Asian Regional Workshop on 'Free Trade Agreements: Towards inclusive trade policies in post-crisis Asia'

Co-organised by: International Development Economics Associates (IDEAs), International Institute for Trade and Development (ITD) and Good Governance for Social Development and the Environment Institute (GSEI)

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Workshop Report

The Asian Regional Workshop on 'Free Trade Agreements: Towards inclusive trade policies in post-crisis Asia' was organised by IDEAs at the Twin Towers Hotel in Bangkok, in collaboration with the International Institute for Trade and Development (ITD) and the Good Governance for Social Development and the Environment Institute (GSEI). Participants included policymakers, practitioners, civil society representatives, businessmen and academia from various parts of Asia covering India, Indonesia, Malaysia, the Philippines, Singapore, Sri Lanka and Thailand, as well as the media from Bangkok.

Day 1

Introduction

The Workshop was opened by C.P. Chandrasekhar, Professor of Jawaharlal Nehru University, New Delhi and Treasurer of IDEAs. His introductory remarks noted that while the need has grown for cooperative bilateral, plurilateral and multilateral solutions to the challenges facing our nations, such challenges are increasing over time. Many of these arise primarily from the current focus of Asian countries on export-led growth. Unlike in the period prior to the sixties, when most countries in the Asian region were seeking development solutions focused on their domestic markets and cooperation was a basis for expanding the size of those markets to exploit benefits of scale, all these countries have become increasingly focused on global markets as the basis for their growth. This has resulted in a situation in which the element of competition has increased, which in turn, has made putting cooperative solutions in place increasingly problematic. More importantly, it has generated more conflicts within our national economies. He pointed out that this is because, in terms of the effects of these agreements, what might suit industry or sections of agriculture, or what might suit states and the political elites, might not actually suit a large majority of the population. So, the emphasis on a set of inclusive trade policies arises out of the need to take into account not merely the lower income deciles of our populations, but also the agriculture sector which increasingly feels threatened by the kind of agreements put in place. One of the outcomes of the global crisis has been a growing recognition, including in the largest economies in the region, that we need to re-think the reliance on export markets, where a combination of a high degree of intra-regional trade and being a final export platform geared to markets in the United states or Europe in particular, has been in operation. It has been recognised that this forms the basis of a development trajectory which might be fragile; which leads to accumulation of reserves of a kind that becomes extremely difficult to manage; and which creates problems for the pursuit of appropriate macroeconomic policies in the spheres of monetary, exchange rate and fiscal policies. Thus, there have been some attempts to look inwards to a certain extent, not to be insular, but to once again look at using domestic and regional markets as the basis for growth. This perhaps portends the possibilities for trying to find more inclusive solutions. He concluded that this workshop and other work IDEAs has been doing with its partners are aimed at trying to develop solutions which allow such inclusiveness. The aim is that while we do not lose out on the opportunities for cooperation that are necessary, we should not end up on trajectories that exclude significant sections of the Asian populations.

China and Japan in the Changing Asian FTA Landscape

The Chair of the session, **Sompop Manarungsan** from Chulalongkorn University, Bangkok, observed that while both Japan and China are the leading countries that have been very active in the FTA negotiations, their strategies are different from each other. China's strategy for FTAs was presented by **Henry Gao** from the Singapore Management University. His basic analysis was that China's FTA strategy is a political battle in the name of trade. While Asia is a latecomer in the FTA game, China has played a very significant role not only because it is a very big economic power, but also because China has taken a conscious strategy to push for economic integration in this region since the mid-1990s. The East Asian financial crisis presented them with the perfect opportunity to begin moving towards greater regional cooperation. After the FTA with ASEAN, China signed seven other FTAs, including two closer economic partnership arrangements with Hong Kong, China and Macao, China respectively, and also those with Chile, Pakistan, New Zealand, Singapore, and Peru. Henry Gao then went on to focus on three major aspects of China's FTA strategy: the choice of the FTA model, selection of the partner and negotiation objectives. He pointed out that China's FTAs generally involve only trade in goods and expand to include services and investment only after the commitments under goods have been substantially implemented. China has also been very reluctant to include issues that are traditionally non-trade related such as environmental protection, competition policy and labour standards, until recently. Recently, China has shown willingness to include these as stand-alone agreements rather than as part of the main agreement. When it comes to choosing FTA partners, the top trading partners of China, namely EU, US and Japan are not China's FTA partners. Among the top ten trade partners, although China has concluded FTAs with ASEAN, Singapore, and Hong Kong, China, since Singapore is part of ASEAN and Hong Kong is part of China, only one country among China's top ten partners has concluded an FTA with China. This, according to Henry Gao, has to do with the criteria used by China in deciding on its FTA partners. The most important thing seems to be the political and diplomatic relationship of the country with China. This seems to apply in the case of Pakistan, Chile, New Zealand, Singapore and Costa Rica. The second criterion is economic complementarity, which applies in the case of Singapore and Hong Kong, China because they are strong in services while China is strong in goods. The third factor is the hub effect. For most FTA partners, while the domestic market is quite small, each of these FTA partners is a part of bigger regional groupings in their region. So the Chinese strategy seems to be to use these FTAs to tap into the bigger markets created by the FTAs already in place. The last is the existence of common negotiating intent, which is not a very significant factor. In terms of negotiating objectives, according to Henry Gao, China wants to diversify its export markets and the sources of its imports so as to ensure security of its export markets and import supplies. China also has been using the FTAs to get these partner countries to recognize its market economy status. The most decisive aspect in China's FTA strategy, according to the paper presenter, therefore is the political and diplomatic relationship of the country with China.

Seiya Sukegawa from Japan External Trade Organisation (JETRO), Tokyo, made a presentation on 'Japan's FTA policy and the Movement of Japanese Companies towards the FTA Era in East Asia'. He focused on the exploitation of the network of FTAs in East Asia by Japanese manufacturing affiliates in the region, and the problems they face. Japan has signed 11 EPAs, while its agreements with five more countries/regions are under negotiation. Japan intends to structure an EPA with ASEAN by concluding EPAs with the major countries in the grouping as well as with ASEAN as a whole. ASEAN is the most important production base for Japanese firms; they have invested and organized production and procurement networks in ASEAN for half a century. Therefore, EPAs with ASEAN countries are given high priority by the Japanese government since Japan aims to improve the cost competitiveness of Japanese firms in ASEAN through reduction and elimination of the tariffs imposed by these countries on parts and materials imported from Japan. JETRO surveys on Japanese manufacturers operating in ASEAN and in India have shown that the average procurement ratio of those companies from ASEAN is increasing; however, companies still rely on procurement from Japan. But, Seiya Sukegawa argued that the AFTA and the ASEAN plus One FTAs are more important for Japanese MNCs when compared with the Japanese EPAs. AFTA average preferential tariff has reduced from 12.7% in 1993 to 0.79% in 2009 and will be close to zero by 2010. In fact, Japanese firms, notably automobile manufacturers, accelerated the restructuring of their production and procurement networks in ASEAN from around 2003. Tariff liberalization has enabled them to maintain production bases on the basis of a choice of optimum location and export to third markets.

Since only Thailand and Malaysia issue certificates of origin for AFTA, Seiya Sukegawa considered Thailand's case to establish the extent of trade by Japanese MNC affiliates that utilise AFTA. The AFTA utilization rate for Thailand to ASEAN countries is found to be increasing and reached 50% in the case of exports to Indonesia, Philippines and Vietnam, in the first half of 2009. It was noted that the top five exports of Thailand to ASEAN through AFTA are all transport and machinery products. But 92% of all automobiles produced in Thailand are by the Japanese MNC affiliates there and these are exported to other ASEAN countries through AFTA. However, as the paper presenter pointed out, even though they must pay the costs for the certificates of origin, etc., Japanese firms are able to utilise AFTA since they enjoy very high margins of preference. The preferential tariff margin on automobile and parts is over 20% in Indonesia and Malaysia and is almost 40% in Thailand.

Seiya Sukegawa established that the FTAs have had considerable impact on Japanese firms' operations. According to him, Japanese affiliates intend to reinforce their operations in

ASEAN as a base to enter other major markets and are working their way into the dynamics of ASEAN plus One FTAs. At present there are five ASEAN plus One FTAs in East Asia. The procurement ratio of Japanese firms in ASEAN exceeds 40% except in the Philippines. Thus, Japanese firms are already qualified to utilize ASEAN plus One FTAs, which set the condition of minimum regional value content of 40%. According to a JETRO survey of Japanese firms in Asia and Oceania, Japanese firms intend to use Thailand as a production base to export to the Indian market utlitising the ASEAN-India FTA. Since 2004, when Thailand started the Indo-Thai FTA's Early Harvest Program (EHP) on 82 items with India, Japanese manufacturers have shifted production base to Thailand for exporting to India, especially for air conditioners, TVs and other machinery equipment. Sony, which had TV factories in both countries, stopped production in India and started import from Thailand. When foreign investment in import/wholesale business was liberalised in Vietnam in May 2008, the company stopped production in its Vietnamese TV factory too, as the AFTA rule of origin criteria of Change in Tariff Classification (CTC) enables them to import LCD TVs under AFTA. But, again in November 2009, Sony announced that it will cease TV production in Thailand as it became certain that the ASEAN-India FTA will come into effect in January 2010. Malaysia will now be Sony's only global production base for TV.

However, still only 23% of Japanese firms in ASEAN are likely to use FTAs in exports and about 20% in imports. The major reason for the non-utilization of FTA in exports is either that the tariffs are already quite low and so there is no major advantage in utilizing the FTA, or that there are no FTA/EPAs with the export destination country. There are three other reasons as well. First of all, companies are required to indicate FOB price on the AFTA certificate of origin. When trade is done through the third countries, it allows the importer to compare invoice prices and the original FOB price and reveals profit margins of the third country. Secondly, the HS codes used in the agreement and the customs codes are different. Preferential tariff rates set in Japanese EPAs are based on HS code 2002, while customs use HS code 2007. Some countries therefore refuse to apply the FTA because of these differences in tariff classification. Thirdly, FTA preferential tariff rates for some items are higher than MFN; this happens because MFN rates have been reduced during the long process of FTA negotiations. In the case of imports, the main reason for the non-utilisation of FTAs is that half the companies already received tariff exemptions under investment incentives. But there are some costs in obtaining and maintaining investment incentives, which effectively work out to be an additional tariff of about 1.9%. Seiya Sukegawa argued that increasingly more Japanese firms will shift from applying investment incentives to utilizing FTAs as the tariff levels come down to below 1.9% or are eliminated by FTAs. According to him, the major challenge that Japanese companies will face in the coming years is that ASEAN FTAs with China and South Korea will eliminate tariffs on the majority of items imported from these two countries into Thailand in 2010. However, the extent of liberalisation is much lesser under the Japanese-Thailand EPA for 2010. In 2010, 89.1% or items from South Korea and 90.4% of items from China will be tariff-exempt, while only 50-60% of items from Japan will be tariff-free. Thus, he concluded that Japanese firms are going to face fierce competition from Chinese and South Korean firms for many products.

While discussing the two papers, **Sakkarin Niyomsilpa** from the International Institute for Trade and Development (ITD), Bangkok, observed that the two papers have different focus in trying to explain Chinese and Japanese evolving FTA strategies in Asia. Even though there are economic push factors, overall, FTAs have been used by China as a strategy to build up its image in the region as a benign emerging power. On the other hand, for Japan, FTAs are tools to increase Japanese exports and facilitate Japanese investments in the emerging markets. Japanese MNCs have responded to the changing trade landscape created by RTAs by re-organising their production process and procuring parts and components from sources deemed more efficient. Sakkarin Niyomsilpa thus argued that Japanese FTA strategy appears to correlate more to the country's trade and investment strategies compared to China. Further, while both Japan and China have an active ASEAN FTA policy, there are structural differences in their economic relations with the region. Japan has deeper roots in the region because of its extensive investments and established production networks. China on the other hand, has modest investment outflows to the region. Both countries' motivations when it comes to FTA policy are also dissimilar. China's motives are primarily political to support its role as a regional leader; for Japan, economic relations to improve the business environment for Japanese multinationals rein supreme. That is why bilateral FTAs are more suitable to Japanese MNCs. This is also the reason, according to the discussant, why Japan not only favours tariff reduction in goods but also likes to include other issues like investment, government procurement, IPRs, and other areas in the FTA agreements. However, according to Sakkarin Niyomsilpa, a major issue that needs to be addressed while analysing regional economic cooperation in East Asia was not covered by both the papers. This is the fact that Sino-Japanese competition profoundly affects the process of regional economic integration in East Asia. It is no secret that the ASEAN-Japan FTA was proposed in response to the ASEAN-China FTA initiative. In this sense, the China-ASEAN FTA is an important milestone in regional economic integration in East Asia. GMS sub-region, East Asian Free Trade Area (EAFTA) and access to natural resources are issues which might increase competition between China and Japan in shaping the economic landscape of East Asia. Conversely, they might serve as economic platforms for cooperation between the two. However, he stressed that China's growth is not a zero-sum game for Japan because economic interdependence between the two countries has intensified in the past two decades. Further, the global economic shift towards Asia and increasing intra-Asian trade would bring China, ASEAN and Japan even closer, which will be accentuated by the surge of Chinese outward investments into Asia.

In the ensuing discussion, **Jayati Ghosh** (Jawaharlal Nehru University, New Delhi and IDEAs) wondered whether there was an additional reason for China's interest in FTAs. In particular, she wanted to know whether China is looking to the ASEAN FTA to ensure continuing cheaper imports. She pointed out that in 2008, while China's export growth fell by 15% year-on-year in the first ten months of 2009, its import growth fell only by 3.5%. Further, a significant number of imports - exported by partner ASEAN countries - like iron ore, crude oil, soya bean, plastics, coal, etc. have actually increased in volume terms. In the context of the paper on Japanese EPAs, she queried the reason behind Sony's decision to shift TV production entirely to Malaysia and away from Thailand now, since duty-free trade in ASEAN had been in existence for many years now. **Indra Lubis** of *La Via Campesina*, Indonesia, pointed out that while it became clear from both the presentations that the FTAs were being driven by the MNCs of both countries, the companies in China that invest abroad are often state-owned, while Japanese MNCs are private owned. So, their strategy and the impact will be different. Further, he raised the issue of whether and how FTAs will be beneficial to the people of China and Japan (and not to the companies only). Indra Lubis also wanted to know whether the change in political regime in Japan after fifty years will result in any change in the Japanese government's trade policy. **Saman Kelegama** from the Institute of Policy Studies, Colombo, commented that once companies from a country like Japan start migrating and investing in a particular region like ASEAN, a number of non-trade issues like government procurement, intellectual property rights, etc. become important. This is why including such non-trade issues in the FTAs or EPAs have become important for Japan. On the other hand, China ignores non-trade concerns because its investments have so far been less significant. But he queried whether, in the coming 5-6 years, when there is an increase in Chinese investments in the region as domestic production costs go up, non-trade issues would not become important for China as well.

Chayodom Sabhasri from Chulalongkorn University, Bangkok, pointed out that in the context of the Taiwan factor, it would be useful to be updated about the relationship between China and Taiwan Province of China on FTA, since Taiwan Province of China also began moving on the FTA front since the last year. **C.P. Chandrasekhar** observed that China is a country that is heavily trade dependent. Further, from the kind of concessions that China has given to get access to the WTO, including in areas like finance, it appears that China went out of its way to get some degree of stability with regard to its export markets. So, in looking at China's participation in these FTAs, purely political factors should not be overplayed. According to him, it could be the case that China finds it difficult to get the more important trade partners to get into FTAs with it, which is why it picks up less important trade partners with which it can have political manoeuvrability to enter into an FTA. In the context of Seiya Sukegawa's presentation on how Japanese affiliates were shifting production processes between India and Thailand, **Shefali Sharma** with the Third World Network based in New Delhi wanted to know whether the Japanese affiliates were using these countries for exporting to the region or to the world. **Pasuk Phongpaichit** (Chulalongkorn University and IDEAs) observed that it is quite difficult to distinguish between political and economic motives in China's FTAs. Even in the FTA with Pakistan, the economic advantage is clearly present. But, if economic motives were to be more prominent, she wanted to know which country China should do an FTA with.

In his response, **Henry Gao** argued that increasing imports from ASEAN are due to several reasons. One is that with the lowering of tariffs, there is growing demand in China for products from ASEAN, including industrial and more importantly tropical agricultural products that are rare in China. Another important factor is the appreciation of the yuan which makes it cheaper for China to buy from ASEAN. But, according to him, the most important reason is the Chinese government's conscious strategy to balance its exports and imports. This was taken about two years' ago when the Ministry of Commerce and the Chinese Prime Minister announced that China would no longer be seeking a trade surplus; instead China will be seeking to increase its imports. While this was partly in response to the US criticism that China was not importing enough, the Chinese government also realised that it was in China's interest to balance its exports and imports. Increasing domestic demand will not only protect the economy against shocks in external markets, but will also improve people's livelihoods.

Henry Gao agreed that the emphasis and motives behind Chinese state-owned companies and private companies are very different. He observed that the primary goal of state companies owned by the Chinese government and to a less extent, of the big private companies which behave in a way like state companies, is to get access to resources that are strategically important for China. A lot of state companies investing abroad are interested in importing strategically important commodities as well as advanced technology and equipment into China, in which the Chinese government has been recently facing a lot of problems. Exports are more important for private companies, who are interested in accessing foreign markets.

In the context of the query about benefit to the people from FTAs signed by these countries, Henry Gao argued that there are two sides to the story. Signing more FTAs will mean that the consumers will benefit from lower prices on goods from abroad. But it is not very clear if the producers in China are benefiting. For example, the sugar and fruit producers in Quangxi province in China have lost out after the ASEAN-China FTA, because of increase in duty-free imports from South East Asia, which produce similar agricultural products at a cheaper rate.

On non-trade issues, he pointed out that in some of the existing agreements, China does include one or two articles in the main text of the FTA on environment protection, government procurement, etc. But at the same time, China enters into side agreements in areas like environment cooperation, IPRs, government procurement or labour cooperation. But he agreed that it is likely that in the future China will include issues such as environmental protection, labour mobility (Mode 4), etc. in the main FTA text rather than as side agreements and include binding obligations. However, in the case of government procurement, the Chinese government still appears to be very reluctant, because while China has started the accession process to the Government Procurement Agreement (GPA) in the WTO, the latest offer does not even cover the current extent of market opening in China. So, his position was that even though China might include environmental protection and labour in the future FTAs, it is unlikely to include government procurement, say for the next ten or twenty years.

Henry Gao concurred with C.P. Chandrasekhar's point that China's services commitments are among the widest and deepest of all the WTO member countries. But it is important to note that apart from the countries that have already concluded FTAs or are negotiating with China, the other countries' major interests lie in services. This is true of Japan, the EU, the US and other developed countries. If China has to enter into FTA negotiations with any of these countries, it will have to make even deeper commitments in services than what it has already given in the WTO. China is very reluctant to do this. And this is why, according to Henry Gao, China is selecting other countries that are more sympathetic to its negotiating positions. Even in China's FTA with Pakistan, even though bilateral trade has seen an increase in the post-FTA period, the trade is still very small at the current level, and concentrated in a very few products. Thus, Henry Gao argued that if economic motives were to be more important to China's FTA strategy, China should be negotiating with the US, EU and Japan, all of which are the main markets for China. It is also in these markets that China encounters most of the trade barriers. In fact, recently there have been an increase in the trade remedial measures that the US and EU governments have taken against China. With regard to Japan, the main problems are the Sanitary and Phyto-sanitary Standards (SPS) and Technical Barriers to Trade (TBT) measures that Chinese products face in that market. But, according to him, only Japan may be willing to enter into an FTA with China, may be in ten years or so. It would be politically difficult for the US to enter into an FTA with China. During China's WTO accession process, the US already had a tough political battle to decide whether or not to grant MFN status to China; it took a lot of political bargaining in the US Congress to get this done. On the other hand, the EU had shown some flexibility to accommodate China in these negotiations. So, in his opinion, it is likely that EU might enter into FTA negotiations faster than the US. In the context of the proposed economic agreement with Taiwan Province of China, Henry Gao pointed out that the two parties have concluded the informal feasibility study and the negotiations might start any time soon.

In his response on Japanese production reorganisation strategies, **Seiya Sukegawa** explained that in August 2009, the rules of origin (ROO) in AFTA were relaxed to mean either Regional Value Content (RVC) or Change-in-Tariff heading (CTH). In LCD TVs, over 60% of the total cost is the panel price. When the RVC rule was in place, these companies had to choose local manufacturing, but once the rule was relaxed, the Japanese manufacturers chose to locate their factories in Malaysia. Malaysia is the location of the first and largest Sony TV factory. While Japanese factories in China are largely meant for the domestic market there, affiliates in ASEAN countries are meant for exporting to the world market. Some companies are planning to invest in India to access its huge market. But since Japanese corporations currently have shortage of resources and international talent, it is difficult for them to establish new factories in India. Thus, given that the FTA between ASEAN and India has fallen in place, they have chosen to expand the ASEAN factories for increased efficiency. Regarding the political change in Japan, he opined that the current government is more focused on East Asia when compared with the previous one and so bilateral FTA negotiations will continue. Recently the government also made a statement about the East Asian Community, although it was not clear whether this refers to ASEAN plus Six or ASEAN plus Three arrangements. Meanwhile, some Japanese industrial sectors are working towards ASEAN plus Three FTAs.

Experiences of Asian FTAs in Progress-I

In this session chaired by **Pasuk Phongpaichit** (Chulalongkorn University and IDEAs), **Jose Enrique Africa** of IBON Foundation, Manila, the Philippines, presented a paper on 'Japan-Philippines EPA within the ASEAN-Japan CEPA: Development denied'. While outside the ASEAN Free Trade Area (AFTA), the JPEPA is the only major FTA that the Philippines has signed and it came into force only in December 2008, the Philippines experience provides a lot of useful insights in the context of alternative policy trajectories. The ASEAN-Japan EPA also entered into force in December 2008. Jose Africa showed how over the last decades, the Philippines government has had a strong bias for market-based, foreign capital-driven development and it has followed liberalisation policies since the 1980s. According to him, the negative experience of the country after a long period of liberalisation provides good grounds for questioning some of the supposed development gains of FTAs. He argued that while the Philippines has been one of the most liberalized economies in the region even before the FTAs, the development promises of liberalisation have been unfulfilled. It is true that liberalisation in the Philippines has been successful in terms of growth in exports and foreign investment. But, despite all the liberalization, the two productive sectors in the economy, manufacturing and agriculture, have been shrinking to levels as small as those of half a century ago and this underpins the backwardness of the country. Meanwhile, the Philippines right now is facing the worst unemployment rate in its history at 11% and poverty figures, even by the low USD 2 per day per capita measure, have been increasing by 3-4% each year in the last decade.

Jose Africa explained that if one context of FTAs in the Philippines is that it has decades' long momentum of liberalization, the other context touching on political economy is how the effects of the liberalisation process themselves have caused changes in the economic structure, which further predispose policies towards liberalization. First of these is the marked increase in the presence of foreign capital in the country with major export interests. As a result of this, foreign players now have a strong influence on Philippine policy making. The second major change that has an influence on policymaking is the great success that the Philippines has had in terms of cheap labour exports. The Philippines is among the most migration and remittance-dependent economies in the world; remittances are quite large, at 10% of GDP. These have significant implications for liberalization measures, because the cheap labour export policies and in particular the foreign exchange they bring to the country mitigate the foreign exchange constraint and costs of liberalization in terms of having to pay for debt, profit remittances, increased imports, etc.; and this makes the Philippines government much more inclined to undertake liberalization measures. The last major point is the diminishing of domestic industrial interests over the last three decades and the increase in the influence of foreign capital in export–oriented interests. According to Jose Africa, the first two points mean that there is no coherent policy of domestic agricultural and industrial development in the country. So, when the Philippines government engages in FTAs, it does not come from a traditional nationalist economic perspective; it comes from a perspective where it is seeking as much market access as possible and is seeking to give as much incentives to foreign investors as possible. This tendency has been reinforced by the global crisis.

In the context of the Philippines engagement with Japan in an FTA, Jose Africa argued that the two countries were already very open to each other even before JPEPA. So, there is not much to be lost in terms of tariffs. But, if JPEPA is compared with ASEAN-Japan EPA (AJEPA), the former is far more comprehensive than the latter. JPEPA is a WTO-plus deal incorporating concrete commitments covering trade in goods, services, investment and movement of natural persons. There are also very clear provisions for further action in IPRs, government procurement, competition policy and dispute settlement. In terms of investment, with JPEPA the Philippines has also, for the first time, officially entered into an international trade deal that has prohibited performance requirements. In contrast, the ASEAN-Japan EPA has concrete commitments only in goods; the others are in generalities.

While there were a lot of protests when the JPEPA was taken up for ratification in the parliament, according to Jose Africa it is quite revealing that the main controversy was not about economic sovereignty or about the impact of free market policies on core socio economic issues, rather about trade in toxic wastes. The only indirect way that economic sovereignty became an issue was a legal technicality because many provisions in JPEPA were inconsistent with the Philippine constitution of 1987, especially regarding foreign investment in protected sectors. The debate here was about how to reconcile the constitution with the JPEPA and not about the loss of policy space. Jose Africa concluded by arguing that ASEAN countries have to work out a mutually beneficial integration process that does not put them in a self-destructive race to the bottom while engaging in FTAs with industrial countries. According to him the main challenge is building the political constituency for genuine economic development in our countries.

In the second paper in this session, **Saman Kelegama** from the Institute of Policy Studies in Colombo, Sri Lanka, analysed the background of the India-Sri Lanka Bilateral FTA (ISLFTA), the performance of bilateral trade, investment and services from the Sri Lankan perspective and also the role played by the ISLFTA at the time of the global crisis. Explaining the backdrop, he observed that India wanted to show that if the SAFTA process was not moving, it was prepared to bilaterally deal with its neighbours and provide access to its market. Sri Lanka, on the other hand, had a fairly mature liberalized regime and wanted to reap economies of scale in its production processes and saw India as the only way to move forward. Under the FTA, Sri Lanka's entire agricultural sector was permitted to be in the negative list, but Kelegama argued that tariff rate quotas, non-tariff barriers and rules of origin diluted such Special and Differential (S& D) treatment offered by India to SL under the FTA. The Comprehensive Economic Partnership Agreement between India and Sri Lanka (CEPA), according to him, was initiated in 2002 to rectify these problems. However, there was domestic resistance against CEPA on account of two factors: 1) that this will further aggravate the trade deficit between the two countries; and 2) that the problems in the existing FTA should be first sorted out before entering into a comprehensive agreement. Thus, due to local pressure groups, the CEP was not signed by Sri Lanka. Refuting the argument that the FTA had led to the expansion in bilateral trade deficit, Saman Kelegama pointed out that in 2007-08, Sri Lankan imports from India increased mainly because of oil imports. But, oil as well as a lot of main imports from India, such as oil, vehicle parts, sugar, iron & steel, and so on came under the negative list. In 2007, only 14% of Indian imports came under the FTA because of the negative list. So, according to him, had the FTA not been there, Sri Lanka's trade deficit with India would have been even greater. Indian investments especially in telecommunications, hospitals, retail services, energy, hospitality and air transportation were also facilitated by the FTA. However, the job creation effect has not been significant. In manufacturing, while the copper and vanaspati industries had grown significantly in the post-FTA period following Indian investments, they saw a dramatic decline in the post-crisis period with employment dismissals.

Saman Kelegama argued that for a small economy like Sri Lanka, India should be seen as an opportunity and not as a threat. It was his opinion that for small economies, the trickle down benefits of growth of getting integrated with a fast growing economy like India are what are needed from an equitable and inclusive growth perspective.

In his discussion of these two papers, **Wisarn Puphavesa** from the Thailand Development Research Institute (TDRI), Bangkok, observed that the two papers illustrated the effects of FTAs from two different perspectives and were biased on the negative side as well as on the positive side. He pointed out that bilateral analysis of trade balance between FTA partners can be misleading, if we do not consider the effects of these bilateral relations on the rest of the world. According to him, terms of trade and transfer pricing that could have come up within these FTA deals, are also important to examine. He discussed other changes that come into play when FTAs become operational. In the China-Thailand EHP, for instance, there was a change in the players. Before the deal, border trade was carried out by small informal players, but post-FTA, it became a market for the big players. For many export products involved in the ASEAN-China FTA, Thailand switched from smaller, higher priced markets to the larger but lower-priced Chinese market. All of these could lead to deteriorating terms of trade for Thailand. So, it is important to analyse these effects that are not captured by the larger export volumes. Thailand also switched from quality products to low quality, lower priced products; this too came about because of the changed trade relations under the FTA.

Wisarn Puphavesa argued that the small countries' approach towards FTAs can be characterized as export-biased. They look for market access and liberalise some sectors, while at the same time they try to prolong the protection for inefficient sectors as long as possible without doing anything to improve their competitiveness. This, according to him, leads to a further distortion in the effective rate of protection in the schedule of tariff reduction. In such a scenario, the protected sectors would tend to fall behind. Also, these countries approach FTAs on a piece-meal basis and change their positions according to the negotiating partners in each FTA, which leads to inconsistencies within their own domestic economies. A country has to put its bilateral deals into the whole picture. Further, small countries are competing to get FTAs signed with the larger economies and in the process they undermine their negotiating strength. ASEAN countries should be doing the FTA together; otherwise countries will lose from the very beginning. Further, in his opinion, the S&D treatment causes the weaker economies to remain underdeveloped. According to him, the better approach would be to help them develop faster through technical assistance and capacity building in structural adjustment mechanisms for developing more competitive sectors. Further, in order to develop inclusive policies, countries should first decide on their development path and then utilize the FTA to enhance that development path. Therefore, it is important for FTAs to be designed within. In his opinion unilateral liberalisation would therefore be much better for small developing countries.

In the ensuing discussion, **Jayati Ghosh** (Jawaharlal Nehru University and IDEAs) pointed out that in the Philippines paper, the role played by domestic political economy interests in pushing the FTA needs to be explained more explicitly. In the context of the ISLFTA, she pointed out that the small country-large country division can be deceptive when it comes to countries like China and India. For example, Sri Lanka is a country that has double the per capita income of India and a lower Gini coefficient, which suggests that the Sri Lankan workers are better off than most Indian workers. However, the tariff arbitrage under the FTA and the trade deflection that came about has destroyed livelihoods of Indian farmers who are much poorer than Sri Lankan farmers. This makes the situation very complicated, but in any case India cannot be considered as a rich country simply because it has some rich large industrialists. **Deepak Mittal** from the Board of Trade, Thailand, pointed out that there are always positive and negative outcomes of FTAs. It is important to look at bilateral trade balances, because sometimes under an FTA, they come out to be quite different from what was anticipated. The fact that Thailand's trade deficit with India turned into a surplus under the Indo-Thai Framework agreement is illustrative. He wanted to know how public sentiment in a country could be moulded in favour of an FTA, since there will always be some segments that oppose any trade agreement.

In his response, **Jose Enrique Africa** clarified that when he mentioned there were no domestic interests in the Philippines opposing the FTA, he did not mean that there were no domestic interests that would benefit. The industry groups pushing for JPEPA in the Philippines were the Foreign Chambers of Commerce and the Semiconductor Association of the Philippines, involving mainly the transnational corporations (TNCs) and subcontractors. Thus, the beneficiaries supporting FTA are the foreign interests based in the Philippines, either because they are in export assembly or in agribusiness operations. In fact, three-fourths of all manufacturing by the top 1000 corporations are by the TNCs. So, it would be these companies that benefit from increased market access to Japan under the FTA. The same is true in agribusinesses. For example, the majority of banana exports from the Philippines are by TNCs, including Japanese TNCs.

Experiences of Asian FTAs in Progress-II

Charles Santiago, Member of Parliament from Kuala Lumpur, Malaysia spoke on 'Malaysian Strategy towards FTAs and the Implications'. According to him, the underlying interests pushing Malaysian FTAs were the demands for increased market access and FDI. In times of economic growth, the argument for FTA was market access and in times of a crisis, as in the present, the argument was FDI. Since the financial crisis last year, there has been a major attempt by the Malaysian government to push for as many FTAs as possible in the hope of attracting greater FDI. He argued that the main motivation of the Malaysian government in negotiating and signing an FTA is to meet the interests of the Malaysian business community. This may involve a contradiction since, according to Charles Santiago, the Malaysian business community has many reservations in going for FTAs and they are going along with a government-pushed agenda since they do not want to upset the government. In fact, last April, when as part of its attempt to further liberalise the economy, the government opened up 12 sub-sectors such as tourism, legal services, health services, etc., the very next day, healthcare professionals, the Bar Council and the tourism association protested, saying they were not ready for greater openness. In the case of the FTA with the US, the pharmaceutical industry told the government that if the FTA with the US was signed, they would move to India. Textiles was the only local industry that hoped to gain from the US FTA as it argued that the FTA would increase its market access in the US through preferential benefits if Malaysia was the first country to sign an FTA with the US. But, in general, it is the foreign capital based in Malaysia as well as across South East Asia that is pushing for FTAs.

Charles Santiago also discussed the quality of consultations that goes into developing the FTA mandates, the modules and the agreements in the Malaysian context. In the case of the US FTA with Malaysia, the non-governmental organizations, the labour unions and the small and medium business community were called for consultations only a few days before the first level of negotiations between the two parties when the government had already chalked out its plan, and were thus meaningless. On the other hand, there were not even these attempts to consult other, even more vulnerable sections of the economy like the fishermen, farmers, etc. Further complicating the matter in Malaysia is the race issue, with economic liberalisation exacerbating domestic race problems. In fact, the non-ethnic Malays (Chinese and Indians) support government policies for opening up the economy and liberalising further, since that is their way of telling the government that they do not like the Malaysian government's policy to support and strengthen the local Malay business community. While Malays fear that if they lose government support, they will become vulnerable, non-Malays feel that opening up the economy will benefit them.

Meanwhile, the US government has put a brake on the US-Malaysia FTA talks and the EU-ASEAN FTA talks have also come to an end. The EU will now be negotiating on a bilateral basis with ASEAN countries and not on a regional basis. The EU is aiming for comprehensive and ambitious coverage aiming at the highest level of trade liberalisation including services and investments. Singapore is ready to start negotiations with the EU, followed by Thailand and Vietnam. Malaysia is also ready to negotiate with the EU, but the government will have to take tough call on government procurement, since the EU has told the Malaysian government that if they want to start negotiations they will have to open up government procurement. But this is the channel that is used by the present government to keep sections of the Malay population (Bhumiputra or "sons and daughters of the soil") happy.

Pointing out the thriving trade that is already taking place in production networked industries in the region, Charles Santiago questioned the logic for FTAs. The larger purpose underlying FTAs is clearly to ensure that trade rules are organized to protect investor rights, which among other things means certainty in their business environment, appropriation of profits and mobility of capital, private property rights, sanctity of contracts, pro-business competition, etc. He quoted figures from the US Department of Commerce that compared rates of return on Asian investments in the US in 2006. While Singapore is the only country that currently has an agreement with the US, it was Singapore that recorded the lowest rate of return of 0.4%, whereas Malaysia which does not have an FTA with the US recorded a rate of return of 3.9%, Hong Kong, China 19.2%, Taiwan Province of China 9.5% and China

2.5%. So, according to these figures, if a country has an FTA with the US, it tends to lose out. Charles Santiago argued that ironically, South East Asian countries are competing with each other to sign as many FTAs as possible and in the process, they are giving higher and deeper levels of commitments to various countries/regions. He also observed that there is going to be regulatory convergence in the region. ASEAN itself acknowledges the need to have regulatory cooperation and convergence in the region in terms of having regional labour markets, regional customs duties and so on, so that the region will be seen as attractive for investment. Charles Santiago concluded that by signing into new frameworks that lock countries into a particular type of investment, business and trade behaviour for 20-30 years or more, the ASEAN governments are indirectly introducing a new kind of constitution by which all future governments have to abide. This is the challenge before Asian countries, as FTAs are not about promoting trade, but rather about control of trade.

Next **Smitha Francis** from IDEAs, New Delhi, presented a paper on 'The ASEAN-India FTA: Emerging issues in India's changing trade policy strategy'. Until the last few years, India and the ASEAN countries were relatively insignificant trade partners for each other, despite India's liberalization and "Look East" policies since the 1990s. She argued that this was fundamentally due to the fact that all the bigger South East Asian economies had been following a foreign direct investment (FDI)-driven export-led growth strategy since the mid-1980s, while India's trade and investment policies remained quite restrictive in comparison. India did not attempt to follow production network-driven export growth strategies, at least until recently. However, trends emerging in India's export and import structure point to an increase in two-way trade in some sectors, which may signify India's increasing participation in FDI-driven production networks. Since 2002, ASEAN has increased its shares in India's global exports and imports and has played a significant role in India's increasing shift towards trade with developing Asia in the last few years. While this has come about with the steady liberalization of FDI rules in many sectors by India, it was argued that the ASEAN-India Free Trade Agreement (AIFTA) would lead to a steady increase in ASEAN countries' market access in India for many sectors and consequently in India's involvement in MNC-driven production networks.

Examining India's tariff reduction commitments under AIFTA, Smitha Francis went on to argue that despite an Exclusion List (EL), many segments of the Indian agricultural sector will be adversely affected by a rise in imports, for at least three main reasons. Even though crude and refined palm oil, coffee, black tea and pepper are Special Products such that their tariffs will not drop to zero, these tariffs are slated to drop drastically from the high levels of 2007, especially after 2013. Also, some crops like palm oil and other vegetable oils that are outside the Exclusion List are close substitutes. By analysing the products whose tariffs will drop to zero by 2013 and 2016 under Normal Tracks I and II (from an average of 30% in 2007), she established that ASEAN countries will gain significantly increased market access in India for several semi-processed or processed agricultural products. She argued that the reduced demand for local agricultural products because of this and the increased imports of close substitutes may both lead to a fall in the prices of local crops, with negative impacts on farm livelihoods.

Meanwhile, ASEAN countries will also gain considerably in several markets such as manmade staple fibres; furniture, lighting and prefabricated buildings; musical instruments and parts; rubber and rubber products; wood and wood products; etc. Therefore, according to her, Indian small and medium enterprises (SMEs) in agriculture-related products & food products, intermediate goods and light manufacturing products as well as transport equipment are likely to be adversely affected by the much greater market access the ASEAN economies will gain due to tariff liberalisation under Normal Tracks I and II. Import liberalisation in intermediate goods will give greater benefits to MNCs for undertaking production rationalisation across the region, particularly in the transport equipment and machinery sectors. This will also help Indian MNCs who are active in the region, especially in the chemicals and also probably the iron & steel sectors. Francis argued that this would lead to India's deeper integration into production networks in some industries like machinery, chemicals and transport equipment. But greater trade integration with Asia built through production chains will increase the country's vulnerability to external shocks further, as was seen in the global crisis during 2008-09.

On the other hand, Smitha Francis argued that there are hardly any immediate benefits for Indian producers as the average percentage tariff drops in Malaysia, Indonesia and Thailand's Normal Track-I products by 2010 are much lower than India's reductions. Further, the ASEAN-5 economies are leading exporters of light manufacturing products. India will also be competing in the ASEAN market with China, which already has signed an FTA with these countries. Thus, according to her, Indian companies will find it difficult to compete with these countries even in sectors with significant tariff reductions. She concluded that the neglect of agriculture and the domestic manufacturing base under the AIFTA in return for expected gains for India's services sectors in the ASEAN countries, together with the known problems in service sector liberalisation, will make India's livelihood and employment issues more acute.

In his comments, the discussant **Somchai Ratanakomut** from Chulalongkorn University, Bangkok, talked about how Thailand has some points that are in common with both Malaysia and India. As in the case of Malaysia, Thailand's government too is quite eager to push ahead the trade liberalisation agenda and is the leading agent. When the EHP with India was initiated, the manufacturing sector in Thailand was pro-liberalisation. But, later when the country started to sign several agreements without consent from the parliament, it became an issue. Now with the new constitution in place in Thailand, a government has to have a public hearing before it signs a trade agreement. Secondly, the parliament has to approve. These might slow the process of liberalisation through FTAs. He opined that while Thailand is trying to protect its economy, this should not slow down progress towards the ASEAN Economic Community.

Somchai Ratanakomut pointed out that exports from Malaysia and Thailand to India have grown significantly owing to the "income effect", as India has been growing quite rapidly over the last few years. In fact, the seven north eastern states of India would like Thailand to invest in infrastructure development there. While the two countries disagree a lot on rules of origin, India and Thailand need to cooperate better on trade facilitation at the logistic level. Given that India is a growing economy, India and ASEAN have to find ways of helping each other, as there are benefits to be gained through cooperation. He pointed out that ASEAN can help India with trade in intermediate products. India's growing economy is also giving rise to increased demand for energy and food. So, he opined that there was no reason why India should think of protecting its agricultural sector since the aim should be how to feed our populations; and there is a lot of potential for Asian countries to cooperate in this area.

During the discussions that followed, **Saman Kelegama** remarked that before countries embark on FTAs with the US, they have to study the earlier experiences and potential consequences very carefully, because market access in the US comes at a very high cost to the partner country. He described the experience of Sri Lanka, where readymade garment exporters initially thought that they would gain easy market access to the USA because of the FTA. But the rules of origin stipulate that the readymade garment should be made out of fabric made in the US, which raises the cost of production of the garments. Thus, even though Sri Lanka gets duty free access to the US market, Sri Lankan garments find it difficult to compete with those being imported into the US from Mexico and other countries. In the context of the ASEAN-India FTA paper, he wondered about India's strategic motive in going for the ASEAN FTA. He observed that there was dialogue on the JACIK (Japan, ASEAN, China, India and South Korea) regional trading arrangement to be a building block for an eventual Asian economic community. So he wanted to know whether the ASEAN-India FTA will contribute to the building of the Asian economic community in the future. **Jayati Ghosh** commented that it is easy to see the difficulties with North-South FTAs. Even though South-South FTAs might have been preferable earlier, it turns out that South-South FTAs are also dominantly pro-MNCs. So, she asked how we could move forward in terms of looking at whether at all FTAs can be made inclusive. **Deepak Mittal** asked whether it is necessary to differentiate between exports made by Thai nationals themselves and those made by companies with investments from abroad with sizeable share holdings by Thai companies which use Thai labour and full local content. **Sakkarin Niyolmsilpa** wanted a clarification on which Indian agricultural sub-sectors will be negatively affected by the ASEAN-India FTA and the Indian agricultural and manufacturing sub-sectors that will gain from the FTA. **Seiya Sukegawa** observed that the AIFTA is very strict on rules of origin, compared with other ASEAN plus One FTAs that have alternative rules. For example, under the Japan-ASEAN FTA or the ASEAN-South Korea FTA, companies can apply for preferential treatment either using the Change-in-Tariff Heading (CTC) rule or the Regional Value Content (RVC) rule; but under the AIFTA, companies have to satisfy both rules. It will be difficult for SMEs to make use of such strict rules of origin and therefore he argued that the AIFTA will not be an active FTA for SMEs. He wanted to know the reason behind India's stricter rules of origin.

In response to Saman Kelegama's point as to why every country wants to export to the US, **Charles Santiago** observed that the textile industry in each ASEAN country has been hoping to gain from early preferential access to the US market. But since the US has eventually granted preference to the entire region and no one gets preferential treatment, ultimately it is the lowest cost producer that will gain the actual market share. Charles Santiago observed that this was not in the interest of any body in the region. He agreed that foreign businesses in the region have significant lobbying power. During Singapore's trade with the US, a US-Singapore FTA Business Coalition and the Singapore Congressional Committee were set up and they had the support of 100 US companies. The latter was co-chaired by three US companies, Exxon Mobil, Boeing and UPS. In the case of Thailand, the Thai-US FTA Coalition was set up with 100 US MNCs as members and the coalition was hosted by the ASEAN-US Business Council. The National Association of Manufacturers also gives a precise picture of how businesses are lobbying their demands to separate ASEAN governments. The American businesses in ASEAN and the US are working together to get FTAs signed that will take care of their interests. Further, he argued that while it is true that the products are produced by the Malaysian or Thai or Indonesian workers in Malaysia, these workers are not benefiting from the FTA because the wages in South East Asia are at the lowest levels. So, the benefit does not accrue to the Malaysian worker or the Malaysian farmer; it accrues to the European, American, or the Japanese businesses. So, it does make a difference as to who owns the company rather than who works there, since the worker always gets the worst deal. On the question of how an inclusive economic system where FTAs play a role can be formulated, Charles Santiago responded that present day FTAs take place between unequal partners and promote control of trade and investor rights. So what we need is a regional approach, which has been called alternative regionalism by some, in which the principles around which we organise trade will be different and which will ensure equality for all stakeholders. Some of this has been talked about in the Bolivarian experiment in Latin America, where things are done quite differently as opposed to the predatory type of FTAs that are being pushed for in Asia.

In her response, **Smitha Francis** elaborated that she agreed with the perception that India got onto the FTA bandwagon in response to the ASEAN-China FTA and after most East Asian countries and ASEAN got into various ASEAN plus One FTAs. On whether AIFTA would help in the Asian integration process, she opined that India could have worked within the ASEAN+6 framework rather than bilateral deals. According to her, by getting into the AIFTA with the kind of adverse sectoral trade offs that have been made, India has missed an opportunity to play a more pro-active role in the Asian regional cooperation scenario. For small export-oriented economies like Thailand and Malaysia, increase in market access in large and growing markets in economies like India has become very crucial. That is the benefit which they are looking for in regional cooperation and this gets translated into their market access expectations out of FTA deals. But on the Indian side, these sectoral trade offs will affect large segments of our population in agriculture and the SME sectors adversely. In order to get out of this dilemma being created through FTAs, for bringing about meaningful Asian regional cooperation, ASEAN member countries as well as India need to fundamentally rethink the continuing premise of the growth strategies being followed by our countries, which are export-driven. This is necessary because even in the South-South FTAs that are being discussed currently, the domestic rural sector and the priorities in domestic industrial capability building are being sacrificed in the name of "strategic purpose", in the name of "Looking East", in the name of South-South cooperation, etc. This is meaningless if the rural sectors across Southern countries are getting impoverished in the process. India has given greater market access to ASEAN in agriculture and industry hoping to get greater market access for the service sector. But service sector liberalisation itself has created problems because a large segment of service sector employment is in the unorganised sector; so even in the service sector the supposed gains are not going to be for the majority of the population. Further, the knowledge control in the service sectors is dominantly in the hands of foreign companies. So, this kind of trade off will not help in the process of South-South cooperation. She clarified that the Indian SME sectors that will be hit most are vegetable oils, food processing and furniture industries. On the other hand, Indonesia, Malaysia and Thailand are giving the maximum tariff reduction in these same agricultural-related sectors covering HS 1-24 or in sectors in which India is not a significant exporter to these countries and ASEAN countries are quite competitive. So, Indian companies are unlikely to gain significantly in these sectors especially in light of the competition from China, which has already made significant inroads in the ASEAN market.

Panel Discussion: The Multiple Challenges in Asian FTAs

This was chaired by Charles Santiago, while Saman Kelegama (Institute for Policy Studies, Colombo) and Chackrit Duangphastra, DTN, Ministry of Commerce, Thailand, participated as the lead speakers. After the chair's opening remarks, **Saman Kelegama** noted five challenges that he thought were crucial in the proliferation of Asian FTAs. The first challenge is the integration of these FTAs into a regional agreement. He observed that when the South Asian Free Trade Agreement (SAFTA) came into formal operation in July 2006, there were altogether four bilateral FTAs already existing in the South Asian region. When the South Asian Preferential Trade Agreement (SAPTA) did not move due to political factors in the region, India took the initiative to pursue bilateral FTAs with willing neighbouring countries. Subsequently, the Indo-Nepal agreement was formalised in late 1996 and the India-Sri Lanka FTA was signed in 1998, while Bhutan-India informal trade was given a more formal structure. In addition, the Pakistan-Sri Lanka bilateral FTA was signed in 2005. In contrast, when the ASEAN FTA (AFTA) came into being, there were no bilateral FTAs among ASEAN member countries. Thus, the deepening of the FTA could be done without overlapping bilateral FTAs. In South Asia on the contrary, each existing bilateral FTA has its own negative lists, preferential schedules, rules of origin, etc. According to Saman Kelegama, the only possible way forward in this situation is to find the least common denominator among the various agreements; that is, to choose to harmonise the various bilateral FTAs based on the most liberal rules of origin, the shortest negative list, the deepest tariff cuts, etc. But he agreed that using this as the terms of reference and expecting others to gradually comply is going to be very difficult due to differences in policy priorities among the participating countries in the region. Under SAFTA, there are eight member countries, the latest member being Afghanistan. The five LDCs - Nepal, Bhutan, Maldives, Bangladesh and Afghanistan - are not keen on accelerating trade liberalisation through SAFTA. It will be impossible for them to accept the least common denominator. In this context, there are only two options. One is to maintain the status quo with the "spaghetti bowl" of criss-crossing FTAs and move ahead with the regional FTA agenda while accelerating trade liberalisation with certain partners through bilateral FTAs. The other option is to have a formula as in the European Union, "Two plus X". That is, since two countries like India and Sri Lanka have signed a bilateral agreement, if another SAARC member wants to join it, they can join under the terms of the existing agreements. When the European Union started expanding, Portugal, Ireland, etc. joined only after they were ready. However, he pointed out that to have something like this in Asia is going to be a major challenge. The second challenge that Saman Kelegama pointed to is the significant confusion created among traders and investors because of multiple FTAs. He took the example of Sri Lanka's major exports of spices. He explained that Sri Lanka can export cloves to India under three major channels: the old Bangkok Agreement, which is now called the Asia Pacific Trade Arrangement (APTA); SAFTA; and the India-Sri Lanka FTA. At one time, when Indian tariffs were coming down gradually for some Sri Lankan agricultural products, the most favourable bilateral agreement to export cloves to India was the APTA. While it was signed in 1974, its tariff cut for the cloves was the deepest. It was only four years ago that the India-Sri Lanka FTA overtook it in terms of tariff cuts for cloves. He pointed out that since exporters in many countries often have difficulty in understanding and judging which preferential arrangement will give the largest access in which markets, the challenge before governments is to create a portal with a database detailing the information of the various agreements in each country's language. Thirdly, we also need to undertake capacity building in our Departments of Commerce, since officials themselves are quite confused. Given that there is the unilateral track of liberalisation, bilateral tracks, regional track and also the multilateral track of liberalisation, different individual officials should be available to manage various agreements and related issues.

The fourth challenge is that when there are multiple FTAs, countries have to be very strategic in their trade negotiations. He argued that when a country has two bilateral FTA negotiations already and then when it approaches another country for another FTA deal, the first country is in a position of weakness having to liberalise as much as in the initial two, even if the priorities might have been different in those cases. For instance, under the India-Sri Lanka FTA, Sri Lanka managed to get its entire agricultural sector under its negative list with the support of the Indian negotiating team. But under the Pakistan-Sri Lanka FTA that was negotiated during 2003-05, Pakistan gave a lot of market access for Sri Lankan exports like tea and rubber, and for readymade garments under quota. In turn, Pakistan wanted Sri Lanka to give market access for a limited number of four agricultural items, namely apple and mandarin as well as Basmati rice and potatoes under quota system. This was agreed to. But, because of this, when it came to the next set of negotiations with India, Sri Lanka found themselves in a much weaker bargaining position since India also expected market access in Sri Lanka for agricultural goods. The final challenge of multiple FTAs, according to Saman Kelegama, comes from the WTO-plus character of many FTAs. In many North-South FTAs, the Northern partner insists on having agreements on government procurement, TRIPs-plus and GATS-plus provisions, including opening up the capital account of the balance of payments. Singapore pursues the WTO-plus strategy in the Singapore-US bilateral FTA. The danger here is that unlike government procurement for which Singapore does not have to be open to other countries even if it has opened up for the US companies, national treatment applies to TRIPS-plus and GATS-plus provisions. That is, what a country has liberalised with respect to one partner in one FTA has to be extended to other countries. In particular, signing an FTA with the US weakens the bargaining power of a country even in negotiations with a Southern partner.

In further support of the last point, the Chair **Charles Santiago** also stressed that FTAs with the US were far more predatory. He highlighted how in Singapore's case, while it had only committed to three new service providers in the telecommunication sector under the GATS, in the FTA with the US, Singapore had to agree to unlimited service providers. The same was the case with GRCs where Singapore opened GRCs even for takeovers.

As a person who has been working with the Thai government's Asian Bureau in the Department of Trade Negotiations, as well as the trade promotion and trade facilitation divisions in the Ministry of Commerce, Thailand, **Chackrit Duangphastra** represented the point of view of practitioners from an export–dependent Asian developing country, which uses FTA as a mechanism to gain foreign investment and market access as well as to welcome foreign employees. According to him, deciding on the scope of liberalisation in trade in goods, services, agricultural goods, etc. is one of the crucial challenges before developing countries. The timing of the negotiations is equally important. When many negotiations take place simultaneously, officials need to wait for one negotiation to end before proceeding with another one. The Ministry has to take decisions in terms of the substance of negotiations too. Some countries require a "single undertaking" on trade in goods, services, investment, TRIPS, etc. all at the same time. Some other FTAs specify a sequencing of liberalisation starting with goods, followed by services and others. An important element according to him is building trust between the relevant government agencies, both domestically and between the negotiating partners as well as with domestic business and the non-governmental sector. The government also needs to take care of the impact of politics, as well as the FTA's impact on food and energy and environment. Further, the overlap between existing trade agreements in areas such as rules of origin is quite challenging. Another challenge is utilisation of FTAs, because of the multiple forms that exporters need to use. The commerce ministry also faces a dilemma in deciding on the mode of notification of a particular FTA to the WTO. Some partner countries might prefer to notify to the WTO under Article XXIV of the GATT or V of the GATS, while some other dialogue partners prefer the "enabling cause", which creates confusion in the notification process. Another challenge is to ensure that adequate safeguard and remedy measures are provisioned for, especially when there are multiple FTAs. This is because some stakeholder or sub-sector might call for a revision of the FTA and there has to be provision for this. Another challenge is in the political realm in terms of balancing politicians' calls for greater liberalisation while needing increased protectionism in reality. Another challenge, according to Chackrit Duangphastra, is how to avoid manipulation of the automatic MFN provision. He explained that a new FTA partner can take a free rider privilege to tap into existing agreements in case of goods, services or investments. So, governments need to decide whether to adopt ASEAN+3 or ASEAN+6 as the optimal model to pursue. In a candid admission of the pressure being currently faced by trade officials in Asian countries, he concluded by saying that the readiness of the FTA team that engages simultaneously in many FTA negotiations is a big challenge.

On the note from the Chair that the challenges before countries are not just from the point of view of negotiations but also from the point of view of the impact of the negotiated deals on the people, on human development, labour and environment, the floor was opened for discussion. Given that multilateralising the various bilateral and regional FTAs in Asia is one of the biggest challenges before us, **Henry Gao** (Singapore Management University) asked whether we can draw any lessons from the European unification process. While there were different deals among the European countries in the 1970s and 1980s, they began the unification process in the 1990s by adopting the Pan-European Cumulative System (PECS) and liberalised rules of origin. That is, they allowed value added contents from different European countries to be added together so that the "spaghetti bowl" problem was overcome. He asked whether we cannot harmonise the rules of origin among the existing FTAs in Asia. Of course, as Richard Baldwin had pointed out, "unbundling of the manufacturing process" or the breaking up of the production process was one condition for such a strategy to work. **Jayati Ghosh** (JNU and IDEAs) noted that Asian countries have very different levels of development, so an important question is how to make greater regional integration in Asia more inclusive. According to her, a significant aspect of the EU experience is the extent of transfers to the backward region, which have been strongly associated with the relative income convergence in the EU, with poorer economies like Ireland, Portugal, etc. having benefited and grown faster. In Asia, we are all net exporters and in that sense not genuinely seeking to create the environment for inclusive regional integration. **C.P. Chandrasekhar** (JNU and IDEAs) asked whether we can talk of inclusive trade policies without having some agreement on the kind of development trajectory that is mutually beneficial for all the countries in Asia. He wondered how this can be formulated when each of the Asian countries is seeking to stimulate their economic development through net exports. It has now been recognised that there is mutual benefit in the financial sphere when a country with large foreign exchange reserves agrees to support another country that has payments difficulty. In the trade sphere also, we need to figure out what kind of mutually beneficial development trajectory can be forged. **Charles Santiago** commented that in a meeting of the top negotiators for the EU-ASEAN FTA, he found the ASEAN negotiators saying that if they got market access in shoes, textiles and some fish products, they would not mind liberalising other sectors. So, he wanted to know if this was the case in most negotiations.

In response, **Chackrit Duangphastra**, DTN, Ministry of Commerce Thailand argued that trade negotiations always involve trade offs. The solution may come from the inputs from the stakeholders. Thailand's new constitution requires the country to have a public hearing before going for negotiations. FTAs are part of the mechanism to increase the efficiency of the economy. Since Thailand cannot negate the existence of the globalised world and the MNC-driven supply chains, the country tries to synchronise the production networks. The objective of the ASEAN Economic Community is to attract investments and be the leading production base in this region. Since the tariffs are already quite low in the region, the areas more important than liberalisation of trade in goods are licensing, certificate of origin, etc. For trade in services, the positive lists for liberalisation and the Mode IV, movement of natural persons, because of its link to immigration, are the crucial issues.

Saman Kelegama remarked that multilateralisation of regionalism is a non-starter and the EU's example is inappropriate. According to him, the whole idea of the Free Trade Agreement of the Americas (FTAA) fell apart because it is difficult to merge CARICOM with

NAFTA. The African Union concept is also falling apart on the dilemma of how to merge SADEC with COMESA. In the EU, there were no bilateral FTAs among the European countries, so it was easy for them to go with a Pan-European cumulative system. But South Asia has bilateral and regional agreements that have binding commitments on tariff reduction, ROO, negative lists, etc. So, it becomes difficult to integrate rules of origin at different levels unless one accepts a least common denominator, which becomes a political economy question. So, according to him, regional integration is possible only if we get rid of the FTAs and agree on common rules of origin and start at the regional level using the EU building blocks model. Saman Kelegama agreed with Jayati Ghosh's point that it is very essential to offer some kind of assistance funds to the backward regions through a compensation fund like in the EU. Even in the SAARC, there is the Revenue Compensation Mechanism and SAARC Development Fund under SAFTA for less developed countries, even though he agreed that there could be operational problems with these. On C.P. Chandrasekhar's question on development trajectories, Saman Kelegama elaborated how the process came about in South Asia. In 1998, "the Group of Eminent Persons' Report" was released in South Asia, which suggested the EU model, namely, to go stage-wise from an FTA to a customs union, then to common market and to economic union with common currency and common central bank. This has been accepted without any cost-benefit analysis from all the South Asian countries. So, the general perception is that SAFTA is the building block for this purpose; but this has clearly been done without taking into account the individual development trajectories of the SAARC member countries and without identifying the winners and losers. There has also been no proper discussion on the development trajectory of integrating the bilateral FTAs into a single regional FTA. He also remarked that market access for a few at the cost of the others comes about because FTA negotiations are fundamentally decided by the political lobbying power of particular industries, which lobby the political leadership to enter into an FTA with a market that matters the most to them, even if the quid pro quo of the FTA means having to open up banking, finance and insurance, labour market, capital account liberalisation, etc. These lobbies are only interested in maximising their profits and sometimes the political leadership gives into this.

Indra Lubis pointed out that instead of looking at the EU or other models, Asia should consider its own experiences, resources and power. For example, Sri Lanka, India and Indonesia had taken the lead on setting up the Non-Aligned Movement, which was something new at the prevailing global conjuncture. He also raised a fundamental question: we have to first decide what kind of Asia we are envisaging before we decide what kind of trade we want. At the most fundamental level, for cooperation to happen, there has to be mutual respect for each other. But there is a lack of it even among the ASEAN members. Within the ALBA, Latin American countries are beginning to answer the question of what kind of Latin America they want. Further, when we talk about free trade, it is not restricted to FTAs or EPAs. For instance, government procurement is also related to the loans that come from the World Bank and the ADB in this region. A fourth point Indra Lubis raised was that we need to prevent the current trend by which governments tend to pass legislations supporting FTAs without consulting the parliament and the people.

Jose Africa remarked that the discussions seemed centred around how to make FTAs work, while free trade itself seems to be problematic from the experience of the Philippines as well as some experience from other countries. Starting from a perspective of the workshop that is seeking ITAs or Inclusive Trade Agreements, the question was what kind of trade deals are inclusive or developmental. He also cautioned that the noodle bowl problem should not be blown out of proportion because that is a big problem only if we want free trade immediately, which should not be the objective from a development perspective. Corporations know how best to choose from the alternative trade agreements in front of them. He pointed out that the real challenge before us is to how to build more inclusive democracies in our countries where our negotiators do have the larger populations in mind rather than the big corporate interests who push for FTAs because that will facilitate their production networks.

Shefali Sharma pointed out that in light of what can be seen from the EU-South Korea FTA deal, which is the only EU FTA with Asia whose text is publicly available, it seems that in the case of liberalising the financial services industry they are in denial about the global financial crisis and what the governments have been doing. The EU is in now in the process of negotiating with its member states on how to bail out their financial firms and they are constrained by what they have themselves committed. So, she wanted to know how the Asian economies which are undertaking commitments in the financial services and capital movements sections under these North-South FTAs, hope to navigate through such situations.

In response, **Chackrit Duangphastra** argued that his country cannot move away from FTAs since they are commitments that their political masters already made at multiple forums. Once we negotiate many FTAs, there can be some improvements and innovations. In many FTAs with Australia, New Zealand, and ASEAN-South Korea FTA, in the Investment chapter, the governments of ASEAN have agreed on macroeconomic stability measures. The governments can introduce the measure to ensure macroeconomic stability and to protect balance of payments, although national treatment has to be offered.

On what kind of Asia we would like to see, **Saman Kelegama** clarified that there is no document that has chalked out a vision for Asia. Whenever Asian leaders meet, they do talk about a possible Asian Economic Community. It appears that there is a general perception that Asia can assert its regional space and emerge as strong or a greater power bloc than the EU, given that by 2050 three of the largest economies in the world, China, India and Japan will be in Asia. The realisation of an Asian Economic Community will be positive as long as the interests of the individual countries are taken care of. To make FTAs work for the people, they have to be converted into economic partnership agreements; otherwise they are difficult to work out taking into account the interests of all segments of the people. Even in the WTO negotiations, it is only after the Doha Development Agenda came into the picture that the developing countries managed to insert into the agricultural negotiations concerns like food security, special products, special safeguard measures, etc. and into negotiations on TRIPS, public health issues, compulsory licensing, parallel importation, etc. The only way inclusive development can be taken into account under bilateral or regional FTAs is by building S&D treatment in favour of countries that require it. But that is not always an effective instrument, as he mentioned in the context of the Indo-Sri Lankan FTA. So, it will be possible to have inclusive trade policies in economic partnership agreements that cover “the broader issues”. The problem with the “noodle bowl” is that it will continue to create paper work and delays in the approval process vis-à-vis investors. In the context of financial crisis, he pointed out that there is a need to build up on the Swap arrangements in the Chiangmai Initiative. He believed that once these and other regional instruments are in place, Asia will have greater power to remain insulated from the developments in the Western Hemisphere.

The Chair **Charles Santiago** remarked that the question in front of us remained as to whether we can have mutually beneficial trajectory of economic development and trading system and whether an FTA would be necessary in that context. NAFTA has been extended from an economic arrangement to a security arrangement; the EU is not just an economic investment and financial arrangement, but also has human rights as one of the cornerstones of its economic development project. While ASEAN talks about “shared prosperity”, in actual negotiations, countries are mostly trying to protect just their own corporate interests. The evidence so far in most FTAs is that while a few industries and groups have benefited from them, the existing asymmetries between the North and the South and within countries are being exacerbated by FTAs. So it seems that FTAs are not necessary at all to move forward on inclusive trade policies.

Day II

Issues in investment liberalisation under FTAs

This session was chaired by **C. P. Chandrasekhar** (Jawaharlal Nehru University and IDEAs). The first paper on ‘Investment Liberalisation under FTAs and Some Legal Issues in International Law’ by **Lawan Thanadsillapakul** (of the School of Law, Sukhothai Thammathirat Open University) discussed how the nature and conditions of the Investment Chapter under the current bilateral free trade agreements are different from those of Bilateral Investment Agreements. She pointed out that since there is no global or central organisation regulating international investment and because of the absence of a consensus to create multilaterally acceptable norms, problems arising from these inadequacies were so far solved by the parties concerned -by the host and the home states, and the transnational corporations - by mainly resorting to bilateral investment agreements or treaties (BITs). After describing the features of BITs, she argued that investment liberalization under BITs allowed host countries to maintain state sovereignty to control FDI and allowed for restricted areas of investment; restricted entry and investment and control on the operation of foreign investors. On the other hand, FTAs define investment very broadly to include any kind of property or contractual right to assets or money, owned directly or indirectly by the investor. Lawan Thanadsillapakul showed in detail that the incorporation of GATT–Plus requirements into the investment chapter of FTAs mean that they would lead to highly adverse consequences especially in terms of investment liberalization and investment/investor protection including dispute settlement mechanism, as well as the level of trade and service liberalization and stringent Intellectual Property protection. The new

FTAs are modeled to ensure that foreign companies will be treated as favourably as the nationals of host country and their competitors, and thus critically limit the ability of the host government to require foreign investors to adopt investment measures. They also protect FDI from direct and indirect expropriation of investments and investment disputes are subject to international arbitration. Foreign investors can also use labour regardless of nationality. Further, unlike the GATT, FTA does not contain any general exceptions from FTA rules. General exceptions would exclude specific kinds of government measures, which in the FTA were mainly limited to national security and perhaps public order. The FTA allowed only country specific exceptions, which required contracting parties wishing to preserve their sovereignty to regulate specific area of laws to identify any such measures that deviate from the FTA's national treatment and MFN obligations. These exemptions must be negotiated and agreed with the other contracting parties prior to signature or accession. Country specific exceptions are subject to "standstill". Therefore FTA does not provide an effective "exceptions clause" for national laws to protect matters such as human rights and human or animal health and the environment. Further, since there is no clear definition of indirect expropriation, FTAs imply the replacement of state barriers by restrictive business practices of TNCs.

Lawan Thanadsillapakul argued that even though FTAs are now entered into by many developing countries with their trading partners at the bilateral level, they may be revised and incorporated into the WTO regime because of strong support especially of the US, EU and Japan. She suggested the reform and revision of the FTA for coping with the problems that might be encountered by host countries, especially the weak countries. She concluded that the global economy needs a new international investment regime and a proper global regulatory framework to regulate international investment. Developing countries may gain advantages from this revised framework agreement and it could be used as an investment instrument by developing countries. The current bilateral FTA is a non-balanced mechanism due to the different bargaining power of the parties.

Daeng Salamuddin from the Institute for Global Justice (IGJ) spoke on 'Investment Issues in Indonesian FTAs'. He pointed out that long before FTAs were signed, foreign investment has occurred widely in Indonesia and foreign capital is in control all over Indonesia: Java, Sumatra, Kalimantan and Sulawesi, also including small islands. Foreign investments have also covered all sectors of the economy including agriculture, plantation, gas and oil mining as well as mineral mining, finance, trade and services. Foreign investors also now control land on a big scale. Act no. 25. 2007 on investments in Indonesia is facilitating big foreign investments. Further, foreign investors in strategic sectors such as oil and gas, minerals, coal and plantation are also the major exporters. The exports by these foreign companies make Indonesia the biggest exporter of raw materials. The country is the second largest world exporter in coal, gas, tin and palm oil. But almost the entire export income is taken by the foreign company through the profits transferred to the origin of their country. Daeng Salamuddin argued that as a result, in the chain of global trade, Indonesia's position is still as a producer of raw material in order to support developed country industries.

He pointed out that at the same time, most of the Indonesian labour force (62%) is in the informal sector and does not have a relation with these large foreign investments in

Indonesia. In the formal sector, most of the labour works in the agriculture sector, which again does not have any relation with the big investments. Most of agriculture in Indonesia employs traditional farming, with a land ownership of approximately 0.25 hectare per farmer. In 2005, World Bank estimated that almost half the people in Indonesia have an income between USD 1 and USD 2 per capita per day, which was worse than the year before.

After the WTO negotiations ended in a deadlock, Indonesia began moving forward with FTAs. Currently, Indonesia actively conducts trade negotiations with countries such as Japan, Australia, New Zealand, China, India, South Korea and potentially with the USA and the EU. Daeng Salamuddin argued that the entry of large-scale investment threatens the livelihood of farmers. The case study carried out by the Institute of Global Justice (IGJ) relating to the mining investments by Newmont Corporation, Lombok Tourism Development Corporation and Special Economic Zone Batam, shows that such investments lead to a takeover of farmers' land and the over exploitation of natural resources, which in turn lead to adverse ecological impact and social conflicts. With large-scale investments reducing the access of communities to natural resources, the productivity of communities decreases. As a result, Indonesia has in fact become an importer of food items such as rice, soybean, meat, milk, wheat, sugar and salt in large quantities, which were previously produced by domestic farmers. Daeng Salamuddin concluded that given that Indonesia is signing up to the comprehensive coverage in FTAs including investment, it will increase the access of foreign capital to natural resources, trade and finance in Indonesia, and in the end will make it very difficult to maintain peoples' livelihoods. He argued that Indonesian society needs real agrarian reform in the form of land distribution, and that the government should provide protection and subsidy for agricultural production tools, capital, technology and access to markets and fair prices in order to increase farmers' income. In the last 20 years, the Indonesian economy has entered a de-industrialization phase, before reaching the phase of industrialization, such that more than 70 percentage of Indonesian industry was coming from imports. Thus, he concluded that in order to build a strong economic structure, the country needs a good industrial policy.

The paper on '**Intra-Regional Investment: The neglected aspect of ASEAN integration'**, by **Pavida Pananond** from Thammasat University, Bangkok, explored whether and how the rise of outward FDI from Southeast Asia could contribute to the region's further integration. The paper presenter reiterated the point that the key mechanism behind ASEAN regional integration has been the interests of non-state actors, particularly multinational firms from outside the region that have established extensive production networks within the region. Not much emphasis has been placed on how intra-regional investment can strengthen the region's economic integration. She showed that despite its limited amount, outward FDI from Asian developing countries has been an increasingly significant trend of the global FDI. Within Asia, Southeast Asia was the third largest source of FDI outflows, following East and West Asia. Two layers of integration are observed among the ASEAN countries. There is extensive cross-country investment among ASEAN-5, especially Singapore, Malaysia and Indonesia, while there is uni-dimensional investment from the more advanced members to Cambodia, Laos, Myanmar and Vietnam.

Intra-ASEAN investment is driven most by market-seeking, followed by efficiency-seeking (esp. lower cost locations) and resource-seeking objectives. Key indigenous players are large firms and government-linked companies.

Pavida Pananond argued that as outward FDI can be regarded as an indicator of competitiveness, the uninspiring performance of key ASEAN members, with the exception of Singapore and Malaysia, implies that they risk being bypassed by other emerging economies that have been able to upgrade their economic development to the point where they are actively engaged in outward FDI. In addition, without more ASEAN members actively participating in outward investment, ASEAN is likely to remain a region whose integration is largely driven solely by inward FDI from outside the region without sufficient role of intra-regional linkages. As she saw it, the need to strengthen Southeast Asia's regional integration cannot be denied, especially in the face of the ever rising competition from other economies with similar factor endowment and larger markets like China and India. Therefore, she argued that ASEAN needs to be flexible enough to accommodate extra-regional structures as much as sub-regional ones. Initiatives that link the region with key players outside the region, like ASEAN Plus Three Cooperation, need to be maintained to encourage inward investment to the region. At the same time, sub-regional groupings such as the Greater Mekong Sub-region (GMS) or the Growth Triangle should also be strengthened to stimulate more intra-regional investment flows. Pavida Pananond called for a clear, proactive and integrated strategy towards outward investment at the country level.

The discussant **Chayodom Sabhasri** (Chulalongkorn University) took up the broad trends in global investment flows and FTAs briefly. He argued that despite the failure of the ASEAN-EU FTA negotiations, Lawan Thanadsillapakul's paper could consider whether ASEAN has better bargaining power as a regional grouping when it comes to plurilateral negotiations such as ASEAN plus One, ASEAN plus Three and ASEAN plus Six. He also looked forward to practical details on reform and revision of the FTA model, and the proposed global regulatory framework for investment suggested by her. In the context of Pavida Pananond's paper, he pointed out that one of the reasons for the dominant role played by Singapore in intra-ASEAN investments is the role of its sovereign wealth funds which invest in several sectors including in housing, finance and services. But, he observed that it might be better to consider inward and outward FDI from individual countries in ASEAN and not the region as a whole, given the differences in economic development of the ASEAN countries.

In the discussion, **Wisarn Puphavesa** (TDRI) pointed out that issues like transfer pricing, which the UN and the UNCTAD used to discuss, have gone out of the horizon. But, there is more incentive for transfer pricing today by exploiting production networks. He also opined that the multilateral framework is better than bilateral FTAs to take care of these problems. In the context of Pavida's paper, he felt that intra-ASEAN investment is low because ASEAN companies are still dependent on developed countries' technology. ASEAN should invest more in marketing networks in Europe, Japan, etc. Further, Thailand's focus on production network-led exports also has problems, as the country will be part of the international transmission of instability. Therefore, in addition to being part of production networks, ASEAN countries have to focus on other differentiated products and be diversified enough to have balanced export growth.

In the context of the discussion on outward investment from ASEAN countries in Pavida Pananond's paper, **Jose Africa** (Ibon Foundation) asked whether the nationality of the investor makes a difference. He wondered whether ASEAN investors are better than non-ASEAN investors in any sense. In this context, he wanted to know how the nationality of ASEAN investors was determined in the study. He also wanted to know whether state-led integration leads to better policy or economic outcomes. **Smitha Francis** (IDEAs) wanted to know whether, given the definition of investor under the ASEAN Investment Area (AIA), the ASEAN plus One FTAs and the moves towards ASEAN plus Three and ASEAN plus Six FTAs signify that a framework equivalent to the Multilateral Agreement of Investment (MAI) was taking effect. She too wanted to know how the nationality of the ASEAN outward investors was defined. She commented that given the predominance of foreign capital in many industries involved in production networks, it was likely that at least some of the outward FDI registered from ASEAN countries could involve relocative investments by the MNCs based in one country into another. But there was also some evidence that domestic capital in countries like Thailand came under increased competitive pressure after the ASEAN-China FTA was signed and undertook relocative investments in countries like Laos and Cambodia. So, she suggested that it might be useful to extend the analysis to look at how the outward FDI from ASEAN countries, especially that to the less developed countries within the region, was being impacted by the ASEAN-China FTA.

Kejpiroon Kohsuwan (Department of Trade Negotiations, Ministry of Commerce, Thailand) asked whether a positive list or a negative list approach would be better in investment liberalisation, from a legal point of view. **Elpidio Peria** (Third World Network) questioned Lawan Thanadsillapakul's position that there was no need to worry about liberalisation because the state had at its disposal legal tools to restrict the entry of investors. He pointed to non-legal factors such as corruption, nepotism and political pressure, which reduce the leverage that states have. He wanted to know how significant these non-legal factors were. **Junya Yimprasert** (Thai Labour Campaign, Chiangmai) said that people misunderstand the role of Singapore in ASEAN. In the global value chain, countries like Singapore and Hong Kong, China are just the agents for the global brands. She also did not agree with Lawan Thanadsillapakul's idea that ASEAN has collective bargaining power, because according to Junya Yimprasert, people in the region as a whole did not have any collective bargaining power. She observed that ASEAN is one of the regions where violation of trade unions rights is quite high. Civil society representatives are still not allowed to meet and discuss with the ASEAN leaders. ASEAN leadership has until now failed to ensure people's participation and the people in the region have no collective bargaining power. Referring to the Singapore issue, the chair **C.P. Chandrasekhar** clarified that FDI is defined as any investment in which a single foreign investor has 10% equity. So, if a sovereign wealth fund from Singapore makes a portfolio investment in which it buys more than 10% of equity, it gets registered as FDI. But Singapore might not have a production interest at all, because it might actually be one of these investor funds investing. **Charles Santiago** (MP, Malaysia) opined that what is decisive in investment negotiations and their outcome is the fact that

90% of all patents are controlled by developed countries and 95% of all patents are controlled by big MNCs. So he asked if there was any difference between having FTAs and the WTO when these are highly monopolised or controlled by big MNCs as well as developed countries.

Lawan Thanadsillapakul began her response by saying that her objective was to seek the proper legal instrument to accommodate globalisation. But because the obligations especially under bilateral FTAs are unfair, the question she sought to answer was how to obtain fair obligations under FTAs. The substance and obligations under bilateral FTAs try to monopolise trade in the hands of a few. In the WTO, all member countries engage in the negotiations; but bilateral FTAs are dominantly influenced by the interests of the private sector. She insisted that if the legal aspect is not carefully assessed, the wealth will not go to the locals because under international law, the nationality of the TNCs is very important. Every country has its definitions of a national entity based on domestic laws and regulations. In fact, the majority of entities in Thailand and elsewhere in ASEAN are not local. From an economic point of view, whether investment liberalisation is good or bad depends on the efficiency of those TNCs. But from the social point of view, investment liberalisation leads to marginalisation of the local people. Further, she clarified that this also means that all the intra-regional investments in ASEAN are not made by the local firms. Under the ASEAN Investment Area (AIA), if a non-member who makes establishment in any one of the ASEAN countries makes an investment in another ASEAN country, it is considered as an ASEAN investment. That is, investments made by the TNCs established in ASEAN can constitute an increase in intra-regional ASEAN investment. In the case of Thailand, foreign enterprises only have to comply with the Alien Business Law to establish in the country. According to this law, if the foreign firm maintains less than 49% equity ratio, they will be considered as local firms and they can circumvent rules to buy land. They can also circumvent the negative lists of FTAs and invest in sectors closed to foreign investment. Lawan Thanadsillapakul emphasised that if non-member investors can be incorporated within the AIA, agreements such as ASEAN plus One, ASEAN plus Three, etc., will of course enhance the regional integration. She said that the ideal is to develop the fair legal model of FTA that will accommodate social issues.

Daeng Salamuddin reiterated how Indonesia has carried out triple liberalisation in the trade, investment and financial spheres, as a result of which all these areas are the control of foreign capital. **Pavida Pananond** agreed that aggregate balance of payments (BoP) statistics are not enough in deciding the nationality of the investors or to indicate the role of multinational firms which are significant players in these investments. There is a clear need for firm-level data. Since the Bank of Thailand that has the data cannot reveal it due to the legal obligations, she is in the process of constructing a firm-level data base from the financial accounts of firms listed in the stock market. She pointed out the need for such statistics to be made available by the government to researchers, and requested the policymakers from the Bank of Thailand and the Ministry of Commerce present at the workshop to look into this matter. In her opinion, the nationality of the investors did not matter in the sense that capitalists from the South seem to be exhibiting the same investment behaviour as Northern capitalists. She took the example of Thai investment in

Cambodia, which according to her was not better than other investments in Cambodia. So, South-South FDI did not appear to be better than North-South FDI. At the same time, she opined that regional integration and globalisation should be viewed as a two-way street, where developing countries should also think of how to benefit from the process instead of just being recipients of foreign capital. In this context, increasing the competitiveness of domestic firms in developing countries becomes crucial and there should be clear policies on this beyond protectionism. She also agreed that Thailand should not be just serving the MNCs as part of production networks, but that the country should also try to develop its own production and distribution networks starting with the neighbouring countries. On the impact of outward FDI from China on ASEAN FDI, she believed that it would be difficult to pinpoint the increase or decrease in ASEAN outward FDI to China's impact alone.

Sectoral Issues of Development Concern–I

This session was chaired by **Jade Donavanik** of Faculty of Law, Siam University, Bangkok. **Elpidio Peria** of Third World Network, Philippines, who made a presentation on the **'IPR Provisions in the EU- ASEAN FTA'**, argued that the EU's thrusts in fostering this FTA are mainly to achieve an effective level of protection and enforcement of IPRs. But this will lead to stronger intellectual property (IP) protection, since it removes or reduces the flexibilities of the TRIPS Agreement in the WTO. The FTA does not put in any of the provisions in the WTO that are favourable to developing countries. Once IPRs get enforced, those in possession of IPRs are the ones who will benefit. He showed that almost without exception, developing countries are net importers of technology. In Malaysia, Indonesia and the Philippines, nearly 97% of IPR is granted to foreigners. Further, Article 3 on technology transfer, which is supposed to enable countries to get technology, takes note of the "legitimate rights" of the IPR holders. This may limit the ability to achieve technology transfer via compulsory licensing or other exceptions to IPR. This puts ASEAN at a disadvantage.

Elpidio Peria discussed the various provisions of the proposed EU-ASEAN IPR chapter in detail to show the extent to which they are TRIPS plus. At the moment, creators in ASEAN get their rights. But, in Article 5 on copyrights, ASEAN is made to sign on to the Rome Convention for the protection of the rights of performers, producers and broadcasting organisations, which is not required even by TRIPs. If ASEAN signs on to the EU-ASEAN chapter in the current form, they will also be signing onto the Berne Convention for the Protection of Literary and Artistic Works, which will affect Laos the worst, since it is not even a WTO member. Under the current EU IPR chapter, ASEAN will also be made to sign the WIPO Internet Treaties, which have been controversial since they go beyond the provisions of the TRIPS agreement, by providing copyright holders exclusive rights over material in the online environment and specifically calling on countries to provide effective legal remedies against the circumvention of technological protection measures. Again, in the case of the rights of authors, while TRIPs allows for only 50 years of protection, the EU-ASEAN FTA extends it to 70 years. Collective management of rights involves the rights of copyright holders to organise themselves to collecting societies. This was a new issue introduced by the EU in the WIPO which was rejected by developing countries; but Elpidio Peria pointed out that the EU is trying to introduce it in the ASEAN case. This is the same case with Article

5.5 on broadcasting rights, which is relevant for output available on the internet. No circumvention of technological protection measures will be allowed under the EU FTA. Again, most of the ASEAN countries that want to preserve their policy space relating to Trademark laws will also be deemed to have limited it. Further, in the case of geographic indicators relating to products from a certain locality, while the WTO discusses only wines and spirits, the EU FTA extends it to many agricultural and other products usually produced by local communities in ASEAN. He argued that this will sidestep the issue of traditional knowledge protection in ASEAN.

ASEAN member-states are to also comply with Articles 1-52 of Patent Cooperation Treaty, which makes it easier for foreigners to apply for patents in developing countries. According to Elpidio Peria, this will result in increased patent applications in developing countries with predictable impact on access to affordable medicines and impact on ability of countries to move up the value chain in manufacturing. Further, the FTA also involves signing Articles 1-16 of the Patent Law Treaty (2000) that would limit the procedural requirements ASEAN countries can demand of patent applicants. This will lower the procedural barriers and costs for applying for a patent in ASEAN countries. Further, Articles 2-9 of the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms will result in: more micro-organisms being patented; greater foreign exchange losses when ASEAN countries use patented micro-organisms in industrial and other processes; and increased risk of bio-piracy. Elpidio Peria also explained that if countries have data protection provisions in their patent laws, it will prevent the drug regulatory authorities in those countries from using the data submitted by the originator for drug registration, to assess the applications of generic companies. This will make it very difficult for generic companies to apply for the same drugs. Raising the data exclusivity provision from 5 to 11 years will thus make it very difficult for generic companies to compete in the same drug. Under the FTA, ASEAN member states may also have to revise their existing Plant Variety Protection (PVP) legislation that are currently farmer-friendly, to reinforce the protection of plant varieties based on UPOV 1991. This will make it more restrictive for farmers to exchange their seeds.

The FTA also calls for enforcement of IPRs. But when ASEAN does not have enough resources to take care of the basic needs of its population, Elpidio Peria questioned why these countries should spend scarce public resources to protect private rights. He concluded by arguing that it is important for ASEAN countries to have clear priorities and know the trade-offs involved in agreeing to these highly restrictive provisions in the IPR chapter. Based on the trade offs, the ASEAN countries need to take a common position. But, only the IPR chapter of the EU-ASEAN FTA has been made public so far. So ASEAN has to first demand that the other chapters be released too so that the countries have a clear understanding of the trade-offs involved in the context of the whole FTA.

The Chair **Jade Donavanik** stressed that it was quite clear that agreeing to the IPR chapter as it is currently formulated will put ASEAN countries in a highly disadvantageous position in a variety of areas and on issues of national concern.

Sajin Prachason (Sustainable Agriculture Foundation (Thailand)/ FTA Watch) began her presentation by pointing out how there is increased realisation about the important role that continues to be played by agriculture as the source of livelihood, food security and social safety net for the vast majority of people not only in Thailand but also in other developing countries. Rapid rice price surges in many parts of the world in early 2008 was another landmark when people realized that agriculture was important for food security and any neglect can lead to devastating impacts. She went on to describe how the FTAs that Asian countries are signing have the potential to affect the agricultural sector via 4 main channels: Tariff reduction/ elimination; Sanitary and Phyto-sanitary Standards (SPS) in developed country markets that prevent expected benefits to developing countries from increasing agricultural exports; intellectual property rights (IPRs); and investment liberalisation. Policy makers and negotiating teams are likely to believe that agricultural trade liberalization will help boost international agriculture trade and automatically pressure farmers and entrepreneurs to adjust themselves more efficiently to international competition. However, Sajin Prachason argued that tariff reduction and elimination tend to disrupt farmers' domestic markets, while the increasing supply of agricultural products reduces farmers' bargaining power. This has been observed in Thailand. On the other hand, trade liberalisation does not fulfil the export promise. Again, taking the case of Thailand, she pointed out that the farmers often do not find it beneficial because it is the middle men for big export houses that quote the price. Further, adjustment to free trade does not happen easily. She explained that in reality, adjustment often means continuing to grow the same crops at a disadvantage because they are part of the farmers' lives and these very same crops had provided them and their families with basic needs and some levels of luxury for years. For other farmers, adjustment means joining government programs or companies in contract farming. This is especially true in Thailand since contract farming is promoted by many policymakers and organizations because of their promises on market access and guaranteed prices for farmers. Contract farming may be favourable for farmers if contracts are negotiated on equal footing and there is a mechanism to regulate and control unfair practices. But experiences in Thailand and elsewhere have shown that farmers are usually put in a disadvantageous position on both the production and marketing sides. Instead of becoming entrepreneurs, farmers become simply workers on their own land.

Further, Sajin Prachason pointed out that IPRs, investment liberalization and protection together can intensify monopoly of natural resources and discriminate against small farmers. Small farmers face obstacles and limitations regarding ownership and security over resources, market entry and exit, and bargaining power, etc. At the same time, safeguard measures are inefficient to protect farmers because they require producer(s) controlling the major proportion of production to write to the authority to invoke the mechanism. She pointed out that Thailand has invoked anti-dumping measures over 40 product items as a member of the WTO, but it has never used safeguard measures at all. She argued that although some of the problems she discussed have existed even before the FTAs, they will worsen as trade liberalization intensifies under FTAs. Moreover, she argued that as liberalization ideology and practice gain wider currency, not only are the agricultural production and marketing sides affected, but the trends of natural resource commodification and monopoly also rise, further reducing the options available to farmers for adjustment.

Pawin Talerngsri from Thailand's Ministry of Finance was the discussant for this session. While concurring with the social, economic and environmental implications of agreeing to the IPR chapter of the EU-ASEAN FTA, he opined that we should explore the basis for a national innovation system for developing countries. He opined that from the practitioners' point of view, the analysis would be more comprehensive and useful if the paper presenter could shed some light on the aspects that ASEAN countries should take care of before moving to a strict IPR regime. Also, he was interested in knowing the successful stories in adopting IPR regimes and the factors that have helped countries with successful IR regimes. On Sajin Prachason's paper, he commented that in neo-classical economic theory, trade liberalisation will be effective if three assumptions of perfect competition, full information and substitutability between labour and capital are in place. The paper clearly established that there is lack of information for the people in the segmented agricultural and rural sectors; imbalance in the distribution of power between the businesses and the farmers; and absence of substitutability between what a farmer can produce and shift to for adjusting to trade liberalisation. In this context, he wondered whether the current policy of trade protectionism by ASEAN countries will improve the livelihood of the regions' farmers and lead to food security, or whether additional policy measures are required. He said that it was important to consider the huge economic rents collected by the politicians and businessmen who benefit from trade protectionism. This is also relevant in the context of the illegal rice imports coming in from Cambodia across Thailand's borders every day. He wondered whether taking concrete measures such as making registration compulsory, etc., would affect trade liberalisation adversely. Pawin Talerngsri also pointed out that the impact of trade liberalisation has to be seen in the general equilibrium context.

In the context of the economic rent for agriculture, **Shefali Sharma** clarified that it was important to understand the global political economy of rent seeking in terms of the concentration of global agricultural business in times when global commodity prices are high or low. She pointed out that during 2007-08, when there were food riots in about 30 countries, the top 4 grain traders made massive profits. So, it is important to examine what this kind of concentration of agribusiness firms and liberalisation does to developing countries where there is no perfect information and the majority of people are dependent on agriculture for livelihood. **Indra Lubis** said that FTAs only bring higher profits to the agribusiness companies in our countries and not to the farmers. He mentioned how Indonesian farmers were arrested for producing the seed of corn, which was under license from Charoen Pokphand, a big agribusiness firm from Thailand. **Jose Africa** commented that in the context of the FTAs, it is not just agricultural trade liberalisation that impacts the backward and relatively unsupported farmers adversely. There is also a knock-on effect from the liberalisation of industry. Further, if an FTA displaces rural producers, they end up going abroad and this brings in a range of additional problems associated with migration. Linking up the apparent national interests that drive FTAs and the workshop agenda on the post-crisis Asian scenario, Jose Africa asked whether the post-crisis situation will intensify the contradictions among Asian countries' competing national interests. He pointed to the example at the latest ASEAN Summit in October 2009, when the world's biggest rice exporter Thailand and the world's biggest rice importer the Philippines could not agree over when to liberalise the latter's rice imports. The Philippines wanted to extend rice protection till 2015, but Thailand wanted it to increase its rice quotas. He also wanted to know if there were any regional directions to reconciling these increasingly conflicting national interests and what they mean for the workshop's main question on what kind of inclusive trade policies we want. **Kejpiroon Kohsuwan** asked whether IPR protection could be viewed as one of the ingredients to move ASEAN to another level from the current level. She wondered how IPR protection would link up with ASEAN's development in the future. She also wanted to know whether ASEAN would like to compete with China without IPR protection. Getting back to the issue of the conflicting national interests of agricultural producing and importing countries, Kejpiroon Kohsuwan wanted to know how policymakers across countries could balance their competing interests to make sure that agricultural communities across our countries gain.

Elpidio Peria responded by saying that developing countries cannot gain from IPR protection in the current conjuncture of a lopsided world, where the majority of IPR owners are the developed countries. He stressed that the developed countries did not develop by respecting IPRs as a basic, initial premise in their development policy. The call is to take note of the development state of the each country and identify the IPR regime that best suits its national interests. We have to make a strategic assessment of where IPR regime fits into trade and economic policies. He pointed out that the Indonesian case has to do more the Law on Cultivation. According to him, this meant that along with stronger IPRs, it will become really difficult for the marginalised sectors in Indonesia to continue doing what they have been doing.

Sajin Prachason responded by first asserting that all that is wrong with Thai agriculture was not entirely due to the FTAs; a lot of the domestic policies are already fundamentally bad. But she argued that continuing with FTAs will certainly worsen the current situation. Rice smuggling and illegal importing are already problems for farmers affected by price fluctuations. FTAs will induce more traders to import in greater quantities and that will worsen the situation. She wondered whether the General Equilibrium Model can be applied in practice because of problems like incomplete information, inequality in access to decision making, etc. She compared small farmers with a corporate group like CP, which is a member of the Chamber of Commerce and the Federation of Thai Industries, thereby having official platforms to get access to the information. When the Department of Commerce consults with stakeholders, they call representatives from CP, not from farmers groups. Currently, the Ministry is making an effort to include small farmers, but there are many groups who live in inaccessible areas. Clearly, there is inequality in information access. Further, a lot of farmers face many other limitations. For instance, in the Nan province, people cannot shift out of corn farming even though corn prices are dropping. There are many factors like this which affect the entry and exit of farmers. On the question about how to reconcile conflicting national interests such as the need to protect some sectors with the need to expand our export markets, Sajin Prachason pointed out that the first step would be an improvement in the consultation process. Further, there should be a mechanism for benefit sharing so that the winners from an FTA have to share their benefits with the losers of the FTAs.

Sectoral Issues of Development Concern-II

This was chaired by **Kejpiroon Kate Kohsuwan** from the Department of Trade Negotiations, Ministry of Commerce, Thailand. in her presentation on **'EU Services Demands in FTAs'**, **Shefali Sharma** from Third World Network, New Delhi, began by highlighting the continuing dominance of the industrialised countries in global services trade, with South-South services trade accounting for only 11% of the total. In fact, three-fourths of the EU GDP comes from the services sector and this reflects the massive amount of economic and political might of its services sector. There is also concentration of services trade in particular countries and a few sectors like: travel and transportation; business, information & communication; and financial & insurance services. She pointed out that one of the major reasons behind developing countries' readiness to enter into deep commitments in services is the belief that services and liberalised investment rules will lead to large increases in FDI. But according to the World Bank, OECD and UNCTAD, countries with bilateral investment treaties (BITs) are not likely to receive more FDI. There is also no empirical evidence of significant increase in FDI flows to the developing countries after the conclusion of the GATS in 1994. Meanwhile, service sector FDI flows are also concentrated among the industrial countries, with most of the inward and outward FDI occurring between industrialised countries and mainly the EU. In any case, FDI in itself does not lead to development outcomes. She pointed out that the broad consensus is that the development outcomes of services liberalisation depend on the existence of a robust regulatory framework.

But, as Shefali Sharma pointed out, when it comes to FTAs the EU has a template that it uses for all countries and the other party has to work with that text. Connecting with the morning's discussions on investments, she showed that the proposals in EU FTAs combine services and investments even more centrally than the GATS agreement. The EU FTA has a new structure with one chapter for services establishment and e-commerce. Services are meant to cover cross-border trade, which is a combination of Mode I and II and limited Mode IV. There is also a new way of scheduling in that the EU expects commitments from the FTA partner in one chapter for both services and investment; while the EU has three different schedules. EU has pre-establishment and post-establishment investment rules for foreign investors in both services and goods.

One of the major problems with services liberalisation is that it is being done without understanding the nature of services dynamics in our countries in the absence of robust data. The balance of payments data is highly aggregated and does not match the Modes; so we have to gather data for services. Shefali Sharma pointed out that deciding what services look like in developing countries and figuring out what it could look like in the future, are extremely important in the context of services negotiations. The definition of services in the EU FTAs is the same as in GATS. However, the breadth and depth of the "measures" affecting services have been broadened to include production, distribution, marketing, sale and delivery of a service and she argued that this has enormous implications on governance. For instance, the EU-South Korea FTA expands the scope of challenges against domestic rules, laws, decisions, etc. considerably, by including measures that can either directly or indirectly "affect" the value chain of the supply of a service. This expands the coverage of regulations that can be challenged by the EU corporate lobbies. On the other hand, EU FTAs are "GATS-Minus" in the sense that while there is "substantial sectoral coverage" as per GATS Article V, there are no Article XIX flexibilities, because the FTA calls for reciprocal behaviour from developing country partners with substantial sectoral coverage and progressive liberalization. Further, the GATS allows a provision to renegotiate market access in a particular sector if a country realises that it has been hit adversely, by providing compensatory equal access in another sector, but this is not possible under the EU FTAs. Under the latter, once a country commits some limitations on national treatment and market access, it cannot introduce new or additional limitations and renegotiate later. While mentioning that the EU EPAs being negotiated with African countries are worse, she pointed that the nature of EU FTAs means that basically a Multilateral Agreement on Investment (MAI) is being formulated under them. It should be remembered that the MAI was shot down at the WTO by developing countries.

Shefali Sharma also explained that since a country that negotiates with the EU has to offer it the same preferential treatment that it would offer to any other partner, including a Southern partner, it eliminates any kind of S-S relationship. Further, the right to regulate within the EU FTA is interpreted as the right to regulate based on "legitimate policy objectives", where "legitimate" is not defined. On the other hand, the GATS refers to national policy objectives. Without playing up GATS that has a huge number of problems for developing countries, she argued that the EU FTA model was worse than that of the GATS.

She pointed out that the section on financial services as part of the regulatory chapter in the EU FTA is a conglomeration of the Financial Services Annex and the Understanding on Commitments in Financial Services. These are aggressive forms of financial liberalisation that were pushed by the US and EU financial lobbies. Mainly OECD countries have signed up to the Understanding in the GATS; no Asian country has so far signed. Sri Lanka has signed only for insurance; not finance. Shefali Sharma explained that financial services include all kinds of instruments such as derivatives, futures trading, etc., which have been in the spotlight in the context of the global financial crisis. Commitments to this will clearly lead to financial deregulation and flexible rules for the easy flow of money and assets between countries. Meanwhile, "prudential carve out" says that it should not be more burdensome than necessary to ensure the stability of the financial system. So, the fundamental question is whether a country has to be in a financial crisis to decide to use the prudential carve out. In the EU FTA, there is also a chapter on Payments and Capital movement separate from the Services and Establishment chapter. It says that there can be no restrictions on payments and transfers from the current account and commits free movement of capital in accordance with host country laws for direct investment. While there are safeguards, there are footnotes with conditions on when and how safeguards can be applied and how to interpret them. They also state that the safeguards cannot interfere with investors' ability to earn a market rate of return. Shefali Sharma argued that these make it difficult for a country to apply these safeguards unless it has a crisis.

In conclusion, she pointed out that even though South Korea has more negotiating power relative to EU's other Southern partners say in Africa, it still faces unequal terrain in services and investment negotiations. Given the highly concentrated structure of services sectors, this increases anti-competitive behaviour. She also observed that there is competition between the EU and the US to get greater liberalisation commitments from Asia than what the other got. When it comes to EU-South Korea deal, the EU has matched its concessions with the US in the US-South Korea deal. If the EU follows this model in its FTAs with other Asian countries, it should be kept in mind that the commitments under this chapter will be in addition to what Asian countries have already committed in the BITs, TRIMs and GATS. Therefore, she concluded that in combination with a lot of other legal instruments, the EU FTA will seriously inhibit the rights of governments to regulate.

Junya Yimprasert of the **Thai Labour Campaign** started her presentation on **'Impact of Trade Liberalisation on Labour',** by challenging the idea in the South and in particular, in ASEAN, that economic growth can come first and development will follow. She reminded that out of the 65 million people in Thailand, 35 million are the workforce and 5.3 million are the farmers, who are producing not just for Asia but for the world. So, the way we look at trade and labour will be incorrect, if we do not look at the economic cycle of farming families. It is most important to remember that the nature of the workforce in Thailand, as well as in other ASEAN countries, is very different from that in the EU and some other developed countries. The majority of the workforce in Thailand are unprotected and include farmers with irregular and seasonal employment. She pointed out that the debt of Thai farmers is increasing rapidly and this is a push factor for farmers to be trafficked overseas to be migrant workers. The government in fact promotes farmers going abroad when there is a gap between planting and harvesting, by giving loans. But, she pointed out that this only adds to their debt, since there is no subsidy or support to the farmers.

Junya Yimprasert also explained that Asian workers find it very difficult to bargain for protection because the nature of their employment makes it difficult for them to unionise, unlike in Europe where the majority (65%) are protected, and even the 9% unemployed workers enjoy social security benefits. So, Asian workers have to protest in the streets and in the Ministry of labour and they are accused of disrupting the economic stability of the country. She mentioned Triumph, one of the last global brands with their own factories in Thailand and the Philippines, which has shut down both these in June 2009, and how the labourers have been fighting for their rights in the Thai Ministry of Labour for months.

On the other hand, Junya Yimprasert argued that the business sector has and will always use government power to manipulate the trade regulation system. However, worker participation is allowed less and less in trade negotiations. She argued that this is not about Asian capitalists, but about global supply chains. In the nature of global supply chain production, the big brands from the US and the EU play the biggest roles, while Asian countries like Hong Kong, China and Singapore turn into their trade agents. She opined that in the future, what will be left in the supply chains will be the branded companies, the agents and only small factories or even home-based workers. So, she insisted that when we talk about labour protection, we can no longer talk in the context of the old employment model. Many workers are the farmers' wives; some are the women who lost their jobs and started their own home-based factories; they are not organised and have no protection. The FTAs will make this situation even more difficult for the unprotected workers. If the government does not understand this situation and does not help the workers to mobilise their bargaining power with the brands, then countries are allowing themselves to be trapped by the politics played by the global players. The big players in the supply chains always say that if the host government does not provide them enough incentives, they would move out.

While explaining the power of the supply chains, Junya Yimprasert discussed the Li & Fung one-stop supply chain model, which shortened the three-month cycle for garment production into 45 days-cycle. The company changed its strategy from being the regional office for the brand to becoming the service actor to produce for everyone. The company currently has a list of 3000 factories around the world to manage the supply chain. She brought in all these details to drive home the point that under the changed supply chain production models, there is no scope for any disruption. This precludes scope for workers to bargain, since any move by workers to unionise, protest and bargain will lead to a disruption in the supply chain process and will be viewed as such. This is also why when it comes to trade agreements, governments usually do not allow any discussion of labour participation or labour rights. She pointed out that when Thai factories get an order, they sent it to the borders to employ Burmese migrant workers who earn only one-third of what the Bangkok workers earn. Instead of helping the workers, the government join the race to get and keep these FDI from the big companies. Thus, the relocation game of TNCs has pushed many governments in the producing countries to compete with each other and provide better incentive promotion programmes for the garment industry.

In the context of FDI into Thailand's industrial estates, Junya Yimprasert pointed out that there is even relocation occurring from Bangkok and Samut Prakarn, which have the highest wages, to the Eastern and border towns of Thailand. This is also linked to the existence of SEZs and Border Economic Corridors. She explained that Thailand used to have 3 wage scales before 2000. But under the pressure from trade liberalisation, the country currently has as many as 23 wage scales. Thus, there is relocation happening from the high wage zone to the low wage areas and to the non-unionised areas because organised workers are only 1.3% of the total workforce in Thailand. Thus, the SEZ act is causing the closure of factories in high wage or unionised zones, because piece rate employment becomes profitable. She mentioned that some energy efficiency promoting policies are also creating conflicts in some localities. She argued that while the current situation is already bad, under FTAs, the collective bargaining power and freedom of association of workers are further manipulated, since there is floating of wage.

Junya Yimprasert also reiterated the fact that when a country signs an FTA with a country like the US, the country will also have to sign similar deals with other countries. Looking back in history, she drew a parallel with the Bowring's Treaty that Thailand was forced to sign with the UK in 1855, which was in effect for over 70 years. After signing with the UK, Thailand had to conditionally sign the same kind of treaties with 14 other countries. It took Thailand 70 years to get rid of the 1855 Bowring Treaty with the UK. The first democratically elected government in Thailand spent three years negotiating with the UK and the other 14 countries with which Thailand had to agree to free trade because of the Bowring Treaty, to get rid of the agreement. According to her, it was clear that this is the same pattern with the US FTA too; if a country signs an FTA with the US, it will have to give the same deal to many other countries also.

She also pointed out that just as people's participation has been lacking in Thailand's unstable democracy since 1932, Thailand's FTA process too had a complete absence of people's participation. ASEAN itself opened for civil society only in 2003, even though it was established in 1967. She opined that while ASEAN had started with the industrial blueprints provided by the US during the Cold War era under military governments, this destroyed the region's strengths in organic food, biodiversity and culture. Junya Yimprasert concluded that in order to survive, ASEAN has to establish its own identity by becoming the organic food bank for the world.

The discussant **Soraphol Tulayasathien** from the Ministry of Finance, Thailand, pointed out in the context of the EU paper that the lack of effectiveness of BITs in bringing in greater FDI must be related to other factors that influence investment decisions. In his opinion, investment agreements are not very liberalising, because most of the service and investment negotiations currently are not on the basis of the choice of sectors to be opened up, but on the Modes to be liberalised. Developing countries are more sensitive on Mode 3, establishment; and developed countries are more sensitive on Mode 4, the movement of high skilled labour. Soraphol Tulayasathien explained the varied evolution of the GATS and the EU FTA structures. The Cancun Round failed mostly because of the Singapore Issues, including investment, since most countries were not willing to consider investment at the multilateral level. But once it was brought back into GATS Mode 3, the line between services and investment have become increasingly blurred with the entry of issues like "services incidental to investment", in the mining, agriculture, fishing and industrial sectors. There is confusion about the services provided to these investment sectors as to whether they should be included in the investment agreement or the services agreement. According to him, that is why we have the new generation agreements like the EU model, which combine services Mode 3 and investment under the title 'establishment'.

He complemented Junya Yimprasert's presentation for broadening the perspective beyond the traditional FTA impact analysis by bringing in labour and other social issues. But, according to him the tools of economic prosperity should not be blamed, but we should include more tools to take care of the side effects of trade liberalisation. The labour problem is not covered in GATS Mode 3 because Mode 3 covers only skilled labour. So, labour rights issue has to be dealt within other fora such as the International Labour Organisation (ILO), the UN Human Rights Council, etc. The ASEAN has also established a Human Rights Committee and all of us have to constantly remind our governments that these are issues that cannot be neglected.

Opening the floor for questions, the Chair, **Kejpiroon Kohsuwan** remarked that it would be useful in the EU-Korea Services negotiations paper to examine whether South Korea actually gave up its sovereignty or whether there were some sectors in which South Korea gained even as it gave in to the EU demands in other sectors. Further research could also be done on the particular sectors that the EU and South Korea liberalised as compared to other FTAs that the two countries have done. On the paper on labour rights, the Chair pointed out that it would be useful to clearly distinguish between the causes of the current labour problems; and whether they could all be attributed to trade liberalisation solely or whether there are other issues that need to be looked at.

Lawan Thanadsillapakul pointed out that the FTAs exacerbate the already worse conditions of the workers, because investors can bring in labour regardless of nationality. In the context of international law and obligations, this leads to the “free rider” problem, since the nations of the labour and the investor who gained entry need not reciprocate commitments to the host country. Further, MNCs are increasingly entering into agreements based on “hired work” instead of “hired services”, which have different legal enforcement implications. Under hired work agreement, employers are not subject to any labour law and related regulations, and therefore need not provide any protection to the workers. In fact, this is why the wage rate has not increased over the last ten years. Lawan Thanadsillapakul also explained that under the ASEAN Investment Area, the mutual recognition under trade in services will recognise the certificates of member countries’ skilled labourers. However, she pointed out that the differences in standards in each ASEAN member country will result in influx of labour which have different standards. So, there should acceptable standards while harmonising across the region. A third point she emphasised is that while investment liberalisation under Mode 3 is very similar to investment, there are very crucial differences from the point of view of policy space. In services, it is subject to bottom-up liberalisation, and is still subject to reservations in either market access or national treatment. The host country also has the authority to make limitations from the very beginning of the agreement. But in investment liberalisation, countries have to liberalise immediately and therefore, state sovereign right to regulate foreign investment will be totally removed. Under the FTA, they incorporate the Mode 3 in services trade into the liberalisation of investment and this is where the conflict comes. The final point she emphasised was that liberalisation alone will not contribute to the host country’s wealth; we need to take account of social issues like labour occupational safety and health, environment, and so on.

Herjuno Kinasih from the Institute of Global Justice (IGJ) wanted to know the EU demands in healthcare services and whether there are any safeguard measures allowed. He observed that in Indonesia, there is a nexus working behind the liberalisation agenda of the insurance sector, pharmaceutical industry and healthcare services. In the context of Junya Yimprasert’s point about people’s participation in trade policy making, he mentioned about Indonesian civil society’s experience. Even though the government carried out consultations with civil society, the perspectives were not reflected in the policies. So he wanted to know what could be done in order to improve people’s participation in trade policy making. **Kannokarn Suksuntichai** from the Ministry of Labour pointed out that Thai labour was not cheap, at least not among ASEAN countries. At the same time, she agreed with Lawan Thanadsillapakul’s point that Thai wage has not gone up as much as it could have. She said that there needs to be some new thinking from Thai policymakers on how to move forward on this front. **Elpidia Peria** asked whether it is possible for developing countries to take an aggressive stand in the services negotiations in say sectors like business process outsourcing. He wondered if there was any scope for taking advantage of any rules. **Virathus Theerawongseri** from the Bank of Thailand asked whether in the light of the global financial crisis, there is any move among the governments who are negotiating FTAs, towards increasing the safeguard measures while liberalising the financial services sector.

In her response, **Shefali Sharma** explained that in order to understand the impact of FTAs on labour, we have to look at the commitments that a country makes in an FTA as a whole, including services, investment and goods. For example, if we are looking at brands in retails, we are talking about distribution, marketing, supply, from top to bottom, and that has a direct implication for labour. So, she pointed out that the commerce ministries in Asian countries need to recognise that the labour question is fundamental. On the issue of whether South Korea gave up its sovereignty in the FTA with the EU, she responded in the affirmative. She explained that this comes about not just based on their market access commitments, but because the commitments under the FTA also applies to laws, rules and administrative decisions of state and local governments. Further, it is also about the framework within which South Korea has to negotiate with the EU. On the question of EU's demands in the healthcare sector, she pointed out that while non-life insurance deals with the medical industry, EU's demands on Indonesia will have to be examined specifically. There are some general safeguards for public safety, morals, public health, etc. But whatever limitations on commitment that a country has to make, the country has to show that they are "not being more burdensome than necessary" or prove that there are major moral or safety hazards. So, according to her, making commitments in this would remain a problem. On the possibility of taking an aggressive stand in the negotiations, she responded that wherever governments feel that they have an advantage, they should push for it. For instance, the Indian government is demanding Mode 4 liberalisation, but that is precisely the area where the EU has explicitly referred to its national sovereignty through the reference to its immigration policies in the EU-Korea FTA. She opined that the EU is likely to do the same in other FTAs. She also observed that generally in multilateral negotiations, developing countries tend to be the ones who want to play by the rules, and do not want be seen as too protectionist and "rude", and that this is likely to be more compromised in bilateral negotiations. On the other hand, the developed countries prioritise their national objectives very clearly in the negotiations.

The Chair **Kejpiroon Kowsuwan** commented that it is easier for policymakers to accept research papers if they are balanced and well supported with facts. She also observed that there was no difference in South-South and North-South FTAs since India has made the same demands to ASEAN as what the EU has done in the EU-South Korea FTA.

Junya Yimprasert reacted to the chair's comments that the labour rights story has become one-sided. She argued that it is not meaningful to say that the views of the labour groups are not balanced if the government does not give them a hearing. According to her, this is precisely why the consultation mechanism failed in the past. The government needs to ask different stakeholders to propose their views and then the balancing can take place. She also remarked that trade negotiations are open for everyone else, including academics and the businessmen, except the labour. So, the only option left to the labour groups is to organise massive rallies on the streets, walk to the Ministry of Labour, etc. On the other hand, she recalled that when the US-Thai FTA negotiations were taking place a few years' back, she was invited by the US ambassador to help lobby the Thai labour unions to agree with the FTA by holding out the temptation that the US will get the Thai government to ratify the ILO Conventions 87 and 98 (freedom of association and the right to collective bargaining and protection) – something the Thai labour movement has been demanding for 20 years. She pointed out that in the past 20 years of her work as a labour rights activist; she has been officially called by the Ministry of Labour to be a resource person for the first time only recently.

She also explained that there is a lot of myth about Global Compact, Codes of Conduct, Corporate Social Responsibility, etc. all of which are meaningless. She pointed out that Global Compact's focal point in Thailand is the Thailand Employees Association, which is all the time busting labour unions. According to Junya Yimprasert, all these have come about because the UN has lost the track of how to solve the problems. Thailand was one of the founding members of the ILO in 1919. But, Thailand has ratified only 14 out of the 188 conventions of the ILO, out of which one is non-active. Thailand's government has still not ratified the ILO convention related to peoples' rights for collective bargaining. She pointed out that the Ministry of Labour has always taken a negative attitude towards trade unions and works in collaboration with the businesses to suppress trade unions. She argued that it was important for trade officials and the ministry officials to understand the ground realities. When the Thai Labour Campaign did a survey in November 2009 in nine provinces, it found that the farmer's income is 300 euros, while the minimum wage in Bangkok is only 100 euros. But, we cannot be driven by the cheap labour-based supply chain approach; we need to talk about a rights-based approach. On the comment that the labour issues can be dealt within institutions outside the FTA, she commented how it took 15 years for human rights lobbies to get the ASEAN Human Rights Body established. ASEAN People's Charter also started only in 2007. She pointed out that it is optimistic to believe that the NGOs and academicians can act through the ASEAN civil society community pillars. However, while engaging with the ASEAN is important, she argued that the civil society will also need to have the peaceful mass mobilisations in order to have the collective voice heard. But, even though the structure for registration for NGO representation is quite difficult, NGOs cannot bypass the democratic process. The civil society has to engage with the government in a democratic manner.

Panel Discussion: Towards Inclusive Trade Policies in Post-crisis Asia

This was chaired by **Lawan Thanadsillapakul** of Sukhothai Thammathirat Open University. The first speaker **Chanida Chanyapate Bamford** of the Focus on the Global South, Bangkok, explained some of the features required to lessen the damage of trade liberalisation and make trade policies more inclusive. She remarked that the fundamental problem is the main principle behind trade liberalisation that it is supposed to lead to free competition, which in turn is expected to make companies more competitive. But, as the economic textbooks say, competitive pressure always produces winners and losers. Pushing out the losers is not being inclusive at all. Further, there is nothing in the system that compensates the losers; definitely the market cannot do so. She observed that during the last crisis, when General Motors (GM) could not compete with the Japanese, South Korean or Indian carmakers, it was the US government that had bailed out GM. Therefore, she argued that since it is clear that inclusive policies cannot be left to the market, we need to rethink trade and development. Even poverty eradication did not happen in the last twenty years with trade liberalisation and the WTO.

Chanida Bamford went on to explain that while regional integration is about expanding the markets, it also encompasses greater complementarity to meet the needs of the nations by trading between nations. So, if having a group of countries working together should be a way out of being competitive, it means that these countries have to be cooperative instead of competing. But ASEAN has seen various conflicts in the national interests involved in its integration. For instance, the Philippines has resisted tariff reduction on rice, while Thailand has been pushing for it. Indonesia too has been resisting tariff reduction to a certain extent under the AFTA. So, she observed that ASEAN integration currently is not based on any new concept, as the ASEAN countries are still competing. In ASEAN Plus One negotiations also, the partners are all working on a competitive mode. For instance, India was demanding the same kind of commitments from ASEAN countries as the EU. Thus, everyone seeks to dominate and gain the maximum out of the FTA negotiations. She argued that in order to get cooperation so that trade negotiations are based on solidarity and complementarity, and to ensure that they are also based on the needs of the population, there has to be participation in the process of negotiations.

Chanida Bamford pointed out that Asia has learned the lessons from the two devastating crises of 1997 and 2008, that relying on external investments makes our countries vulnerable. At the time, ASEAN had come up with some initiatives that were encouraging. The Chiangmai Initiative conceptualised the pooling of ASEAN funds together so that when there is any balance of payments crisis, these countries do not have to rely again on the big institutions like the IMF dominated by the neo-liberal politicians and their economists. Unfortunately, once the crisis was over, people went back to “getting growth back on track”. But, we should not lose the opportunity offered by this crisis and go back to “business as usual”. She observed that fortunately this time, the governments departed from the neo-liberal path and put a lot of money into stimulating the economy. They also put money in people’s pockets to stimulate consumption. But, they are still basing economic growth on the old model that stimulating consumption will stimulate growth. While some governments are also spending on public goods and services, such measures are being considered as time-bound programs before getting back to the same growth model.

Chanida Bamford stressed that even as Focus on the Global South and other civil society organisations have been involved with ASEAN Summit and ASEAN negotiations, they find that the ASEAN integration process is still based on liberalisation. Even as ASEAN talks about “caring and sharing”, there is still no discussion on any benefit-sharing mechanism. The starting and end points remain liberalisation of trade in goods, services, investments and money; but not people. But, migration is the fundamental common issue among ASEAN countries. ASEAN countries are either the receiving or sending country, or both at the same time; and migrants are the most vulnerable group. So, she pointed out that there are efforts among ASEAN civil society groups to push migrant workers’ issues. Similarly, environment is another issue that ASEAN countries share concerns about. She concluded that for trade policies to become inclusive, right to livelihood as well as other freedoms including decent living standards and environmental protection have to be the starting points and not liberalisation which will benefit only the big companies.

The second panel speaker **Indra Lubis** of *La Via Campesina* stressed on the food crisis two years ago. He observed that while we have had food crises since the end of the World War, this time it was not about food production, but about price rise, which came about because of the neo-liberal economic policies. His main argument was that while demand for food keeps growing strong, its supply has got concentrated and controlled in the hands of a few people. He described the Indonesian agricultural situation to explain how the big corporations control. Indonesia is one of the countries which uses significant quantities of soya in the traditional food. About 15 years ago, the government reduced the support to farmers for the production of soya, because it was not economically viable in the absence of price support. Because farmers have given up the cultivation of soya even as the consumption of soya remains strong and growing, last year when there was a soya crisis in Indonesia, the government had to allow soya imports. He pointed out that one of the companies that got the license to import was Cargill, which is not only a distributor, but also produces soya in Brazil. Thus, soya gets imported from Brazil and takes 2-3 months to arrive in Indonesia by sea. However, Cargill keeps 17000 tonnes of soya in their storage to control its price. Since there were protests in Indonesia against this, including from the small industry which uses soya in food products, finally the government distributed money to solve the problem. The government was also forced to bring down the tariff line to allow imports. Indra Lubis pointed out that India faced a similar issue in the case of sugarcane, on which thousands of farmers are dependent on; sugarcane imports from Brazil in large quantities are affecting these farmers. On the other hand, countries like Japan keep protecting their farmers and their rice price.

Indra Lubis argued that parliaments and the people in our countries need to understand that what happens in the rural area is not just because of the problems in national policies, but is related to the policy decisions already made at the regional and international levels. He reminded how asymmetric the global power relations are. For instance, no country in the WTO, including those that have signed FTAs with the US, has protested against the protectionist measures taken by the US in the aftermath of the financial crisis. Meanwhile, the criticism often raised by developed countries against some developing countries is that they do not have democratic systems in their politics. But equally important is democracy in economic policies. He opined that Asia has to develop with its own capacity and with its own characteristics; with Asian strengths being its large population and rich natural resources.

The third speaker **Jayati Ghosh** (Jawaharlal Nehru University and IDEAs) began by saying that when we talk about inclusive trade policies, we are not talking about FTAs because FTAs are already misnomers. This is because FTAs are not about free trade, but about "directing trade" towards a specific set of countries. Therefore, they are by nature, discriminatory trade agreements. She pointed out that the critical aspect about them is that they are not about countries; rather, they are about classes. Over the last 10-20 years, trade agreements have disproportionately tended to benefit business interests, while citizens and their needs have not been the focus. Therefore, according to her, it is hardly surprising that in trade negotiations India demands of Thailand exactly what the EU is demanding, because the Indian government is negotiating largely in favour of its business interests. The focus across the countries tends to be on investment rules and market access for companies, on the things that affect business profits and GDP, rather than issues of basic needs, protecting livelihoods and increasing employment.

Jayati Ghosh argued that considering the extent and pattern of employment as a by product and a social issue is a fallacious way of looking at economic growth. In the West, it is seen as an economic issue. In Asia as well, we can shift the focus and make employment an economic goal. Issues of livelihood and employment have to be made the central concerns of trade negotiating processes. She also argued that even though the way that RTAs have operated so far has not been this way, developing Asia desperately needs regional cooperation, from the point of view of economic inclusion and democracy. First of all, the export-led growth model, which most of our countries have been adopting, is no longer possible. The US cannot be the growth engine in the near future whether it wants to be or not. This change may come about through trade protectionism or by allowing the dollar to fall; that does not really matter. She explained that the earlier strategy of constantly increasing net exports is, therefore, no longer a viable option for even economic growth. It is evident that the earlier paths of accumulation are reaching all kinds of other limits as well. While the saturation of the Northern market is already known, there are also the resource constraints and the destruction of nature.

Jayati Ghosh observed that the food crisis is actually worse now than two years' back. The FAO estimates that 57 countries are in severe or moderate food crisis, including 24 countries in developing Asia. In these 24 countries, food prices are higher than they have even been historically and they have gone up by about 40-50% in two years. She pointed out that nominal wages have not however gone up or have deteriorated in some cases. So, the food crisis is a very large crisis. In addition, there are huge problems in terms of the environment and nature: degradation, pollution and congestion, quite apart from climate change. So, according to her, it is very clear that patterns of demand, consumption and production will have to change because economic growth is coming up against these limits and generating much social instability and tension.

Finally, she argued that Asian cooperation will have to take cognizance of five major areas. First of all, we have to use finance as a means of ensuring regional stability. Although people have forgotten about the Chiangmai Initiative, it is very important for our countries to have that backup if international capital decides to be excessively mobile. In addition, that will allow countries to set up capital controls without generating capital flight. Jayati Ghosh argued that capital controls in fact have to be set up regionally because if only one country sets up capital controls, it creates regulatory arbitrage and capital moves to other countries. The second most important thing in FTAs, according to her, is the exchange rate. She argued that since tariff levels in many of the countries are already down to levels as low as 5%, 2% or 0%, the only trade instrument that is left is the exchange rate. It is known for example, that China is using exchange rate policy as a trade instrument; other countries may move towards that as well. But it is also known that small developing countries that are open to finance find it difficult to control exchange rates. She pointed out that it is only countries that have large foreign exchange reserves that can afford to control exchange rates, because other countries are at the mercy of capital flows which determine their exchange rates. She explained that the kind of exchange rate volatility that occurs because of sudden and large capital movements in and out of countries is in itself a huge hindrance to stable regional trade, because by making some economies suddenly more expensive, it changes the incentives in favour of or against particular economies. The Thai wage rate is not so competitive anymore precisely because the Thai baht has appreciated. So, Thai workers seem more expensive than they are in terms of their real income.

According to Jayati Ghosh, the third issue that governments negotiating FTAs have to consider is backward region grants. It has to be kept in mind that such backward region grants had played an enormous role in the EU in generating solidarity and preventing marginalisation of the less developed regions. This in turn made everyone feel that they have a stake in a common partnership. The fourth aspect she stressed is that across the region, countries have to move towards wage-led growth rather than profit-led growth. While the share of profits has gone up across the world, Asia has seen the sharpest rise in profits as a share of national income, and the biggest declines of wage shares. So Asia has kept growing by suppressing wage incomes (broadly the incomes of workers and peasants who constitute 85% of the population across the region.

Fifth, Asia needs regional public cooperation and investment in R&D to develop technologies for more sustainable production and consumption patterns and transfer these technologies to each other. It was clear in the Copenhagen Summit that the developed countries will not give these technologies easily or cheaply and will demand all kinds of concessions in return. So Asian countries have to invest in research and development (R&D) for sustainable, cleaner technologies and share them. It is much better to do this regionally rather than nationally, since there are huge economies of scale involved. This in turn requires trade and investment policies that are regional. This will not happen easily, since Asian governments are not used to thinking in this way and there are various political economy interests involved. But it is now more possible than ever before, because developing Asia as a whole has large balance of payments surpluses, very large foreign exchange reserves and also greater regional integration than before. Fundamentally, this requires a change of vision, and she concluded by saying that we need to generate the political pressure for that kind of alternative in Asia.

In the ensuing discussions from the floor, **Elpidio Peria** from Third World Network pointed out that we have to figure out what kind of institutions we need to realise those goals. He made some observations based on his close monitoring of the negotiations on biodiversity for several years. He pointed out that while the Copenhagen Summit on Climate Change was going on, there was another unnoticed negotiation – emanating from the Rio de Janeiro summit on biodiversity – on how to work out some instruments for benefit sharing from the use of natural resources so that the benefits will return to the originating country. He observed that Asian countries took very divergent positions, with Japan, South Korea and Thailand on the one side against the rest of Asian developing countries. So it appears to be very difficult for Asia to have common policies. He also asked whether it is possible to come up with an alternative term to liberalisation because when ASEAN did this exercise three years back, it came up with a list of many issues. He also wanted to know whether, if we let the WTO collapse under its own weight, UNCTAD can play the appropriate role and whether fair trade schemes are viable alternative models.

Junya Yimprasert pointed out that the discussions were still considering only capitalist economies. But there can be other kinds of approach to trade as they are doing in Latin America where trade is occurring in kind and not in terms of financial transactions. Many people also talk about solidarity economies, while she would like to talk about organic economies. In the context of Jayati Ghosh's analysis, she mentioned that when we talk about class, we have to give space to the working class, to the peasants. But, what often happens in reality is otherwise. In Thailand, when the Kut Chum village in North-eastern Thailand created its own bank note, the Bank of Thailand banned it and declared it illegal. So, unless the model of economic system changes from trading in cash to trading in kind, there will be no space for cooperation as is the case with ASEAN currently. Europe is also talking about social solidarity economies, fair trade economies, etc. She asked whether Asia and the world can move towards alternative economic systems.

Herjuno Kinasih from the Institute for Global Justice (IGJ), Jakarta, Indonesia, pointed out that when discussing alternative trade policies in the regional context, we also have to consider the nature of international relations, which are based on the tradition that we can survive if we can define our partner and competitor. His question was how countries and people can cooperate with each other at an equal level. He opined that this will require a balance between policy-led development and bottom-up development. He pointed out that people and communities can also exchange technologies on how to improve farmers' income by improving agriculture.

Amitayu Sengupta of IDEAs emphasised the difficulty of having regional cooperation under an export-led growth model. As he put it, when the Asian countries got into export-led growth, the demand was to originally come from some "external markets" to provide the impetus for our development. But after the 1990s, Asian countries have started eyeing each other's markets. Thailand started looking west and discovered India; India looked east and discovered ASEAN, Sri Lanka also looks to the Indian markets. He asked how we can think of regional integration or inclusive growth as long as we are thinking still about exploiting each other's markets.

In response, **Chanida Chanyapate Bamford** observed that relying on the catching-up types of industrialisation that have gone on for decades cannot work anymore even if now the industrialised countries say that shifting this particular industry to your country will help for carbon emission credits. She argued that if we allow people to have their say, they will protect their natural resources, environment and livelihoods. In Thailand, the communities have fought against relocative and other kinds of industrialisation. They have challenged and stopped certain projects. Thailand also has an Administrative Court that has proved quite useful to communities for filing petitions and they were able to stop 60 industrial projects. This is proof of community power; so we have to support them. In the context of benefit sharing, she pointed out that the huge disparity within Asia, in contrast with Africa for instance, is a major factor hampering Asia's ability to take a unified stand on issues. Only people can bridge this gap. In ASEAN, that is why the civil society started the ASEAN

People's Forum to bring people together not just to meet the ASEAN leaders, but to share their respective experiences in alternatives by telling everyone that the same old models will not work any more.

Indra Lubis pointed out that planning for alternative economic development and generating the political will have to go hand-in-hand. But, according to him, the food problem has to be solved first. He noted that Japan, South Korea and even Taiwan, Province of China developed because they took care of agrarian reforms first and this was possible at the time because the US supported this due to the political context. So we have to carry out agrarian reforms and make sure that the land goes to the people and not to corporates. According to him, the latter will happen if we accept the World Bank proposed market-assisted land reforms. In the context of Jayati Ghosh's point about regional cooperation to transfer technologies within Asia, Indra Lubis pointed out that this point was made at the Bandung Conference. In 1955, in Asia including Japan, South Korea, China and even Africa, decided that they needed to become independent. He wondered whether Asian countries can come together again like that in order to fight the common enemy.

Jayati Ghosh agreed with the point that Asia's obsession with net exports has to go. The basic purpose of increasing exports was to import more and raise consumption. As long as this obsession with net exports dominates policy, the competition among nations will continue and there will not be any space for meaningful cooperation. However, obsession with net export growth will go away only if countries have some degree of comfort in terms of dealing with the fear of financial crisis and the need to generate adequate back up reserves. This is why financial arrangements are crucial in this context too. To Elpidio Peria's point that alternative visions seem so implausible in Asia even as people raise examples from Latin America, she argued that this is because the neo-liberal dream still has a lot to play out in Asia, while it is over in Latin America. Hardly anyone believes in neo-liberalism in Latin America any more, because they went through the whole experiment of neo-liberal economic policies over the last several decades and learnt the lessons the hard way. She argued that, in contrast, Asia is still living in the neo-liberal dream, and as long as that dream has to be played out, dissenting progressive voices will remain unacceptable. However, while recognising that political economy, she argued that this does not mean that it is not possible. While it will not happen overnight, she argued that moving away from export-led growth is an inevitable process because there are too many constraints to the current pattern of growth like environment, energy, wage goods, etc. She anticipated this to become clear sooner or later. To Junya Yimprasert's point about local initiatives, she responded that celebrating local communities and giving space for their initiatives are important. However, she argued that communities can also be stratified, citing the example of landlord-dominated local communities in India which can be oppressive. Such initiatives have to be seen in the larger context given that local initiatives cannot substitute for a model of national development.

The Chair **Lawan Thanadsillapakul** concluded by stressing that world history teaches us that the power of the community of people cannot be conquered. So, the challenge for a fair and equitable globalisation will go on.

The Workshop came to an end with Jayati Ghosh extending a warm vote of thanks on behalf of IDEAs, to all the participants and also to GSEI and ITD for a fruitful collaboration and conference.