitration take into consideration the factors listed above in paragraph 1."[21]

The intrinsic strength of the ECAFE arbitration machinery lies in the fact that it may become the trend setter in SE Asian commercial arbitration. The methods of doing business in SE Asian countries, particularly among the Chinese communities, are quite averse to litigation. Perhaps arbitration with its less formal and less expensive procedures will make an inroad into SE Asian business patterns, and the development of intra regional trade will ultimately have to make full use of this available facility.

(x) *Regional Patents Administration*

This device is of primary importance in the obtaining of technical skills for the joint ventures of the region. The foreign partner, particularly if he is to provide technical skills would require protection for such skill, especially if they are patentable. The countries of ASEAN do not individually possess the capacity to set up a Patents Administration Unit. As a consequence, Singapore utilizes the convenient process of registering only those patents which have been verified and registered in the U.K.[22]

Patents provide a substantial investment incentive to the foreign inventor and his local licensee, by assuring both at least a temporary legal monopoly for the use of the process. The existing patents administration patterns although utilizing the concept that only new and valuable inventions will be patented, are ill equipped to undertake technical examination of the process thoroughly enough to ascertain its novelty.

There has thus been a project suggested by the U.N. Secretary-General[23] that "contemplates the establishment of regional patent co-operation centres designed to enable developing countries of the same geographical region or sub-region and possibly of the same language, to pool their resources especially for the examination of patent applications. [Thus] together to tap the vast facilities of the patent offices in the developed countries, possibly through the intermediary of the International Patent Institute (IIB) at the Hague."

Another project submitted thereto, involves the results of the searches and examinations carried on by the highly advanced patents offices of the developed countries being made available to developing countries as a matter of information only, leaving each government wholly free to adopt its own criteria for the grant and scope of the patent protection and the individual application of these tests. Even here, the need for support by the proposed regional patent co-operation centres is necessary, since even the task of applying the proper criteria to an individual patent application requires a high degree of technical expertise not readily available to the individual countries.

21. Section 11(3).
22. "Registration of U.K. Patents" Chapter 181, Revised Laws of the Colony of Singapore, 1955 Edition.
23. Summarized in "Foreign Investment in Developing Countries" E/444 (U.N.) 1968 page 30-32.

II. TECHNIQUES TO FACILITATE THE INTERNATIONAL CORPORATION AND THE REGIONAL HOLDING COMPANY

In this section, facilitating devices rather than promotional devices take priority. There is therefore the basic premise that joint ventures are acceptable and that the remaining problem is that of corporate structure and allied problems. The unique problems that suggest themselves in the sphere of corporate structuring include: tax burdens; repatriation of profits; share transferability over national frontiers; forms of organizations and division of equity participation; industrial incentives and the problem of overall co-ordination.

In the case of existing enterprises, especially in the iron and steel industry, the establishment of a regional holding company appears promising. The holding company will own or have majority share holding in all the companies producing and distributing facilities within ASEAN of a particular product. The regional holding company itself may be owned either by nationals of the different countries or the government or a combination of both on a predetermined scale of holdings. The centralized holding company could, if necessary, employ managerial and technical skills by service contracts with the developed countries.

The international corporation only begins to exist when ownership, management and income are internationalized. The effectiveness of international corporations is enhanced by an international division of functions. Thus if an originally Western company sets up a branch within ASEAN, the branch may take over the production of export to the other countries of its products. Research and training facilities are made more readily available to the local ventures thereby.

The decisional process of such international corporations has been succinctly described:[24]

> "What is meant (by integration) in the present context, is that the top management of the company, is evaluating the performance of any one production unit, has regard not only to the performance of the unit itself—its profitability and growth record, for example, but also to its contribution to the company as a whole. At the centre, management is concerned with the optimal use of the resources of the system it is controlling. In allocating finance for expansion, for instance, it has to take into account not only current levels of profitability of its different subsidiaries, but also their potential contribution to the future growth of the company."

The development of the truly international corporation is barely in its infancy. The unique problems of the international corporation and the role of legal codes in its continued existence is summarised thus:[25]

> "If such international corporations are to play an effective role in pooling the talents, resources, and markets of member enterprises in the different countries under a judicious system of local autonomy and interlocking international participation, there must be a corresponding development not only in national and business policies but also in national and

24. By C. Miles in "The International Corporation" in April 1969 International Affairs page 259 at page 261.
25. "Foreign Investment in Developing Countries" U.N. R/4446, 1968 pages 16-20 paragraph 65.

> international legal forms and institutions which are needed to give impetus and protection to such co-operation. Generally, a long-range effort will be needed to develop appropriate concepts and practices to govern the relationship between international corporations and their national component enterprises, and to harmonize the applicable rules of national legislation and administration, so as to reconcile the many varied public and private interests involved on a basis most conducive to economic development."

The magnitude of the tasks posed is best revealed by enunciating the problems themselves. They include: the creation of an autonomous law of international business; to be supplemented by the adjustments of existing national laws which may be conflict with this new emerging autonomous laws, thus requiring legislative amendments and treaty making. National governmental action has to be sought in a number of areas: Laws and regulations affecting corporate organization; the issuance and holding of different classes of shares, transferability over the Stock Exchange; and corporate taxation.

III. CONCLUSIONS

The legal techniques discussed, will concommitantly prove attractive not only to inter-ASEAN investment, but also to investment by the developed countries. The two-pronged assault on the problem of channelling private as well as public investments is accentuated by the control over such incentives by the governments.

Several organizational formats are possible and these include: governmental equity participation; regional public equity participation; private investments; supplies of raw materials and purchasing agreements between corporations and corporations and governments; and foreign participation to acquire technical and managerial know-how. Depending on the particular industry, a combination of some or all of these corporate techniques will prove necessary.

The basic questions, nevertheless, remain essentially the same, particularly in the realm of corporate investments. If private investment is the be effectively channelled, several problems have to be solved. These include the standardization of tax burdens; repatriation of capital and profits; the particular corporate structuring i.e. public company, private company, private exempt company, holding company, licensing or marketing arrangements, or a sale agency distribution set-up.

The legal techniques again can be effectuated within or without the complex structuring of a regional organization. Thus the harmonization of fiscal and monetary incentives; regional arbitration centres; research facilities; regional financing and regional arbitration centres; research facilities; regional financing and regional patents administration, all entail a regional framework. However, this is not to say that they cannot function without the heavy commitments of a regional organization. The arbitration centre, patents administration and research facilities can and have been instituted without the complex organizational structure e.g. the Southeast Asian Steel Institute. The other techniques do not require such regional commitments and as such are of immediate importance to ASEAN.

The basic dilemma of ASEAN regionalism has led to a polarization of two schools of thought on the matter. On the one hand are the 'idealists'? who realise the immense possibilities of regionalism, and this view is best put forward by an identification of some of the possibilities of regionalism. They include, inter alia:

> "A meaningful union of these countries (ASEAN countries) will allow industry the freedom to find its own natural location irrespective of national requirements, provide a pool of scarce know-how and capital, permit the free flow of labour, rationalize the production and marketing of their primary products, and generally make for balanced growth all round. Other benefits could easily follow, such as the creation of an Investment fund, common transport and communications services and a competitive basis for marketing the products of industry and agriculture."[26]

On the other hand, are the realists, who project the view that regionalism is premature, at least for ASEAN. It is the writer's personal view, that such reluctance to relinquish national sovereignty to a supranational authority, stems from the colonial history of SE Asia. Having only within the last two decades, attained independence, the nations of SE Asia have embarked on the task of national development with grandiose schemes sometimes, and with myopic import substitution measures on other occasions. Perhaps, the failure of the policies, will provide the catalyst for regionalism. After all, the catalyst for European regionalism came from the aftermath of World War II and the economic depression that followed.

In view of these opposing stands, it would be quite 'academic' for one to attempt a paper on legal techniques to facilitate regionalism. However, this paper was written with full knowledge of the views held, particularly in high circles, which run averse to the views put forward in this paper. Nevertheless, it is felt that some effort must be made to direct some thought and 'serious thinking' to the challenges of regionalism even if the techniques suggested do not materialize in the near future.

The rhetoric of regionalism abounds in SE Asia, especially from politicians, but what is required is not the mouthing of pious platitudes on the virtues of regionalism but some firm commitment by governments to the concept of regionalism. There is a need for a momentum to be created. This momentum can originate in the social, educational and cultural co-operation that is taking place in SE Asia today. The business community of ASEAN can be instrumental in the creation of this momentum, as business and the quest for profit really knows no bounds (national or otherwise). However, the official encouragement of investment, while commendable, is viewed with some reservation. A caveat is presented, when one notes that the official encouragement by the Singapore government to Singapore businessmen to invest in Indonesia, was met with hostility in some circles in Jakarta.

The legal techniques involved in trade liberalization will not ipso facto, provide a panacea to the problems of ASEAN. In fact, the real gains will be minimal if the new opportunities are not accompanied by

26. "Asian Common Market — Problems and Possibilities" The Asia Magazine, September 29, 1968 at page 32,

the availability of increased factors of production, particularly the entrepreneurship. In SE Asia, today, the only community which is apparently willing and able to exploit the new opportunities of trade liberalization are the Chinese. If this is going to be the result of trade liberalization, the reluctance of most governments to make the commitment is understandable. On the other hand, the trade liberalization measures may prove to serve only the interests of Japanese investment in SE Asia, as *de facto* the EEC has been to American investment. It has never been the avowed or unspoken premise of any governmental policy, to be a mere economic appendage of either Japan or the US. Yet such a state of affairs seems inevitable, if SE Asia is going to be hemmed in by traditional hostilities and embark on short sighted economic policies.

While trade liberalization and its possibilities are desirable as measures to promote economic development, the real impetus to economic development and the an equitable distribution of the gains of regionalism lies with the concept of plan harmonization. It is the absence of plan harmonization in the EEC framework that has led to the contemporary crisis of the economic community. Plan harmonization is, admittedly, a radical step from the traditional measures of economic development, but that is no reason to detract from its effectiveness. The keyword in plan harmonization is 'rationalization'. Based on this concept, there has to be,

> "the confrontation of plans on a collective regional basis, whereby countries would be assured that in concentrating on particular projects while avoiding others, they would each receive compensating advantages in the form of access to a wider market and the assurance that other countries will not encourage the establishment of similar production facilities."[27]

Since the future of economic integration in SE Asia will depend enormously on the success of initial efforts, the following conclusions on the type of framework that ASEAN could adopt will prove germane.

Joint ventures will be the most important channel via which the seeds of economic integration will be sown. Harmonization of fiscal and monetary incentives; regional arbitration centre; research facilities; regional financing and regional patents administration are areas which have and will entail some regional apparatus and coordination. Governmental guarantees of sources of supply; regional markets and licensing agreements could be effectuated over bilateral and multilateral arrangements. The latter category are peculiarly important to ASEAN as no complex regional apparatus is required.

However, in specific sectors, in which the economies of scale are vital, the sectoral approach to trade liberalization and plan harmonization can be utilized advantageously. The institutional apparatus can be simply a Board of Management consisting of experts served by a secretariat. This basic unit, in a particular regional industry must have wide powers which include the power to control production, licensing, supplies,

27. Report of the Group of Experts 'Measures of or Economic Co-operation in the ECAFE Region' *op. cit.*

prices and freight charges. The sectoral industries will be allowed free access to the markets of the regional and available incentives and more favourable terms of finance from regional financing institutions could all be made preferentially available to the regional industries.

The various sectoral committees created periodically can be brought into contact with the subregional Ministerial Council which is to be advised by a Planning Council, supplemented by a secretariat. The Ministerial Council, via the Planning Council will be responsible for the plan harmonization of the region.

The 70's are upon us. SE Asia can ill afford expensive wars and confrontations. Economics, like misery, may make strange bedfellows out of the neighbours of SE Asia, but having chosen the path of self determination, it is to be hoped that the nations of SE Asia will not opt for an era of economic intransigence, when the challenges of regionalism are easily available.

POSTSCRIPT

Since this article was written a Bill entitled the Economic Expansion incentives (Relief from Income Tax) (Amendment) Act 1970, (Bill No. 26/70) has been passed by the Singapore Parliament under which certain radical amendments to the incentives available are made.

By clause 3 'royalties' has been more restrictively defined to exclude artistic and commercial royalties.

By clauses 4 and 5 the tax relief period is now fixed at 5 years, but allows the relief only to companies which incur a fixed capital expenditure of not less than one million dollars.

Clause 6 provides for the deduction of depreciation allowances when computing the exempt profits of the pioneer enterprise.

By clauses 11 and 12 the qualifying capital expenditure for an expanding enterprise is increased from an amount not exceeding one million dollars to an amount not exceeding ten million dollars and the tax relief period is fixed at not exceeding 5 years.

PHILIP NALLIAH PILLAI*

* Final year student in the Faculty of Law, University of Singapore.