

# Regional Economic Integration in Great East Asia: Determinants and Barriers\*

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**ABSTRACT.** The article studies both general trends and peculiar characteristics of processes of economic integration in the Great East Asia, which plays the role of one of the major centers of contemporary global development. The basic determinants and barriers for implementation of regional strategies by China, Japan, ASEAN that will influence the geo-economic policy of Ukraine not only in East Asian, but also European and Eurasian areas. Attention is focused on the basic principles of realized and potential future integration models in the "ASEAN+" format with variable composition of member states that correspond to different extents to strategic objectives of both specified key actors in the region and extra-regional states that have global and transnational interests.

Extrapolation of dominant trends in the nature and dynamics of transformation processes of East Asian economic regionalization allowed forming a forecast for the long-term conservation of importance of free trade agreements in the absence of preconditions to create customs unions. At the same time it was stressed out that proper assurance of national interests of international economic relations will be based on contractual instruments at the international level, without creating institutional and legal superstructure similar to the European Union or the Eurasian Economic Union as supranational law and supranational bodies.

**KEYWORDS.** Regional economic integration, Great East Asia, geoeconomic strategies, China, ASEAN, Free Trade Agreements, international investment agreements.

## Introduction

In terms of intensification of controversial integration and disintegration processes at the global and regional levels, the state's creation of conditions for proper assurance of interests not only of present but also future generations is only possible if

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Ukraine implements its own strategic economic and social policy. In axiological dimension this approach corresponds to fundamental principles of the Constitution of Ukraine and the Economic Code of Ukraine on state responsibility towards the people for its activities in the context of formation of legal economic order based on the optimal combination of state regulation of macro-economic processes and market self-regulation of economic relations of business.

The need for an integrated geo-economic policy of Ukraine actualizes the requirement to obtain scientifically based information on the likely future transformation of regional trade and economic legal orders, the nature and dynamics of which are driven by objective trends and implementation of geo-economic policies in general and with respect to Ukraine in particular by the European Union, Russia, China at first.

The general challenge of harmonization for legal purposes and means of achieving the integration policy of Ukraine for European and Eurasian areas is to be studied in the wider context. This is due to the European Union and Russia's recognition in their post-crisis concepts to 2020 dependence of prospects for their long-term development on transformational trends in East Asia in general and economic policy of China in particular.

This trend takes on significance of the exogenous factor for Ukraine, characterized by a high probability of significant indirect effects in the next decade to meet the economic interests of public and private interests of domestic economic operators on both these areas.

The above can separate relatively independent component within the designated common challenge, which is the need to modernize economic and legal principles of no less important vector of geo-economic policy of Ukraine in the hierarchy of priorities – East Asia, which has to ensure the optimization of access of goods, services and technology of Ukrainian exporters to markets of, particularly, China, ASEAN (Association of Southeast Asian Nations).

This approach involves the study using an interdisciplinary methodology of economic, legal and prognostic studies that meet modern trends of social sciences' knowledge of polyaspect, multi-dimensional phenomena and processes and is, therefore, one of the most promising areas of strategic research.

The above determines the feasibility of goal of this article, which is to identify general trends and features of economic integration in the Great East Asia and to disclose basic principles of implementation of own regional strategies by key actors – China and ASEAN.

In order to attain the set objective it is necessary to address relevant international treaties in international trade and investment, WTO analytical material, forecasting developments of entities of strategic influence on Ukraine – EU, US, Russian Federation, results of research of Ukrainian and foreign scholars, in particular, Poruchnyk A.M.<sup>2</sup>, Oleinikov O.V.<sup>3</sup>, Kurnishova Yu.<sup>4</sup>, B.D. Sanshita<sup>5</sup>, J. Janmin<sup>6</sup>, D.S. Rajan<sup>7</sup>, J. Nakagawa, W. Liang<sup>8</sup>.

### **General Principles and Peculiarities of East Asian Regional Integration**

In the context of deployment of one of the major global trends – moving the center of economic development from West to East, which has all the prerequisites to preserve its vector in the long term, identifying relevant areas of both convergence and conflicts of interest of key actors who represent such region as the Great East Asia is relevant.

Since the conceptual and legal development of both the EU<sup>9</sup> and Russia<sup>10</sup> emphasize that the dynamics of their own future development largely depends on the nature of trends in this region; foreign economic strategy of Ukraine not only in this area but also in the European and Eurasian areas should be formed subject to specifics of both the region as a whole and individual sub-regions – East, Southeast, and South Asia. This general approach

<sup>2</sup> *Poruchnyk A.M.* National Interest of Ukraine: Economic Self-Sufficiency in Global Dimension: [Article thesis] / A.M. Poruchnyk. – K.: KNEU, 2008. – 352 p. [In Ukrainian].

<sup>3</sup> *Oleinikov I.V.* State Regulation of Foreign Economic Activities in East Asia [Text] /O.V. Oleinikov // Journal of IEPI NAS of Ukraine. – 2010. – No. 1. – pp. 99 – 109. [In Russian].

<sup>4</sup> *Kurnishova Yu.* Modern tendencies of regionalism in the East Asia: opportunities for Ukraine. Analytical memo of NISD, March 2011 [Electronic resource]. – Access mode: <http://www.niss.gov.ua/articles/399>. [In Ukrainian].

<sup>5</sup> *Sanshita B.D.* Asia's Regional Comprehensive Economic Partnership [Electronic resource]. – Access mode: <http://www.eastasiaforum.org/2012/08/27/asia-regional-comprehensive-economic-partnership>.

<sup>6</sup> *Janmin J.* China's Concerns Regarding TPP No More than Empty Worries? Fujitsu Research Institute (January 11, 2012) [Electronic resource]. – Access mode: <http://jp.fujitsu.com/group/fri/en/column/message/2012/2012-01-11.html>.

<sup>7</sup> *Rajan D.S.* East Asia integration – China's Reservations on India Playing a Leading Role // Chennai Center for Chinese Studies C3S Paper No. 757 (March 13, 2011) [Electronic resource]. – Access mode: <http://www.c3sindia.org/eastasia/2201>.

<sup>8</sup> *Nakagawa J., Liang W.* A Comparison of the FTA Strategies of Japan and China and Their Implications for Multilateralism // Indiana University Research Center for Chinese Politics and Business – October 2011 [Electronic resource]. – Access mode: [http://www.indiana.edu/~rccpb/Working\\_Paper/Liang%20Nakagawa%20RCCPB%2011%20FTAs%20PUB.pdf](http://www.indiana.edu/~rccpb/Working_Paper/Liang%20Nakagawa%20RCCPB%2011%20FTAs%20PUB.pdf).

<sup>9</sup> Europe 2020. A strategy for smart, sustainable and inclusive growth. – Communication from the Commission. – Brussels, 3.3.2010 COM (2010) 2020 final [Electronic resource]. – Access mode: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

<sup>10</sup> Strategy–2020: New model of growth – new social policy / Concluding report on results of expertise for relevant challenges of socio-economical strategy of Russia by 2020 [Electronic resource]. – Access mode: <http://2020strategy.ru/documents/32710234.html>. [In Russian].

combines subjective constants and legal variables, within which it is advisable to focus attention on the use of such legal instrument of countries' foreign economic strategies implementation as regional trade agreements, among which ninety percent are agreements on free trade zone, the remaining ten – agreements on customs unions<sup>11</sup>. Such agreements can be regarded as polyfunctional ones that facilitate implementation of regional economic integration of states at the macro level, and at the micro level – assurance of interests of foreign economic operators.

Within this article, subjective component in the context of the above sub-regions covers three East Asian countries, especially China and Japan, Association of Southeast Asian Nations (ASEAN) and the leader of South Asia – India. Given such a broad territorial approach it is important to structure together bilateral and multilateral agreements on free trade, which set out the general outlines and specific areas of regional economic integration processes in the Great East Asia.

As the Ukrainian researcher Oleinikov O.V. states, despite the trend of liberalization and globalization, the level of command regulation of foreign economic activity in East Asia rapidly increases and embodies the active role of the state in shaping foreign economic course and involves a wide set of regulations. East Asian countries prefer to use the law as high-tech and instrumental means to achieve policy goals, not as the principle of rule<sup>12</sup>.

Trade and economic strategy of China and Japan basically involves action based on principles of multilateralism under the rules enshrined in the multilateral agreements of the World Trade Organization. The reason is that the existing legal regime of international trade as a whole corresponds to their national economic interests, since it is favorable to competitive export-oriented business entities.

However, compared with the European Union and the United States, these leading countries in the region were relatively late to use a tool such as the free trade area agreements and economic partnership agreements. At present they have a strategy formed and implemented to conclude such agreements which differ in a number of characteristics. Changes in legal support of geo-economic policies of Japan and China in terms of growth of number of concluded agreements on free trade area and economic partnership are due to combination of both domestic and external factors.

<sup>11</sup> The WTO and preferential trade agreements: From co-existence to coherence. – World Trade Report 2011 [Electronic resource]. – Access mode: [http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report11\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf). – P. 3.

<sup>12</sup> Oleinikov I.V. State Regulation of Foreign Economic Activities in East Asia [Text] / O.V. Oleinikov // Journal of IEPI NAS of Ukraine. – 2010. – No. 1. – P. 107. [In Russian].

Transfer and intensification of Japan's conclusion of the economic partnership agreements (EPA) and bilateral investment treaties (BIT), as noted by D. Nakagawa and W. Liang were caused by interests of Japanese economic actors, whose activities were carried out in a less favorable legal regime on outer markets compared to competitors from countries which concluded, inter alia, the Free Trade Area Agreements<sup>13</sup>.

Back in 2011 President of Ukraine noted that Ukraine's national interests, primarily in the economic sphere lie in deeper cooperation with leading centers of growth. As at present ASEAN may be classified as part of the circle of growth centers, one of the preconditions that determine a priority of foreign policy of Ukraine is successful liberalization of trade within ASEAN and between ASEAN and other countries<sup>14</sup>.

This approach can be considered generally reasonable, but it constitutes two subjects of research which are organically linked and at the same time require separate analysis and forecasting of processes of foreign economic relations development within regional economic integration carried out based on the principles and directions provided for by relevant international treaties.

Since in this context, Ukraine's interest was to create a free trade zone with ASEAN<sup>15</sup>, it correlates with similar interests of the EU and Russia, declared under the formation of their regional foreign policies.

To determine the prospects of cooperation between Ukraine and ASEAN it is important to study both conceptual and legal foundations of foreign economic relations within ASEAN in the process of sub-regional economic integration, and legal mechanisms aimed at developing ASEAN ties with other states and their integration associations.

If we consider ASEAN as the nucleus of processes of regional economic integration, it is important to determine on which orbit of this Ukraine is. Furthermore, generalization of Russian researchers is noteworthy, where they state that in terms of strategy ASEAN forms broad regional and inter-regional cooperation

<sup>13</sup> Nakagawa J., Liang W. A Comparison of the FTA Strategies of Japan and China and Their Implications for Multilateralism // Indiana University Research Center for Chinese Politics and Business – October 2011 [Electronic resource]. – Access mode: [http://www.indiana.edu/~rccpb/Working\\_Paper/Liang%20Nakagawa%20RCCPB%2011%20FTAs%20PUB.pdf](http://www.indiana.edu/~rccpb/Working_Paper/Liang%20Nakagawa%20RCCPB%2011%20FTAs%20PUB.pdf).

<sup>14</sup> Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine “Modernization of Ukraine is our strategic choice” [Electronic resource]. – Access mode: [http://www.president.gov.ua/-docs/Poslannya\\_sborka.pdf](http://www.president.gov.ua/-docs/Poslannya_sborka.pdf). [In Ukrainian].

<sup>15</sup> Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine “Modernization of Ukraine is our strategic choice” [Electronic resource]. – Access mode: [http://www.president.gov.ua/-docs/Poslannya\\_sborka.pdf](http://www.president.gov.ua/-docs/Poslannya_sborka.pdf). [In Ukrainian].

structures on the basis of concentric circles of "special" relations. Within the proposed model, our country will stay in the most remote circle against the existing and likely possible in future economic integration projects, which are subject to further consideration: ASAEN+1, East Asian Community, East Asian Summit, ASEAN and its dialogue partners, which consists of 10 countries (European Union, China, Russia, the US, India, Japan, Republic of Korea, New Zealand, Australia, Canada), and other extra-regional countries<sup>16</sup>, including Ukraine.

As the conditions for realization of potential of bilateral cooperation at the ASEAN-Ukraine level will not be determined in the institutional and legal vacuum, the question of studying those grounds that govern Ukraine's opportunities for creating a favorable legal regime for the implementation of national economic interests in both components: public – government and private – foreign economic entities, is relevant.

This approach is totally functionally reasonable given the assumption that it is unlikely that ASEAN will develop new legal mechanisms of interaction for Ukraine. Consequently, the potential models of cooperation between Ukraine and ASEAN already exist as a kind of actualized plurality of interaction with other states, of which specific formats of cooperation will have to be selected and their level of optimality will have to be determined. It should be noted that the current executive power of Ukraine doesn't classify the East Asian vector as priority in the foreign economic field for the next three years. Thus, the Government's action plan, approved by relevant Decree of the Verkhovna Rada of Ukraine of December 11, 2014, No. 26-VIII<sup>17</sup>, provides for signing of the free trade agreements with Canada, Turkey, Israel, Gulf Cooperation Council (GCC), Economic Community of West African States (ECOWAS) by 2018.

Nevertheless, the results of comprehensive research by leading Ukrainian economists, including Poruchnyk A.M., which retain their relevance in modern conflicting geopolitical transformations, strongly suggest that the region of East Asia should be considered one of the most important for long-term national interests of Ukraine. Furthermore, he believes that specification, structuring, and subordination of their elements, as well as determination of principles of implementation remain a pressing

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<sup>16</sup> ASEAN in early 21<sup>st</sup> century. Relevant challenges and possibilities / Vasiliev L.Ye. [et al.]. – M. PH "FORUM", 2010. – P. 8. [In Russian].

<sup>17</sup> Decree of the Verkhovna Rada of Ukraine dated December 11, 2014 No. 26-VIII «Action Plan of the Cabinet of Ministers of Ukraine» // Official Journal of Ukraine. – 2014. – No. 102. – Art. 3005. [In Ukrainian].

challenge<sup>18</sup>.

So, staying in line with the strategically important scientific discourse on East Asian geo-economic vector and performing decomposition of system as part of the situational analysis methodology it is appropriate to highlight the leading actors of each of the sub-regions of the Great East Asia and try to identify and structure their main strategic interests which determine the dynamics and trends of changes in the region.

Thus, Asia is represented by three economically powerful countries – China, Japan and South Korea. In turn, South-East Asia can be studied in two planes, as this sub-region is seen through the prism of the operation of, firstly, ASEAN, and secondly, of the developed countries of Association (Singapore, Malaysia, the Philippines) which can conduct an independent foreign policy that becomes important not only for the EU and Russia, but also for Ukraine. Finally, the center of power in South Asia is certainly India, which is the core of SAARC sub-regional economic organizations and has the potential to affect both the regional and global processes.

ASEAN Economic Community, the East Asian Community and the East Asian Summit can be considered as the main institutional formats of regional economic integration, where the element common for all the above formats is ASEAN. Indeed, formally Association of Southeast Asian Nations is considered kind of center of integration processes. The Association was created in 1967 through signing of the Bangkok Declaration by the five founders: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. The other five states gained legal status of members of the Association later – Brunei (1984), Vietnam (1995), Laos (1997), Myanmar (1997), and Cambodia (1999).

Since formation of the ASEAN Community can be considered as the strategic goal of the Association member states, we note that structurally as a system it will be composed of three subsystem elements – ASEAN Community on policy and security, ASEAN Socio-Cultural Community, and ASEAN Economic Community, where the latter is subject to study.

So, the establishment of ASEAN Economic Community should be seen as a higher level of regional integration in the economic area within the territories of ASEAN Member States, which will be implemented without the creation of supranational bodies and formation of supranational law, as opposed to integration proc-

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<sup>18</sup> *Poruchnyk A.M.* National Interest of Ukraine: Economic Self-Sufficiency in Global Dimension: [Article thesis] / A.M. Poruchnyk. – K.: KNEU, 2008. – P. 34. [In Ukrainian].

esses in the European and Eurasian region.

Main areas of Economic Community can be divided into internal – creating a single market and production base, formatting a region of equal economic development, and external – forming a highly competitive region, more precisely, sub-region – development center (along with China, the EU, NAFTA), which will be fully integrated to global economy. These areas can be seen as interrelated and synergetic, allowing their combination into a cognitive map with positive feedback. In general, within the Economic Community ASEAN distinguishes the five key elements of the common market and production base, which should be: free movement of goods, services, investment and capital, facilitation to the movement of skilled labor.

To achieve such goal as creating a common market and production base within ASEAN, the attention is primarily paid to the legal enforcement of free movement of goods. However, in ASEAN a supposedly purely commercial aspect is linked directly to the production, as it should facilitate the development of production networks (clusters) in the region and increase the ASEAN ability to act as the global production center (de facto this status now belongs to China) or part of global supply chains which are implemented by transnational corporations.

A key role in the liberalization of trade in goods originating from the territory of the Association countries is played by such a mechanism as the Common Effective Preferential Tariff for ASEAN free trade area (CEPT scheme, under which the schedule of reduction of duties was agreed and participation in which was mandatory for all ASEAN member states)<sup>19</sup>. In 2009 the ASEAN member states signed the ASEAN Trade in Goods Agreement (ATIGA)<sup>20</sup>, which is codified in nature, making it possible to combine and improve the legal basis for foreign trade in goods in one document.

Quite effective sub-regional economic integration within South East Asia, during which, unlike the European (EU) or the Eurasian (Eurasian Economic Union) regional integration projects no creation of supranational institutions is expected, more efficient assurance of interests of each member state is allowed as an integrated component of common interest, which are assured by collective means – institutional and legal.

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<sup>19</sup> Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area [Electronic resource]. – Access mode: [http://www.asean.org/images/2012/Economic/AFTA/Common\\_Effective\\_Preferential\\_Tariff.pdf](http://www.asean.org/images/2012/Economic/AFTA/Common_Effective_Preferential_Tariff.pdf)

<sup>20</sup> ASEAN Trade in Goods Agreement [Electronic resource]. – Access mode: <http://www.asean.org/-communities/asean-economic-community/category/asean-trade-in-goods-agreement>.



The Free Trade Area, established in 1992 within the ASEAN (AFTA), provides for asymmetric approach to liberalization of foreign trade regime by six more developed countries and four less developed countries. In particular, the first group of countries significantly reduced the level of tariffs on products included in the special list by the year 2010, to no more than 5%, while the second group of states should undertake similar action no later than 2015.

To ensure adequate access to service markets in other countries of the Association and provision of foreign business entities with national legal regime within ASEAN in 1995 the ASEAN Framework Agreement on Services (AFAS) was signed. Based on the analysis of materials of authorities of the ASEAN member states, such as Malaysia, some generalizations can be made that the principles and key directions of liberalization of services correspond to the conceptual and legal framework of the World Trade Organization since liberalization is carried out in twelve sectors, covering one hundred and twenty-eight sub-sectors as defined in the WTO Classification of service sectors<sup>21</sup>.

It appears that the transition to closer economic ties within ASEAN in the form of Economic cooperation is more likely in the event that the existing legal principles – Free Trade Area Agreement for goods and services, as well as the ASEAN Investment Area Agreement (AIA)<sup>22</sup>, shall be filled in with real actual content – active actions of foreign economic activity actors of the Association states which should also be supported by dispute settlement mechanism similar to that adopted within the WTO.

Given the close relationship of legal instruments regulating social relations in the investment and innovation spheres, generalization of Ukrainian jurists is noteworthy. They emphasize that the dynamic development of research potential and its realization in foreign trade can be achieved only with the active and enabling regulatory role of the state, as evidenced by the experience of all major market states, the dynamic countries of South-East Asia<sup>23</sup>.

Status of ASEAN as a subject of international economic law at

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<sup>21</sup> Liberalization of Services under ASEAN Framework Agreement on Services (AFAS) Ministry of International Trade and Industry of Malaysia, 17th March 2011 [Electronic resource]. – Access mode: <http://www.mfea.org.my/Data/Sites/1/link/Announcement4/Afas.pdf>

<sup>22</sup> ASEAN Comprehensive Investment Agreement [Electronic resource]. – Access mode: <http://www.asean.org/communities/asean-economic-community/category/agreements-declarations-7>

<sup>23</sup> Ukraine and European integration: public law aspects [Text]: Article thesis / [Averianov V.B., Hrytsiak I.A., Demchenko S.F., et al]; edited by Averianov V.B., Demchenko S.F.. – K.: «Press of Ukraine», 2010. – P. 118. [In Ukrainian].

the same time does not exclude possibilities of individual member states implementing their own foreign policy. In particular, Singapore holds an active position not only on the issue of Association's concluding of the free trade area agreements, but also expanding the number of their own bilateral FTA signed, including those attributable to trans-regional and concluded on terms of "WTO-plus" and "WTO-X". This trend directly concerns Ukraine, which is negotiating with Singapore to conclude the FTA. Given the typical tactics of Singapore to act in relations with developing countries, to which Ukraine relates, as an economically developed country that tries to provide the legislative protection and assurance of interests of its economic operators, the potential Agreement is likely to belong to a deeper and broader type.

### **Key Models of Regional Economic Integration in ASEAN+ Format**

Despite the recognition of ASEAN as the core of regional economic integration, it must be emphasized that the degree of freedom of such core is negligible since the priority objectives of the Association in the trade, investment, technological areas are unlikely to be achieved independently without cooperation primarily with the countries of East Asian trio. Thus, the factor of dependence of ASEAN countries on processes in these countries led to the need to introduce binding legal mechanisms which bilateral agreement on free trade zone became.

Based on the fact that the development of trade and economic relations of ASEAN with other key actors in the region are carried out in different formats, their serial consideration is appropriate, in the first place, and secondly, the differentiation of free trade area agreements corresponding to this format corresponding on various criteria is justified methodologically, where one of the main criteria provides for the allocation of existing and potential agreements.

At present ASEAN+1 is the main integration format in which the leading countries of East, South-East and South Asia implement foreign economic strategies for the benefit of business entities, whereby the Association cooperates with China, Japan, South Korea, India on the basis of bilateral agreements.

One of the key trends of the past two decades, which is determinant of transformations of regional trade order, is a process of ASEAN rapprochement with China. Strengthening of bilateral trade and economic relations creates a favorable situation for

member states of the Association to assure their interests by supporting China that can be qualified as change of the structural nature. It in turn was the result of a functional change, namely the transformation of the status of China in the early 21<sup>st</sup> century not only as an influential regional but also global subject of international economic law.

Mutual relations in the economic sphere are developed based on those principles and in those priority areas, which are enshrined in bilateral documents, the first of which was the Framework Agreement of Comprehensive Economic Cooperation in 2002<sup>24</sup>. The key to understanding the situation in the region is the establishment of China and the Association of Public Legal Conditions for Intensification of Trade Relations between subjects of foreign economic activity. This refers to the formation of a free trade zone of China-ASEAN (CAFTA), in which, both direct relations in the field of foreign trade are regulated, and, by analogy with the WTO, of goods and services, and investment relations.

The Trade on Goods Agreement was most flexibility taken into account as a subjective aspect – a different level of economic development of member states of ASEAN, and as a product one. Thus, for six more developed countries of the Association (Singapore, Thailand, Malaysia, Indonesia, Philippines, Brunei) in 2010 the period ended during which the greatest possible liberalization of foreign trade regime was envisaged in terms of reduction of duties, while for Laos, Vietnam, Cambodia and Myanmar asymmetrical more favorable period by 2015 was agreed.

Based on the fact that, along with major segment in the field of foreign relations – in the export and import of goods the service sphere gains importance both in the cross-border plane, and directly in other countries in order to create a favorable legal regime in this area the Trade on Services Agreement<sup>25</sup> was concluded between China and ASEAN in 2007.

In the development the above thesis on conduction of their own foreign policy by individual member states of ASEAN, including the strategic directions, we note that one of the most il-

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<sup>24</sup> Framework Agreement on Comprehensive Economic Co-Operation Between ASEAN and the People's Republic of China Phnom Penh, 4 November 2002 [Electronic resource]. – Access mode: <http://www.asean.org/communities/asean-economic-community/item/framework-agreement-on-comprehensive-economic-co-operation-between-asean-and-the-people-s-republic-of-china-phnom-penh-4-november-2002-3>.

<sup>25</sup> Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN [Electronic resource]. – Access mode: <http://fta.mofcom.gov.cn/topic/chinaasean.shtml>.

lustrative examples in this context are the trade and investment relationship between China and one of the most economically developed ASEAN countries – Singapore where strong economic position is occupied by representatives of the Chinese diaspora (huadzyao). Thus, while Singapore is now the only ASEAN country which signed a bilateral agreement on free trade area with China, despite the operation of a free trade area between China and ASEAN.

The legal basis for the mutual foreign direct investment by private law subjects is the Investment agreement<sup>26</sup>, which can be regarded as the third pillar of bilateral trade and economic relations, along with agreements on goods and services.

Japan's foreign economic strategy with respect to the ASEAN is largely due to China's activity in this direction. Japan, like China, set up a free trade area with ASEAN in the framework of the Agreement on comprehensive economic partnership<sup>27</sup> that includes provisions not only to traditional areas – trade in goods and services but also investment and other areas of cooperation. The agreement also provides for a more flexible approach for the four less-developed ASEAN countries and must be fully formed in the same year 2015 as free trade areas within ASEAN (AFTA) and ASEAN with China (CAFTA), which indicates the ability of ASEAN to collectively defend their economic interests in relations with stronger partners.

Within the strategic course of India's "Look to Asia", which is the epitome of its modern foreign policy, India and ASEAN established a free trade area, which does not cover services, scientific and technological cooperation, investment, referring only to trade in goods and anticipating lower duties for a range of products by 2015. However, this narrowed form of cooperation is likely to be extended by the above fields, for which a legal basis was created in the form of a Framework Agreement between ASEAN and India on Comprehensive Economic Cooperation<sup>28</sup>, which provides for the formation of regional trade and investment zones by making special bilateral agreements. Furthermore, parties encourage external factors to reach a compromise, where one of such

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<sup>26</sup> Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN [Electronic resource]. – Access mode: <http://fta.mofcom.gov.cn/topic/chinaasean.shtml>

<sup>27</sup> Agreement on Comprehensive Economic Partnership among Member States of the Association of Southeast Asian Nations and Japan, 2008 [Electronic resource]. – Access mode: <http://www.asean.org/communities/asean-economic-community/item/asean-japan-free-trade-area-2>.

<sup>28</sup> Framework Agreement on Comprehensive Economic Cooperation Between the Republic of India and the Association of Southeast Asian Nations, (Bali, 8 October 2003) [Electronic resource]. – Access mode: <http://www.asean.org/communities/asean-economic-community/item/asean-india-free-trade-area-3>.

factors, the most significant one, may be described succinctly as all the same "China factor".

The development of trade and economic relations between ASEAN and India was evolutionary – from sectoral dialogue to India's obtaining the status of a dialogue partner.

Effective bilateral cooperation both with the ASEAN within the Free Trade Agreement, and with the most developed countries of the Association by concluding bilateral agreements with them on trade and economic cooperation, sets the basis for the formation of India's strategic vision of large-scale integration in the re-gion that can be done with the use of economic and legal mechanisms. For example, India is initiating consideration of Agreement on Pan-Asian Free Trade Area (PAFTA), which can be a preliminary step towards the formation of the Asian Economic Community (AEC) as the third global economic pole, along with the EU and NAFTA. It appears that the likelihood of the realization of this scenario is low, at least China is unlikely to carry out practical steps for its implementation.

In general, increasing role of India is perceived ambiguously by China, the imperative of which, as Indian researcher D.S. Rajan emphasizes, is to establish regional economic order where China dominates, because only in this case its strategic interests can be assured<sup>29</sup>.

One of the strategic approaches, aimed at minimizing the risk of trade-economic "take-over" of the Association by China, is structural in nature and can be achieved by expanding the number of elements of the system. Such a theoretical vision gained practical implementation and legal provision at establishing several stabilization formats of ASEAN cooperation with key actors of East Asia, which, along with China and Japan, involved South Korea, with which ASEAN also signed a bilateral free trade agreement.

So, along with the ASEAN+1, the following integration model is expressed by the ASEAN+3 formula. The strategic objective of its members is to develop East Asian Community, where the economic and legal part is, unlike previously considered model is not implemented, but has the potential nature. In this case we are talking about establishing, perhaps by 2017, the East Asian Free Trade Area (EAFTA) and East Asian area for investment cooperation by expanding the scope of ASEAN Investment

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<sup>29</sup> *Rajan D.S.* East Asia integration – China's Reservations on India Playing a Leading Role // Chennai Center for Chinese Studies C3S Paper No. 757 (March 13, 2011) [Electronic resource]. – Access mode: <http://www.c3sindia.org/eastasia/2201>.

Area (AIA).

At present China has no legal instrument for restraining the process of expansion of number of member states of the East Asian Summit which is adverse to China's strategic interests. In addition to India, since 2011 subject to ASEAN official invitation the East Asian Summit also includes Russia and the USA. This is due to the fact that for becoming a member of the Summit the mentioned states have fulfilled all the necessary requirements, in particular, have acceded to the ASEAN Treaty of Amity and Cooperation, established substantial economic relations with the ASEAN and acquired the status of a dialogue partner.

Thus, the strategic position of China is that the processes of regional trade and economic integration must be carried out only by regional countries in the ASEAN+3 format with the creation of relevant free trade area (EAFTA), which provides for subsidiary consideration of interests of extra-regional states. However, China always stresses, on the one hand, on the central role of ASEAN in these processes, and on the other hand – on the important role of existing institutional and legal mechanisms of interaction in the format of ASEAN+1, and especially ASEAN+3, instead of ASEAN+8, which is emphasized by Japan and India.

### **Transatlantic Format of Integration Processes**

The above-mentioned in theory could create the basis for generalization on China-centricity of processes of the formation of a new regional trade and economic law order and kind of ASEAN-centricity of regional integration processes. However, this generalization cannot be confirmed empirically in full, as it would only partially reflect trends in the region due to focusing on intra-regional processes which, in certain circumstances may become a methodologically flawed approach.

In this context, it is unjustified to leave another integration project beyond the research, where neither China, nor ASEAN is involved insider information project as an initiator or the party invited to negotiations. This refers to the draft Transatlantic Partnership Agreement (TPP)<sup>30</sup>, which by the content is the free trade area agreement actively promoted by the United States. This agreement is inextricably linked to the Trans-Pacific Strategic Economic Partnership Agreement (TPSEPA) which entered into force on January 01, 2006 between four countries – Singapore, New Zealand, Brunei, Chile, and is the enhanced version

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<sup>30</sup> Trans-Pacific Partnership (TPP) [Electronic resource]. – Access mode: <http://www.ustr.gov/tpp>.

thereof.

The feature of the new draft TPP agreement which has essential preconditions to become legally binding on member states, is a system of rules aimed at regulating both traditional and uncharacteristic for free trade agreements relations, for instance, environmental, labor relations which are not are key to integration processes, however, are quite capable to make a barrier to entry by other countries, especially China.

Entry into force by the existing or close to it amended free trade area agreement within the Transatlantic Partnership, provisions of which are accorded without China, despite, and perhaps vice versa, because of, the change of its status both at the regional and global levels, if not disables its accession to this agreement, but at least creates extremely unfavorable conditions due to this whole complex of objective and subjective factors. If one generalizes a set of basic negative aspects arising due to forced promotion of negotiations with TPP without its participation, their essence lies in infringement of economic interests of China, threat of partial intra-regulated marginalization, and torpedoing of years-long integration efforts in the region.

Being aware of high risks, China will undoubtedly take countermeasures of tactical and strategic nature, which, as noted by Chinese researchers may include acceleration of negotiations on East Asian Free Trade Area (in the format of ASEAN+3), activation in other areas, which already have some institutional and legal conditions created, in particular within the Shanghai Cooperation Organization, changes in the pattern of economic development with reorientation from external markets to the internal one<sup>31</sup>.

In terms of the above it should be appropriate to draw attention to the latest integration initiative on ASEAN on creation of the free trade area within the Regional Comprehensive Economic Partnership (RCEP) between 16 countries of the Great East Asia. The subjective part of the negotiation process that will last roughly from 2013 to 2015 shall be formed by 10 member states of the ASEAN and 6 regional countries with which the Association signed bilateral FTAs, therefore, it refers to development of cooperation in the ASEAN+6 format (Australia, China, India, Japan, South Korea, and New Zealand).

Conceptually legal principles of formation of a free trade area

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<sup>31</sup> *Janmin J.* China's Concerns Regarding TPP No More than Empty Worries? Fujitsu Research Institute (January 11, 2012) [Electronic resource]. – Access mode: <http://jp.fujitsu.com/group/fri/en/column/message/2012/2012-01-11.html>.

within the Regional Comprehensive Economic Partnership (RCEP) have much in common with such principles as to both the East Asian Free Trade Area (EAFTA), which China considers a priority, and Comprehensive Economic Partnership of East Asian (CEPEA), which is a priority for Japan. However, using the provided official English-language abbreviations of key regional integration projects Asian researchers, in particular D. Sanshita, emphasize that RCEP is characterized by significant differences as well, in general, such agreement should be considered as a kind of compromise between EAFTA and CEPEA in the first place, and secondly, as an alternative to TPP, which doesn't involve all members of the Association of South-East Asia States, and thirdly, as a tool to preserve the ASEAN role as the core of regional integration processes<sup>32</sup>.

In turn, one of the most active members of ASEAN in terms of conclusion of agreements on free trade area – Singapore – considers RCEP and TPP not as alternative but as parallel projects of regional integration that are capable of mutual positive impact<sup>33</sup>.

Studying the formation and implementation of foreign economic strategies of the Great East Asian states within regional integration projects in the light of interests of Ukrainian foreign economic activity entities it's worth to note specific provisions of analytical report prepared by the National Institute for Strategic Studies. One of the most important generalizations is that the creation of numerous regional free trade areas and preferential relations within integration structures of Southeast Asia is not in the interests of Ukraine in terms of capacity to diversify exports.

The unfavorable trend is the growth of Chinese exports to the ASEAN markets, including those that are competitive to Ukrainian ones. In terms of functioning of the China-ASEAN free trade area, regionalization of the Chinese currency, and strengthening China-ASEAN economic relations in general, Ukrainian products feel more discrimination on East Asian markets. In particular, the ASEAN markets are significant consumers of steel – the annual volume exceeds 40 million tons, of which more than half are imports. The introduction of ASEAN-China free trade regime has provided significant benefits to Chinese steel products.

The overall conclusion is that in terms of main items of Ukrainian exports to South-East Asian countries China becomes a

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<sup>32</sup> *Sanshita B.D.* Asia's Regional Comprehensive Economic Partnership [Electronic resource]. – Access mode: <http://www.eastasiaforum.org/2012/08/27/asia-regional-comprehensive-economic-partnership>.

<sup>33</sup> Factsheet on The Regional Comprehensive Economic Partnership (RCEP) Ministry of Trade and Industry (Singapore, November 2012) [Electronic resource]. – Access mode: [http://www.fta.gov.sg/press\\_relese%5CFACTSSHEET%20ON%20RCEP\\_final.pdf](http://www.fta.gov.sg/press_relese%5CFACTSSHEET%20ON%20RCEP_final.pdf).



powerful rival of Ukraine which already now may be classified as one of the risks for the national economy, which has a pronounced export-oriented nature<sup>34</sup>.

To investigate possible trajectories of the East Asian region it is possible to apply scenario forecasting methodology in its search component, which requires identifying the key factors, versatile performance and resultant interaction of which will determine the appropriate alternative trajectory. It is this methodological basis that the above research has been made on for development prospects for the region in 2020<sup>35</sup>, which involved experts from East Asian and South-East Asian regions – scientists, government officials, representatives of business entities. Based on the discussion five scenarios were elaborated, key provisions of which are disclosed in the article thesis<sup>36</sup>.

Another forecast of US experts dedicated to research of global trends to 2025 which are observed in the post-crisis world, claimed that "Asian regionalism has global significance, it may lead to the emergence or strengthening of trends for the formation of three trade and financial quasi-blocks – of North America, Europe, and East Asia. The formation of such quasi-blocks will affect the ability to achieve future global agreements within the World Trade Organization, and regional groups will compete in setting interregional standards for information technology products, bio-, nanotechnology, intellectual property rights, and other products of the "new economy"<sup>37</sup>.

### Conclusion

Summarizing the above the following main conclusions can be made.

Major trends in transformation of trade and economic order in East and South-East Asia will preserve unfavorable nature to im-

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<sup>34</sup> *Kurnishova Yu.* Modern tendencies of regionalism in the East Asia: opportunities for Ukraine. Analytical memo of NISD, March 2011 [Electronic resource]. – Access mode: <http://www.niss.gov.ua/articles/399>. [In Ukrainian].

<sup>34</sup> *Kurnishova Yu.* Modern tendencies of regionalism in the East Asia: opportunities for Ukraine. Analytical memo of NISD, March 2011 [Electronic resource]. – Access mode: <http://www.niss.gov.ua/articles/399>. [In Ukrainian].

<sup>35</sup> Global Trends 2020 Mapping the Global Future: Report of the National Intelligence Council's Project [Electronic resource]. – Access mode: <http://www.dni.gov/index.php/about/organization/national-intelligence-council-global-trends>.

<sup>36</sup> *Korol V.I.* Legal support of foreign economic strategy of Ukraine (theoretical and methodological and applied principles of government legal forecasting) [Text]: Article thesis / Korol V.I. – K.: NRI of private law and entrepreneurship of NALS of Ukraine, 2013. – pp. 268-270. [In Ukrainian].

<sup>37</sup> Global Trends 2025: A Transformed World [Electronic resource]. — Access mode: [http://www.acus.org/files/publication\\_pdfs/3/Global-Trends-2025.pdf](http://www.acus.org/files/publication_pdfs/3/Global-Trends-2025.pdf)

plementation of the East Asian regional geo-economic strategy of Ukraine. This is due to the fact that they reduce the ability of the state to assure preferential legal regime of access of domestic goods and services to foreign markets of key actors in the region, especially China and ASEAN. Their collaboration within the implemented trade and economic integration model of ASEAN+1 creates legal pre-conditions for implementation by their foreign economic activities entities within the bilateral free trade area of exports and imports on more favorable terms than provided for Ukrainian exporters under the most favored nation treatment.

Solving the challenge of optimizing the legal regime of export of Ukrainian goods to foreign markets of countries of the East Asian region, which is also relevant for the foreign economic operators in the EU and Russia will get more complicated irrespective of the subject composition within which regional trade agreements may be concluded: ASEAN+6 with a view to the creation of a free trade area within the Regional Comprehensive Economic Partnership by 2015, ASEAN+3 with plans for formation of the East Asian free trade area by states of the East Asian Community by 2017, or ASEAN+8 with a probability of establishing the comprehensive economic cooperation area within the East Asian Summit after 2017.

Previously declared in the strategy of the state modernization external interests of Ukraine to conclude the Free Trade Area Agreement with the ASEAN as a legal instrument of its East Asian regional strategy can be secured in the long term, beyond the forecast period of 2020-2025. This determines the appropriateness of Ukraine's shift of emphasis to performance of legal actions of tactical nature, which in foreign economic domain should cover bilateral agreements on free trade areas with individual ASEAN countries and the development of industry-sectoral cooperation in priority areas of common interest.

Determination of the probable ratio of contractual, legal and institutional principles in the implementation of integration and foreign economy strategies of states in the East and South-East Asia as a new center of global economic development and extrapolation of current trends on the key actors (ASEAN, China, Japan)'s application of trade and economic agreements allows developing a long-term forecast. Its essence lies in the fact that for this region free trade area agreements will remain relevant, while no customs union will be formed in the forecasted 2020-2025 period. Lack of institutional and legal superstructure similar to the EU or EAEU as supranational law and supranational bodies does not prevent at present and is likely to not prevent in future en-

sureing proper economic interests of states of the region and foreign economic operators based on the contractual legal tools at the international level.

Based on the fact that in the 21<sup>st</sup> century a significant impact on global trends not only in foreign trade, but also the investment and innovation sphere will be from new centers of growth, one of the main among them being China, it is strategically important and methodologically grounded to study Chinese experience and conduct comparative study of key mechanisms in the field of taxation, which were introduced in China and Ukraine and perform the stimulating or restraining function for domestic entities (residents) and foreign investors (non-residents) in terms of taxation of their revenues or profits, which is appropriate to recognize as the subject of further interdisciplinary economic and legal research.

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