ASEAN IS IN THE MOVEMENT OF COMBATING CORRUPTION: SHOULD NEW-GENERATION FTAS BE A PROMISING FORUM FOR ANTI-CORRUPTION ENFORCEMENT OF ASEAN IN INTERNATIONAL BUSINESS?

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Abstract
For a long time, corruption has been a shrilling concern for ASEAN member states for the reason of being one of the primary causes restricting the integration of these nations into international trade and efforts at globalization. In fact, over the last few years, ASEAN has undertaken a myriad of policies and improved the regional legal framework to combat corruption such as the signing of UNCAC and new free trade agreements and the establishment of the ASEAN Economic Community. Notwithstanding this, according to the statistics of global organizations, the levels of anti-corruption in ASEAN countries, except Singapore and Brunei, are relatively low. This mainly derives from the fact that the national legal framework in each of the member states has not satisfied fully when the political regime lacks democracy, governmental authority is insufficiently impartial and the awareness of citizens about corruption is still moderate. Simultaneously, the international agreements to which ASEAN member states signed are only the model for domestic enforcement mechanisms, and seem to be silent on international enforcement of anti-corruption. To date, the WTO is known as a global agency for international business, to which all ASEAN countries have acceded. Under the WTO, there is no official mechanism for enforcement of anti-corruption; nevertheless, this organization acknowledges, encourages and states indirectly this issue via transparency, accountability or governance in their agreements (Government Procurement Agreement and Trade Facilitation Agreement). Under the Doha negotiation round, WTO member states failed to gain consensus to dismantle tariffs, resulting in the emergence of a myriad of bilateral and regional trade agreements out of the scope of the WTO. These have gradually developed to be so-called new-generation free trade agreements in the hope of mitigating the traditional trade barriers as well as lessening non-tariff ones, such as governance and transparency. The recent development of new-generation FTAs between ASEAN and/or ASEAN member(s) and the external trading partners that pay high attention to anti-corruption issues, i.e., EU, Australia, Canada, Japan, US, may create a promising forum for anti-corruption enforcement of ASEAN in international business in the future. This article will elaborate on all aforementioned issues before a reasonable conclusion is delivered.

Keywords: anti-corruption, ASEAN, WTO, ASEAN Plus, international business, UNCAC, new generation FTAs
1. A current outlook of ASEAN on anti-corruption related to international business

ASEAN (Association of Southeast Asian Nations) has been increasingly known as a powerful association for international business in the world. Along with other big economies such as the EU, China and the USA, ASEAN has played an important role in global trade facilitation and integration. As a factual matter, despite being one of the biggest trading organization, ASEAN has experienced unstable development in international business, one of the most primary culprits leading to which is escalating corruption in the region. ASEAN member states alerted that rampant corruption through the region decelerates progress for international economic integration. In addition, these countries emphasized that the greater expansion of economic integration may cause some threats to the region. In case of ignoring them, ASEAN may confront corruption problems that worsen and worsen. The escalation of international business activities can create new chances for corruption to arise.1 The more growth in the international delivery of goods and services and cross-border flow of money and people, the more that related illicit international business activities2 increase.

Through the support and call of Transparency International,3 ASEAN member states have joined in and established ASEAN Economic Community (AEC) so as to encourage free foreign trade and investment, and exchange of human resources from 2015. Under the scope of AEC, all regional countries aim to co-operate together in coping with current corruption problems and guaranteeing transparency in rule of law and governance to facilitate international business. Natalia Soebagjo, Chair of the Executive Board at Transparency International Indonesia stated that ASEAN is home not only to some of the wealthiest, fastest-developing economies, but some of the most underprivileged people in the world.4 Combating corruption is a pivotal aspect to maintain sustainable development and mitigate income inequality.5 ASEAN acknowledges

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1 Cuervo-Cazurra A. (2016), ‘Corruption In International Business’, Journal of World Business, 51, p. 35-49.
2 Ibid.
3 Transparency International is a non-governmental organization established in 1993 working “to end the injustice of corruption”. Retrieved from https://www.transparency.org/en/about [accessed 20 October 2020]
4 Alfada A. (2019), ‘Corruption and Economic Growth in ASEAN Member Countries’, Economics and Finance in Indonesia, 65(2), p. 111-131.
5 Kompanek A. (2016), ‘Boosting Integrity in Global Trade’, Corporate Compliance Trends. Retrieved from https://www.cipe.org/blog/2016/05/06/boosting-integrity-in-global-trade/ [accessed 20 October 2020]
that each member is in the progress of greater global economic integration when participating in AEC. Nonetheless, an obstacle that ASEAN has concern for is the difference in political will, domestic laws and state governance among member states.6

Except for Singapore and Brunei, most of ASEAN member states have high rates of corruption, being ranked in the bottom 50 of 189 nations in the world.7 In recent years, ASEAN has continued to experience inconsistent changes in the progress of tackling corruption. Some ASEAN member states raised their scores in CPI (Corruption Perceptions Index) rankings in 2019.8 Significantly, Vietnam increased by 21 places and reached 98 out of 189 countries after a new law for anti-corruption took effect in 2018. Likewise, Malaysia experienced considerable development in CPI rankings, ranked 51st in comparison with 61st in 2018. Following these countries, Indonesia went up by 4 places and jumped to 85th when the national anti-corruption commission showed a greater performance so far. Despite ranking under 100, Laos and Myanmar witnessed a slight improvement, compared to the previous year. Conversely, the rest of ASEAN went down in the CPI rankings. In particular, there was a dramatic shrinkage in efforts to combat corruption in the Philippines, which fell by 14 places in 2019 because of wrong national policies. Thailand adopted a new anti-corruption law, which seems to be not effective in reality, leading to a drop to 101st. Cambodia has continued to place at the bottom of ASEAN relating to corruption, which may originate from the low awareness of officials and citizens in the related matter.

2. The current corruption control framework of ASEAN member states in international business

EU countries and the USA have become a role model in the fight against corruption via highly effective legislation. Their success has recently been a good example followed by other countries in the world. Accordingly, ASEAN member states have gradually learned and identified that a comprehensive legal framework on this matter is a must, in which laws and independent agencies are two essential elements. This may be understood that corruption arises where unrestrained bureaucracy emerges; however, it can be brought under the control when legislation is vigorously enforced.

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6 Ibid.
7 Corruption Perceptions Index, Transparency International. Retrieved from https://www.transparency.org/en/cpi/2019/index/nzl# [accessed 20 October 2020]
8 Ibid.
2.1. Laws

- International treaties

In the global context, the two most pivotal international anti-corruption treaties that have been ratified include the United Nations Convention on Anti-Corruption (UNCAC)\(^9\) and the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions (OECD Anti-Bribery Convention).\(^10\) Ratifying one or both of these treaties expresses a commitment to endeavoring to fight against corruption, as well as requiring members to make legislative modifications necessary to achieve this goal.\(^11\)

Currently, all ASEAN states have ratified UNCAC in the confrontation against corruption.\(^12\) This is considered as a remarkable effort of these countries with the aim of improving the national legal framework of anti-corruption. The UNCAC is defined as a wide-influencing instrument that addresses corrupt activities in all areas, including investment and trading. This treaty regulates supply and demand-side, regarding bribery, trading in influence, abuse of functions and illicit enrichment. Simultaneously, with the number of 187 parties and 140 signatories, the UNCAC has a function to provide monitoring as its enforcement mechanism in the member states’ legislation of anti-corruption. Through the international treaties, not only ASEAN countries but other members are required to ensure three main objectives as stated in Article 1:

\(^9\) The United Nations Convention against Corruption is considered as the only legally binding instrument of anti-corruption in the world, focusing on five primary matters: preventive measures; criminalization and law enforcement; international cooperation; asset recovery; and technical assistance and information exchange. Retrieved from https://www.unodc.org/unodc/en/treaties/CAC/ [accessed 20 October 2020]

\(^10\) The OECD Anti-Bribery Convention forms legally binding rules to criminalise foreign bribery in public sector relating to international business transactions and provides a host of relevant instruments that make this effective. Retrieved from http://sna.org.mx/download.php?file=%2Fwpcontent%2Fuploads%2F2019%2F10%2FNorm_Internacional_CONVENCIC3%93N-PARA-COMBATIR-EL-COHECHO-DE-SERVIDORES-P%C3%9ABLICOS-EXTRANJEROS-OCDE_V_ENG.pdf [accessed 20 October 2020]

\(^11\) Dryden C. E. (2016), ‘Note: Exploring The Promise And Potential Of A WTO Anticorruption Treaty’, Law And Contemporary Problems, 79(4), 249. Retrieved from https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4809&context=lcp

\(^12\) All ASEAN countries have become parties under UNCAC. Retrieved from https://www.unodc.org/unodc/en/corruption/ratification-status.html [accessed 20 October 2020]
“1. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

2. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

3. To promote integrity, accountability and proper management of public affairs and public property”.

Along with UNCAC, some ASEAN member states signed other agreements with each other or other countries in the prevention of corruption, especially in the field of international business. Previously, the provisions of anti-corruption were absent under Free Trade Agreements (FTAs) or were not regularly discussed in international forums. For example, the ASEAN-Japan Comprehensive Economic Partnership (AJCEP), and the ASEAN-Hong Kong, China FTA (AHKFTA) have no provision related to the combat against corruption. However, in recent years, anti-corruption is more and more acknowledged as one of the important criteria in the new generation of free trade agreements to which ASEAN countries are signatories. Singapore, Malaysia and Vietnam are signatories of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This agreement provides a chapter (Chapter 26) to encourage transparency and corruption elimination via commitments in regard to measures, regulations and administrative procedures influencing trade and investment. At the same time, the agreement also concentrates on enhancing integrity among public officials, referencing to international anti-corruption treaties (such as UNCAC) and providing commitments to criminalize bribery and protect whistleblowers. Anti-corruption is currently also implied under the provisions of transparency in the FTAs between ASEAN members with external partners, such as EU–Singapore FTA (ESFTA), EU-Vietnam FTA (EVFTA) signed on 19 October 2018 and 30 June

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13 Article 1, UNCAC.
14 Van der Ven C. (August 4, 2014), ‘How the WTO’s Trade Facilitation Agreement May Reduce Bribery’, Global Anti-Corruption Blog. Retrieved from https://globalanticorruptionblog.com/2014/08/04/how-the-wtos-trade-facilitation-agreement-may-reduce-bribery/ [accessed 20 October 2020]
15 Ibid.
16 Le T. Q. (July 01, 2019), ‘Các hiệp định thương mại tự do thế hệ mới và tác động đối với kinh tế Việt Nam’, (‘New generation FTAs and impacts on Vietnam’s economy’). Retrieved from tapchitaichinh.vn: http://tapchitaichinh.vn/nghiencuu-trao-doi/cac-hiep-dinh-thuong-mai-tu-do-the-he-moi-va-tac-dong-doi-voi-kinh-te-viet-nam-309171.html [accessed 20 October 2020]
2019 respectively. The EVFTA incorporates expressly the concept of transparency into all its chapters, commencing with its preamble, which “recognizes the importance of transparency in international trade to the benefit of all”.\(^\text{17}\) The EVFTA has established comprehensive rules on transparency under the provisions of Customs and trade facilitation, Technical barriers to trade (TBT), Sanitary and phytosanitary measures (SPS), and particularly under provisions of Government procurement (Chapter 9) and Trade and sustainable development (Chapter 13). It is expected that the EU–ASEAN FTA, which is currently under negotiation between the parties, will be based on the structure of the EVFTA and ESFTA.\(^\text{18}\)

- Domestic laws

In the progress of tackling corruption in international business, there have been positive amendments and modifications within domestic laws of ASEAN countries. First, most ASEAN member states have extended the governing scope and applicability of anti-corruption law on not only public but private sector in accordance with international treaties. Most recently, the new anti-corruption laws of Vietnam and Myanmar have just taken effect, both of which add the provisions regulating the bribery of private sector though the primary scope is still the public sector. Second, several ASEAN member states also set forth provisions of extra-territorial effects under national laws, which gained unification and consistency among national legislations in all EU countries, and are recognized under UNCAC (Article 16 and Chapter VI). Typically, extra-territorial effects in anti-corruption may include international cooperation and crimes in relation to foreign entities. On the basis of UNCAC, most anti-corruption laws in ASEAN countries have reserved a chapter about international cooperation, which mainly mentions the compliance of bilateral and multilateral agreements, related national jurisprudence, cross-border legal assistance via investigation, prosecution and other criminal proceedings. The bribery of foreign public officials is determined as a crime and the liability of this criminal is stated under some jurisdictions such as Singapore, Myanmar, Cambodia, Thailand and Malaysia. As a factual matter, there is a high possibility of corruption in international trade and investment, relating strongly to extra-territorial effects such as the choice of law and entities. With this new

\(^{17}\) Levon C. (March 12, 2020), ‘How will the EVFTA contribute to more transparency?’, Retrieved from vietnamlawmagazine.vn: https://vietnamlawmagazine.vn/how-will-the-evfta-contribute-to-more-transparency-27080.html [accessed 20 October 2020]

\(^{18}\) Hicks W. (February 24, 2020), ‘EU Eyes FTAs With ASEAN As A Whole’, Bangkok Post. Retrieved from https://www.bangkokpost.com/business/1864214/eu-eyes-ftas-with-asean-as-a-whole [accessed 20 October 2020]
reach, the applicability and enforceability of domestic legislations may be expanded and more effective, especially in case the giving and receiving gratification may occur outside national territory. Take Singapore as a typical example. The Prevention of Corruption Act (PCA) itself sets forth provisions of extra-territorial effects, one of which is a Singaporean person undertaking corruption or bribery abroad may be liable pursuant to this Act.19 Where being undertaken outside Singapore, the wrongdoer under the PCA may be accountable for that wrongdoing as if it had committed within Singapore. In *PP v Taw Cheng Kong*, Mr. Taw, who is a manager of the Singapore Investment Corporation Pte Ltd (GIC) in the Asia Pacific region, worked mainly in Hong Kong. Due to the receipt of “incentive fees” from Kevin Lee of Rockefeller & Co Inc. in New York for driving GIC to conduct illicit transactions on basis of Lee’s instigation, Mr. Taw was penalized pursuant to section 37(1) of the Act. This extra-territorial effect under this Act broadens the scope of deterrence for Singaporeans who intend to commit corruption outside national territory.20

2.2. Anti-corruption bodies

To ensure the enforceability of law, an independent agency needs forming to investigate and report corruption problems timely. According to UNCAC, articles 6 and 36 stipulate that member states should form or sustain authorities in anti-corruption and law enforcement who are granted with independence. Specifically, Article 36 provides specialized anti-corruption agencies such as corruption investigating commissions or prosecution body in the prevention of corruption. Meanwhile, Article 6 identifies a range of specialized institutions playing a crucial role in the reform and implementation of anti-corruption policies. Currently, all ASEAN member states established independent bodies to prevent corruption problems within the territory. There is no denying an endeavor that ASEAN has become increasingly serious in the fight against corruption and adhered to the objectives of UNCAC. Most of the member states provide a code of conduct for officials to avoid committing corruption in the public sector. The purpose of this act is to evaluate behaviors of officials and guarantee the compliance with integrity, impartiality and objectivity.

19 Hin K. T. (n.d.). ‘Corruption Control In Singapore’. Retrieved from unafei.or.jp: https://www.unafei.or.jp/publications/pdf/RS_No83/No83_17VE_Koh1.pdf [accessed 20 October 2020]

20 *Ibid.*
UNCAC has no provisions on the implementation of these bodies. Therefore, the performance, quantity and structure of the bodies are dependent on whether political will and government commitment of each country on anti-corruption exist or not. There are three criteria for evaluating this issue.\textsuperscript{21} First, in case political will exists, the government will enact legislation to grant authority to the anti-corruption bodies for the impartial implementation of the anti-corruption laws without fear or bias.\textsuperscript{22} Second, anti-corruption agencies are required to maintain independence from the control of politics in order to ensure that they can investigate allegations of corruption in relation to the public sector.\textsuperscript{23} Finally, anti-corruption agencies are perceived and recognized by residents in the country as highly credible public bodies performing their control of corruption professionally without favor. Currently, most ASEAN countries have not met these criteria completely in the form of anti-corruption agencies, which derives from the differences in legal systems as well as local people’s awareness about anti-corruption. Take the Philippines as a typical example. The local people’s view about the governmental authority is relatively low though the Philippines has formed a large number of anti-corruption agencies. More seriously, the legislation of this nation on this issue lacks integrity and effectiveness, which leads to the rise of corruption in the public sector. When being asked about the reasons why there are plenty of anti-corruption bodies in the Philippines, most residents assert that this is one of the fastest instruments for government officials committing corruption. In the meantime, Singapore maintains an anti-corruption agency effectively in light of the strong political will of the government. By virtue of these, there are sufficient human resources, operational independence and finance to allow the Corruption Practice Investigation Bureau (CPIB) to implement the Prevention of Corruption Act (PCA) without bias, irrespective of the status, power, or political affiliation of offenders. Along with this, Singaporean people has good cognition about corruption as a high risk and states that offenders deserved to be imprisoned under the law. As a result, today, Singapore still maintains no tolerance against corruption, ingraining in the Singaporean way of thinking.

\textsuperscript{21} Quah J. (2015, 01), 'Evaluating the effectiveness of anti-corruption agencies in five Asian countries: A comparative analysis', Asian Education and Development Studies, 4(1), p. 151.

\textsuperscript{22} Ibid.

\textsuperscript{23} Ibid.
3. The challenges of ASEAN members in the enforcement of anti-corruption in international business

From what is mentioned above, it is apparent that corruption activities, regardless of extraterritoriality or not, are only enforced domestically in ASEAN member states. In fact, international business is a broad term, which refers to a range of commercial activities on the global scale. Hence, it is definitely regulated and enforced under international laws, including corruption issues. However, there are three primary challenges that ASEAN member states have encountered in the enforcement of anti-corruption in international business, which are as follow:

- The differences among national legal regimes

ASEAN member states have difficulty in anti-corruption enforcement in international business due to a lack of legal harmonization among ASEAN member states. This problem arises from the differences among national legal regimes. The legal diversity may result in the interpretation of anti-corruption laws and rules varying across states, potentially creating drawbacks to effective international cooperation.24 For illustration, in South East Asia, while Indonesia, Vietnam, Thailand, Laos, Cambodia adhere to Europe-based civil law, Malaysia, Myanmar, and Singapore are known as countries following common law. On account of foundational diversity in the legal regimes, anti-corruption laws and rules are interpreted differently from one nation to another.25 It is also crucial to note that Singapore, Brunei, Myanmar and Malaysia were previously colonized by Great Britain, remaining heavily affected by court decisions on precedent corruption cases instead of statutory articles. This is a fact distinguishing them with other ASEAN member states. As a result, residents of ASEAN member countries are not governed under the same laws of anti-corruption when it relates to extraterritorial aspects such as bribery of foreign officials. Rather, domestic laws and rules of each state govern cases in relation to this issue. For example, the Malaysian Anti-Corruption Act 2009 amended in 2018 includes an extraterritorial provision relating to residents whereby the person may

24 Gautier C. & Ramirez M. (September 17, 2012), ‘Overview of ASEAN Anti-Corruption Legislation: The Uneven Road To Harmonisation’, the Newsletter of the Asia Pacific Regional Forum of the Legal Practice Division of the International Bar Association, Vol. 19, No. 2.. Retrieved from Lexology.com: https://www.lexology.com/library/detail.aspx?g=1de22d51-96bf-43b5-be90-492f86942059 [accessed 20 October 2020]

25 Ibid.
be dealt with in regard to an offense that is committed outside Malaysia in the same manner being committed within this country. Likewise, a Singaporean person committing bribery outside territory could also be subject to the Prevention of Corruption Act. However, in some countries like Vietnam, the bribery of foreign public officials is not criminalized under national legislation, and the accountability of legal persons is not provided. As mentioned above, international business comprises a range of investment and trading activities that may possibly involve in corruption. It is an undeniable fact that there has been a dramatic rise of foreign bribery or other extraterritorial activities related to corruption in recent years. However, due to the differences among ASEAN member states’ legal systems, it is only likely to enforce the prevention of corruption domestically but not internationally.

- Lack of effective mutual legal assistance

As a matter of fact, mutual legal assistance among countries is essential in investigating and prosecuting corruption crimes, especially related to international business. However, there are inadequate legal bases for international cooperation and obvious restrictions under the legislative framework of some ASEAN member states. This leads to obstacles in anti-corruption relating to both outgoing and incoming requests of mutual legal assistance. This can be seen that in case a country is a member of an international treaty such as UNCAC asking state members to provide mutual legal assistance for corruption cases, domestic laws may impact the enforcement of the treaty in practice. Further, on the base of reciprocity, the number of bilateral mutual legal assistances and extradition treaties are still limited in spite of having a significant influence on international cooperation against corruption. This is because such procedure is cumbersome and consumes lots of time and efforts. On the other hand, competent bodies in requesting countries have, to different degrees, restricted understanding of other countries’ mutual legal assistance and extradition laws, which causes a

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26 Le T. Q. (July 01, 2019), ‘Các hiệp định thương mại tự do thế hệ mới và tác động đối với kinh tế Việt Nam’ (‘New - generation FTAs and impacts on Vietnam’s economy’). Retrieved from tapchitaichinh.vn: http://tapchitaichinh.vn/nghien-cuu-trao-doi/cac-hiep-dinh-thuong-mai-tu-do-the-he-moi-va-tac-dong-doi-voi-kinh-te-viet-nam-309171.html [accessed 20 October 2020]
27 U4 Anti-Corruption Resource Centre (2013, 9). U4.no. Retrieved from UNCAC in a nutshell: https://www.u4.no/publications/la-uncac-en-breve-una-guia-breve-a-la-convencion-de-las-naciones-unidas-contra-la-corrupcion-para-personal-de-embajadas-y-agencias-donantes.pdf [accessed 20 October 2020]
28 Ibid.
delay in the exchange of information to gain proper modifications in domestic laws.

- Lack of international enforcement

Currently, it is apparent that the deficiency of global anti-corruption programs is international enforcement. Much of the world, including ASEAN member states, concedes a fact that corruption is a non-tariff barrier to restrict trade liberalization. In spite of condemning corruption in international business, international treaties and mutual agreements are silent on the establishment of an international enforcement mechanism, leaving solely a domestic enforcement mechanism.

First, as mentioned above, ASEAN member states signed UNCAC. Notwithstanding this, under this treaty, most provisions are referenced to the compliance with the principles of domestic laws. This means that implementing provisions stipulated under the Convention shall be adhered to the principles of Constitutional and substantive, based on bilateral or multilateral agreements with other nations as well as the principle of reciprocity. For this reason, the provisions under the Convention are non-self-executing, and a state is permitted to interpret the requirements of this treaty differently.  

Cecily Rose points out that UNCAC is a binding convention agreed by nations; however, it seems to be non-compulsory, vague, and inaccurate norms that are relatively unable to keep pace with the evolution of corruption patterns. Therefore, despite incorporating many provisions of UNCAC to enhance not only the law applicability in each member but the legal harmonization in the region, domestic laws of ASEAN countries contain certain distinctions. For example, Thailand, Lao, Singapore, Indonesia and Malaysia do not consider the method of dispute settlement under paragraph 3 of Article 66 and bind themselves under domestic laws.

Second, despite the attempts to international anti-corruption for legitimacy, the real value of anti-corruption provisions under the new bilateral and regional FTAs of ASEAN countries relies completely on

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29 Dryden C. E. (2016), ‘Note: Exploring The Promise And Potential Of A WTO Anticorruption Treaty’, Law And Contemporary Problems, 79(4), 249. Retrieved from https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4809&context=lcp [accessed 20 October 2020]

30 Rose C. (2015), International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems, Oxford: Oxford University Press.
their enforcement at domestic level.\textsuperscript{\textit{3}}} In fact, although the matters of trade facilitation are referenced to the law of WTO, FTAs are not entitled to have advantages from the WTO dispute settlement system for enforcement. Rather, the FTAs are often dependent on the capacity of each member country to bind the other(s)’ accountability via the utilization of diplomatic and political pressure affecting the choices of a sovereign nation’s enforcement.\textsuperscript{\textit{32}} In another word, the implementation of anti-corruption provisions under FTAs bases on political will and states’ current anti-corruption infrastructure. Moreover, the existing FTAs lack the promotion of good democratic governance and the prevention of corporate and government corruption among foreign trading partners.\textsuperscript{\textit{33}} Although the international standards of transparency and anti-corruption are provided, domestic institutions for enforcement in some nations are insufficient capacity to monitor and manage the issues of corruption outside the territory.

\textbf{4. Can the new-generation FTAs be a promising forum for anti-corruption enforcement of ASEAN in international business?}

Transnational anti-corruption attempts could be categorized as part of the law of international business on the ground that anti-corruption conventions and related national legislation influence how trade and investment are undertaken. The World Trade Organization (WTO), founded in 1995, has fostered a multilateral landscape to combat corruption on the basis of the underlying transparency and non-discrimination principles. Nonetheless, the WTO fails to provide direct and substantial rules tackling against corruption or bribery in trade matters apart from two agreements, which are the Trade Facilitation Agreement (TFA) and the Government Procurement Agreement (GPA).\textsuperscript{\textit{34}} More specifically, The TFA pays attention to the mitigation of trade barriers via streamlining cross-border trade transactions as well as enhancing transparency in customs procedures under WTO. In the meantime, the GPA is a plurilateral agreement, signed by forty-eight member states (including

\textsuperscript{31}Alemanno A. and Karttunen M. (2016), \textit{The Transparency and Corruption Dimensions “New Generation” Trade Agreements"}, Internal Scoping Report for Transparency International.

\textsuperscript{32}Jenkins M. (2018, 07 20), ‘Anti-corruption and Transparency Provisions In Trade Agreements’. Retrieved from knowledgehub.transparency.org: \url{https://knowledgehub.transparency.org/assets/uploads/helpdesk/Anti-corruption-and-transparency-provisions-in-trade-agreements-2018.pdf} [accessed 20 October 2020]

\textsuperscript{33}\textit{Ibid}.

\textsuperscript{34}Levon, (n 14)
the EU) committed to undertake covered procurements via transparency, predictability and non-discrimination. The GPA is also determined as the only WTO agreement that touches the anti-corruption issues, albeit not bindingly to all WTO members. The WTO has endeavored to develop the rules on transparency under the Doha Round; nonetheless, the negotiation has not been successful as expected.

Under the Doha Round, WTO member states failed to finalize trade negotiation on the so-called Singapore matters, including investment, competition, transparency in government procurement, and trade facilitation. Therefore, the myriad of bilateral and regional trade agreements (FTA) has arisen outside the WTO, evolving progressively into so-called “new-generation FTAs”. The objective of these FTAs is to regulate both traditional tariff barriers and different non-tariff barriers hindering the fairness and openness in international trade. More crucially, the new-generation FTAs also emphasizes on non-trade matters, including governance and transparency.

At the moment, such new-generation FTAs comprise of wide transparency rules and progressively incorporate anti-corruption perspectives. The USA and the EU take special initiative in promoting the anti-corruption rules into their FTAs. More explicitly, it is now common to find a chapter on transparency extending transparency obligations to all policy areas under their FTAs, which simultaneously integrate anti-corruption provisions such as the Comprehensive Economic and Trade Agreement between EU and Canada (CETA), Korea–US FTA (KORUSFTA). Even, US–Mexico–Canada Agreement (USMCA) leaves a particular chapter to stipulate issues

35 Revised Agreement on Government Procurement, The World Trade Organization. Retrieved from https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm [accessed 20 October 2020]
36 Dung T. and Quy M. (2012) (2nd ed.), International Trade Law, Vietnam National University.
37 The Doha Round, known as is the latest round of negotiations for trade among the WTO member states with the aim of obtaining enormous reform of the international trade via the means of lower trade barriers and reviewed trade rules. Retrieved from https://www.wto.org/english/tratop_e/dda_e/dda_e.htm [accessed 20 October 2020]
38 Levon, (n 14)
39 Ibid.
40 Ibid.
41 Chapter 27, The Comprehensive Economic and Trade Agreement between EU and Canada.
42 Chapter 21, Korea–US FTA.
43 Chapter 27, US–Mexico–Canada Agreement.
of anti-corruption. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership,\textsuperscript{44} which was originally modeled after the US’s model FTA also contains an anti-corruption chapter\textsuperscript{45} (similar to the Anti-corruption chapters of the USMCA and KORUSFTA). The transparency and anti-corruption chapter therein requires contracting parties to access the UNCAC\textsuperscript{46} and pass anti-corruption laws, and commit to criminalize both active and passive bribery, protect whistleblowers...

The EU now has FTAs with Vietnam and Singapore, which are its two largest ASEAN trade partners.\textsuperscript{47} This means that the EU is expressly interested in pursuing the FTAs with ASEAN economic bloc as a whole. Although the FTAs of the EU do not have a clear chapter on anti-corruption, the transparency provisions cover extensively the agreements. In particular, two chapters, regulating areas where companies are often involved in corruption, shall benefit from transparency provisions, including Government Procurement and Customs and Trade Facilitation.\textsuperscript{48} The transparency provisions of the free trade agreements of the EU would push the development of stricter legal framework against international corruption and transnational bribery. The states concluding the FTA with the EU must establish or maintain appropriate mechanisms for responding to enquiries from any interested person regarding the offences on transparency and also provide mechanisms to settle such enquiry. For instance, according to the EVFTA, to monitor the implementation of the chapter on Trade and Sustainable Development, the agreement creates both a special Committee on Trade and Sustainable Development and channels for the involvement of independent civil society, including social partners. In addition, the contracting parties shall also respect the public participation by communicating with independent civil society representatives and other stakeholders.\textsuperscript{49}

\textsuperscript{44} Christopher F., Francisco R., William M., and Samuel S. (2019 01 21), ‘CPTPP Enters Force What Does It Mean Global Trade’. Retrieved from https://www.whitecase.com/publications/alert/cptpp-enters-force-what-does-it-mean-global-trade [accessed 20 October 2020]
\textsuperscript{45} Chapter 26 Transparency and Anti-corruption, CPTPP.
\textsuperscript{46} Article 26.6, CPTPP.
\textsuperscript{47} France B. (2020 24 12), ‘EU-VIETNAM Trade Agreement: A Milestone In A Strong And Successful Relationship’. Retrieved from https://eu-gateway.eu/news/eu-vietnam-trade-agreement-milestone-strong-and-successful-relationship [accessed 20 October 2020]
\textsuperscript{48} Chapters 4 and 9, EVFTA; Chapters 6 and 9, ESFTA.
\textsuperscript{49} Article 17.1(4), EVFTA.
It should be noted that currently some ASEAN member states are actively developing the new-generation FTAs. In particular, Singapore, Vietnam, Brunei and Malaysia have signed the CPTPP in 2017. Being a member of CPTPP, these countries must commit to eliminate bribery and corruption in international trade and investment.\(^5\)\(^0\) Article 26.7 of the CPTPP specifically requires:

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international trade or investment, when committed intentionally, by any person subject to its jurisdiction:

   (a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

   (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

   (c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

   (d) the aiding or abetting, or conspiracy in the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall make the commission of an offence [as described] liable to sanctions that take into account the gravity of that offence.

3. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences [as described]. In particular, each Party shall ensure that legal persons held liable for offences […] are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

4. No Party shall allow a person subject to its jurisdiction to deduct

\(^5\)\(^0\) Article 26.6, CPTPP.
from taxes expenses incurred in connection with the commission of [the] offence.

5. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1 […].

It is believed that the establishment and implementation of the regional trade arrangements under the framework of new-generation FTAs would directly contribute to the movement of combating corruption in South East Asia. The new generation FTAs increasingly encourage ASEAN countries (that participated in the agreements) to reform and implement the regime on transparency in state governance and anti-corruption. Indeed, besides offering significant economic opportunities, these agreements apply pressures on contracting states to develop the legal framework to fight against international corruption and bribery and require them to implement specific measures against such offences.

Conclusion

From what has been explained above, it can be concluded that ASEAN has undertaken a myriad of positive policies to fight against corruption in international business; however, their effectiveness is not high in reality. This is because ASEAN has been encountering the following issues: differences among national legal systems, the lack of international cooperation and international enforcement.

Despite gradually recognizing the direct values of anti-corruption on trade liberalization, the WTO is not yet ready to be an ideal forum for international enforcement of anti-corruption. However, the new generation FTAs can become a proper instrument for ASEAN in this regard. The agreements concluded recently by some ASEAN member states will promote the development of their national laws and also require them to comply with the international laws of anti-corruption more strictly. Those agreements can serve as ground for formation of a regional anti-corruption regime in ASEAN in the future. Such regime will not only raise and disseminate awareness of transparency in international trade, but also the anti-corruption practices relating to trade vulnerabilities. ●
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